

EU agrees new rules on business insolvency

Press contacts

Verónica Huertas Cerdeira

Press officer

+32 2 281 45 48

+32 470 88 21 99

The EU is giving reputable bankrupt entrepreneurs a second chance, and making it easier for viable enterprises in financial difficulties to access preventive restructuring frameworks at an early stage to prevent insolvency.

The Council, at the level of ambassadors, confirmed today an agreement reached with the Parliament on the directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures. 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. Furthermore, the directive also aims to reduce the amount of non-performing loans (NPLs) on banks' balance sheets and to prevent the accumulation of such NPLs in the future. In doing so, the proposal aims to strike an appropriate balance between the interests of the debtors and the creditors.

Josef Moser, minister for Justice of Austria, said: "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. I am glad we have reached an agreement with Parliament so quickly so the new rules can be adopted before the European elections."

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.

Main elements of the compromise

The compromise **largely respects the principles of the Council's position** in particular with regards to the necessary amount of flexibility to member states to adapt the new legislation to their existing frameworks. This is, for example, the case regarding provisions on the involvement of judges, the duration of the stay of individual enforcement actions or the cross-class cram-down.

As part of the compromise, several provisions were added or amended compared to the Council's positions. Those include:

- the introduction of **provisions on the duties of company directors in insolvency proceedings**. Those provisions include: having due regard for the interests of creditors, other stakeholders and equity holders as well as taking steps to avoid insolvency and avoiding deliberate or grossly negligent conduct. Those duties could be implemented at national level by ensuring that judicial authorities take them into account when assessing the liability of the director in cases of breach of duty of care.
- an article on **worker's rights** has been introduced to recall that member states should ensure that the existing rights of workers under national and Union law are not affected by the preventive restructuring procedure (e.g. the right to collective bargaining and industrial action and the right to information and consultation)
- **provisions on the appointment of a restructuring practitioner**: Council and Parliament agreed on a few cases where the appointment of a practitioner to assist the debtor and creditors shall be required (e.g. in case a cross-class cram-down would be necessary to adopt the restructuring plan, when such appointment is requested by the debtor or a majority of creditors or when it is decided by judicial authorities in case of general stay of individual enforcement actions). For other cases, the directive states that appointments of a restructuring practitioner should be decided on a case-by-case basis depending on the circumstances of the case, except in those cases where member states may require a mandatory appointment.

Next steps

Once the linguistic revision is completed, the text will formally adopted by the two institutions and published in the official journal.

Member states will then have **2 years** to implement the new rules in their national legislation, although they can ask the Commission for an additional year for implementation.

Background

The proposal was presented by the Commission on 22 November 2016. 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.

The Council adopted its initial position on the directive on 11 October 2018.

[Download as pdf](#)