



Council of the
European Union

124113/EU XXV. GP
Eingelangt am 25/11/16

Brussels, 25 November 2016
(OR. en)

Interinstitutional File:
2016/0359 (COD)

14875/16
ADD 2

JUSTCIV 310
EJUSTICE 191
ECOFIN 1120
COMPET 617
EMPL 500
IA 120
CODEC 1744

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	23 November 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2016) 358 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU

Delegations will find attached document SWD(2016) 358 final.

Encl.: SWD(2016) 358 final



EUROPEAN
COMMISSION

Strasbourg, 22.11.2016
SWD(2016) 358 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

**on preventive restructuring frameworks, second chance and measures to increase the
efficiency of restructuring, insolvency and discharge procedures and amending Directive
2012/30/EU**

{ COM(2016) 723 final }

{ SWD(2016) 357 final }

Executive Summary Sheet

Impact assessment on a Proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU

A. Need for action

Why? What is the problem being addressed?

The proposal addresses the following key problems: (i) lost opportunities and costs generated by barriers to cross-border investment related to insolvency frameworks, (ii) foregone benefits and additional costs for creditors and debtors related to liquidations of viable companies, (iii) lost opportunities and additional costs for natural persons related to inefficiencies in insolvency frameworks as regards a fresh start.

These problems stem from differences in national set of rules regarding: (a) rules on the possibility of restructuring at an early stage, (b) rules on stay of enforcement actions (moratorium), (c) rules on debtor-in-possession, (d) rules on the preparation and adoption of restructuring plans, (e) rules on provision of new financing in restructuring, (f) intensity and quality of courts' and insolvency administrators' involvement, (g) rules on debt restructuring for natural persons, including discharge and second chance.

The differences between restructuring and second chance frameworks of Member States generate continuing legal uncertainty, additional costs for investors in assessing their risks, and persisting barriers to the efficient restructuring of viable companies in the EU, including cross-border enterprise groups.

What is this initiative expected to achieve?

General objectives:

1. Reduce the barriers for cross-border investment which are related to restructuring and insolvency frameworks and increase investment and job opportunities in the internal market
2. Reduce the number of unnecessary liquidations of viable companies and increase the possibilities of cross-border restructurings in the internal market
3. Reduce the costs and increase the opportunities for honest entrepreneurs to be given a fresh start.

In general the initiative aims at harmonising certain aspects of restructuring and second chance provisions.

What is the value added of action at the EU level?

Member States alone cannot ensure that their insolvency and restructuring regimes will be compatible. A well-functioning EU internal market requires a coherent restructuring and second chance framework, capable of addressing the cross-border dimension of firms, as interaction between companies located in different Member States has become increasingly common. EU action will add value by facilitating cross-border investing in the EU, ensuring that viable businesses in financial difficulty will benefit from more choice of accessible tools aiming at preventing their insolvency; at the same time, entrepreneurs will profit from the possibility of using reasonable discharge periods in their Member States. The proposed rules will create legal certainty for creditors and investors which want to lend in other Member States.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The following high level options were considered:

Option 1: Maintaining the status quo (baseline scenario)

Option 2: Setting up a fully harmonised preventive restructuring procedure and a second chance framework

Option 3: Introducing an alternative, optional EU restructuring and second chance regime

Option 4: Setting up a harmonised minimum legal framework in the area of restructuring and second chance for entrepreneurs

To achieve the objectives above, various substantive sub-options are envisaged. These substantive sub-options include (i) enabling efficient possibilities of early restructuring, (ii) improving chances of negotiations by allowing the debtor a "breathing space" by way of stay of enforcement actions

(moratorium), (iii) facilitating the continuation of debtor's business while restructuring, (iv) disallowing dissenting minority creditors and shareholders to jeopardise restructuring effort while safeguarding their interests, (v) increasing the chances of success of the restructuring plan, (vi) increase the effectiveness and reducing the length of restructuring, insolvency and second chance procedures, (vii) enabling the discharge for entrepreneurs in a reasonable time (3 years).
Who supports which option?
Most Member States support the objectives of the Commission to improve early restructuring and second chance frameworks, but insist that harmonisation should remain on the level of principles due to complex links with other areas of law such as company law. As to the stakeholders, business organisations, professionals' associations, financial institutions, consumer organisations, Trade Unions and academics were in general supportive of minimum harmonised rules on early restructuring and a second chance approach and welcomed the idea of an efficient and (cost)-effective EU insolvency framework for saving viable businesses. They also stressed that a balanced approach should be envisaged, safeguarding the interests of all stakeholders and preventing moral hazard. However, the banking sector and some other stakeholders were of the view that consumer discharge should not be covered by this initiative. The European Parliament supports harmonisation of certain aspects of restructuring and puts emphasis on ensuring a second chance to all natural persons.
C. Impacts of the preferred option
What are the benefits of the preferred option?
The preferred option would enhance the prospects of realising a higher number of restructurings of cross-border groups the costs of which are currently prohibitive. The impacts will be potentially significant in several Member States (BG, DK, SK, SI, HR, CY, EE, IE, LT, LU, NL, PL, RO). This will lead to a significant reduction in the number of jobs lost due to insolvency (currently estimated at 1.7 million per year). Efficient preventive procedures lead to a speedier deleveraging of non-performing loans. Apart from a significant negative relationship between corporate deleveraging and GDP growth (1 percentage point reduction in the ratio of debt to financial assets leads to about 0.4 percentage points less GDP growth), the preferred option should lead to increases in recovery rates which, in turn, lead to lower borrowing costs (a 10 percentage point increase in expected recovery rate is associated with a 37 basis point fall in bond spread). The preferred option will increase the rate of self-employment, since the reduction of discharge period increases the rate of self-employment in Member States, such as HU, IT, LT, MT, PT and RO where discharge periods exceed the period of 3 years. 3 million new jobs are likely to be created as a result.
What are the costs of the preferred option?
Some Member States will need to put in place a preventive procedure or a procedure leading to discharge of debt, or adapt a procedure already notified under Annex A of the Insolvency Regulation. Some changes to company law may be needed to implement the provisions on shareholders' position in restructuring.
How will businesses, SMEs and micro-enterprises be affected?
The preferred option will reduce the costs of restructuring of SMEs, through measures such as reducing court involvement, reducing the instances where restructuring practitioners need to be appointed, providing for national model restructuring plans. Cross-border credit to SMEs will be more accessible: an efficient restructuring procedure would enable SMEs to recover more than in the case of the insolvency of the debtor, since creditors' recovery rates are in general higher where the insolvency framework allows for early and efficient restructuring of viable firms and quick resolution of the non-viable ones. Better conditions for fresh start after failure will reduce the death rate of companies and the negative knock-on effects of related insolvencies in the supply chain. Entrepreneurship and innovation will be encouraged.
Will there be significant impacts on national budgets and administrations?
No. Member States where preventive procedures or procedures leading to discharge are introduced for the first time may need to provide training for their judicial or administrative authorities and possibly also for practitioners. These training costs will be of one-off character in the range of €50-1300 per judge in those countries where a preventive procedure is used for the first time. Member States which are not currently collecting data will have to put in place such data collection tools, but the costs are not likely to be high especially if procedures are already digitised. Most Member States are already introducing digitisations of procedures as part of eGovernment initiatives.

Will there be other significant impacts?
No.
D. Follow up
When will the policy be reviewed?
5 years after the entry into application of the Directive.