



EUROPEAN COMMISSION

PRESS RELEASE

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Commission seeks public input on European approach to business insolvency

The European Commission launched a public consultation today on a European approach to business failure and insolvency, which puts the focus on helping sound businesses to survive and honest entrepreneurs to get a second chance while protecting creditors' right to get their money back. Procedures should be speedy and efficient, in the interest of both debtors and creditors, and should help safeguard jobs, help suppliers to keep their customers, and owners to retain value in viable companies. Disparities between national insolvency laws can create legal uncertainty and an unfriendly business environment. Key issues are the time required to discharge a debt, the conditions for opening proceedings, the filing of claims and the rules for restructuring plans. These can have an adverse effect on cross-border investment. Today's consultation will seek the views of stakeholders on how best to respond to these challenges.

"Europe needs a 'rescue and recovery' culture for viable businesses and individuals in financial difficulties," said Vice-President Viviane Reding, the EU's Justice Commissioner. "Honest business owners should get a second chance, so that insolvency does not become a life-sentence if things go wrong. SMEs, which are the backbone of our economy, are particularly important. I count on everyone interested to participate actively in this consultation so that we can gather the best ideas about how to respond to the challenge of business insolvencies."

The proposed modernisation of the EU's Insolvency Regulation – which dates from 2000 – is a key first step to bringing EU insolvency law into the 21st century ([IP/12/1354](#), [MEMO/12/969](#)). At the same time, it is clear that a revision of the Regulation cannot by itself address the underlying challenges to cross-border insolvencies, such as the sometimes marked differences in national insolvency laws. That is why the Communication that the Commission adopted in parallel with the Insolvency Regulation proposal in December 2012 launched a reflection process on a new EU approach to business failure in light of diverging national insolvency rules. Today's consultation is the follow-up to this.

One of the questions raised in the consultation is the need to harmonise the "time to discharge" (the time it takes to close down a failed business), which is often regarded as crucial for the opportunity to restart a business. Currently, the time it takes to close down a failed business varies significantly throughout the EU, ranging from four months in Ireland to over six years in the Czech Republic and in some countries failed entrepreneurs cannot obtain discharge at all.

The consultation also addresses the rules governing the exercise of the profession of liquidators. Furthermore, stakeholders are asked whether the existing rules concerning directors' duties and liability in case of insolvency create problems in practice and if rules should be introduced at EU level to ensure that fraudulent managers who have been disqualified in one country are prevented from managing a company in another country.

Finally, the consultation asks whether the legal uncertainty arising from the different conditions under which an act of an insolvent debtor which is detrimental to their creditors can be avoided before national courts has created problems in practice

This consultation is open until 11 October 2013 and can be accessed here: <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=InsolvencyTwo>

Background

Businesses are essential to creating prosperity and jobs. But setting one up – and keeping it going – is tough, especially in today's economic climate.

Figures reveal how urgent it is to take action in this field: half of all businesses do not survive the first five years of their existence. An average of 200,000 firms go bust in the EU each year, resulting in 1.7 million direct job losses. A quarter of these bankruptcies have a cross-border element.

As the European response, the Commission presented in December 2012 a package of measures to modernise insolvency rules ([IP/12/1354](#), [MEMO/12/969](#)). The main elements of the package were a proposal to amend the Insolvency Regulation and a policy Communication on "A new European approach to business failure and insolvency".

European Insolvency Law is laid down in [Regulation \(EC\) No 1346/2000](#) on insolvency proceedings (the "Insolvency Regulation"), which has applied since 31 May 2002. The Regulation contains rules on jurisdiction, recognition and applicable law and provides for the coordination of insolvency proceedings opened in several Member States. The Regulation applies whenever the debtor has assets or creditors in more than one Member State.

For more information

Public consultation on a new European approach to business failure and insolvency

<http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=InsolvencyTwo>

European Commission – Insolvency proceedings:

http://ec.europa.eu/justice/civil/commercial/insolvency/index_en.htm

Homepage of Viviane Reding, Vice-President of the European Commission and EU Commissioner for Justice:

<http://ec.europa.eu/reding>

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