

Directive on business insolvency: Council agrees its position

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The Council today agreed its position on the business insolvency directive. The directive aims at providing access by viable enterprises in financial difficulties to preventive restructuring frameworks to enable them to restructure at an early stage, and so prevent insolvency. It also gives reputable bankrupt entrepreneurs a second chance, and introduces measures to increase the efficiency of restructuring, insolvency and discharge procedures.

Negotiations with the European Parliament can now start with a view to reaching an agreement in early 2019.

Every year, 1.7 million people lose their jobs because their company goes bankrupt. We must therefore have robust insolvency rules in place across the EU to reduce the number of bankruptcies, and ensure that reputable entrepreneurs are offered a second chance. That is why the Council supports this new legislation, with adaptations to make sure it takes full account of the existing and well functioning systems already in place in member states.

Josef Moser, Minister of Justice of Austria

Main elements of the Council's position

The position of the Council ([12536/18](#)) keeps all the main elements of the initial Commission's proposal but provides more flexibility to member states to adapt the new legislation to their existing frameworks.

In particular, the Council has amended the provisions on:

- the **involvement of judges**: while keeping the objective of having quicker insolvency procedures, the Council's position provides for more flexibility for member states to decide on when and where the involvement of judges is made mandatory;
- the **duration of the stay of individual enforcement actions**: while keeping the durations proposed by the Commission (i.e. 4 months maximum

for the initial duration), the Council introduces the possibility of a longer period for courts to confirm particularly complex plans;

- the **cross-class cram-down**: while the rules defined in the proposal are kept, member states have decided on more flexibility at national level to set the conditions needed to carry out a prior valuation of a business, as well as the rules determining when a creditor class can be crammed down.

Next steps

As the European Parliament has already adopted its position, trilogue negotiations can start very soon.

The objective of the three institutions is to reach a political agreement before the 2019 European elections.

Background

According to the Commission's assessment in 2016, every year about 200 000 firms in the EU go bankrupt, resulting in over 1.7 million people losing their jobs.

The proposal was presented by the Commission on 22 November 2016. The overall objective of the text is to reduce the most significant barriers to the free flow of capital stemming from differences in member states' restructuring and insolvency frameworks and to enhance the rescue culture in the EU. In doing so, the proposal aims to strike an appropriate balance between the interests of the debtors and the creditors.

The text is a minimum harmonization directive. It introduces a set of principles along with more targeted rules in some specific cases, while allowing member states to go further when transposing the rules into national law.

Once adopted, the new rules will complement the 2015 Insolvency Regulation which focuses on resolving the conflicts of jurisdiction and laws in cross-border insolvency proceedings, and ensures the recognition of insolvency-related judgments across the EU.

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