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# COMMISSION STAFF WORKING DOCUMENT

# EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

*Accompanying the document*

**Proposal for a Directive**

**harmonising certain aspects of insolvency law**

{COM(2022) 702 final} - {SEC(2022) 434 final} - {SWD(2022) 395 final}



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**Need for action**

Insolvency proceedings aim at ensuring an orderly winding down or restructuring of companies in financial and economic distress. The EU has already legislated in the area of insolvency. However, existing EU legislation only covers pre-insolvency and debt-discharge measures (captured by the recent Restructuring and Insolvency Directive) and rules on applicable law in cross-border insolvency cases (set out in the Insolvency Regulation). As a result, substantive national insolvency law remains widely differing across Member States.

The wide differences in national insolvency regimes are an important obstacle to the single market for capital in the EU. They pose difficulties for cross-border investors who need to obtain information about - and be able to compare - 27 insolvency laws, in order to consider them in their investment decisions (and reflect in the cost of capital). Furthermore, national insolvency regimes continue to differ in terms of efficiency, notably regarding the time it takes to liquidate a company and the value that can eventually be recovered. Data sources analysed in this Impact Assessment suggest that procedures in some Member States suffer much more from delays and yield considerably less efficient outcomes than the best performers in the EU. This divergence ties closely with low predictability of the outcome of insolvency procedures, which leads to higher information and learning costs for investors and poses a significant barrier to cross border investments. This ultimately prevents efficient allocation of capital and hinders the development of the Capital Markets Union (CMU).

This initiative follows-up on Action 11 of the 2020 Capital Markets Union Action Plan, where the Commission committed to making the outcome of cross-border investment more predictable as regards insolvency proceedings. It aims to harmonise targeted aspects of substantive law on corporate (non-bank) insolvency in order to make insolvency regimes more efficient and reduce information and learning costs for cross border creditors resulting from the lack of harmonisation. It also aims to facilitate cross-border investments and competition while safeguarding the orderly functioning of the single market as mandated by Article 114 TFEU.

Member States' different starting points, legal traditions and policy preferences imply that reforms at national level in substantive insolvency law are unlikely to lead to sufficient convergence, despite some reforms launched in the past years. Therefore, action at the European level is required to ensure that the problem is addressed.

**Possible solutions**

Two packages of policy options were identified based on input from a group of experts on restructuring and insolvency law, a dedicated study and stakeholder views. These sources of evidence, as well as the data from the benchmark study carried out by the European Banking Authority in 2020 and the World Bank Doing Business indicators, were also used to compare the options and assess their impacts. The two options considered are a targeted harmonisation option (Option 1) and a more comprehensive harmonisation option (Option 2), both implemented via a directive. The option of only issuing a recommendation was discarded as being unlikely to address the identified problem.



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The proposed options target the three key dimensions of insolvency law: (i) the recovery of assets from the liquidated estate, (ii) the efficiency of procedures and (iii) the predictable and fair distribution of recovered value among creditors. They cover, in particular, issues related to transaction avoidance, asset tracing, directors' duties and liability, the sale of a company as a going concern ('pre-pack'), the insolvency trigger, a special insolvency regime for micro and small enterprises, the ranking of claims and creditors' committees. Option 2 includes all elements covered in option 1, complemented by more ambitious measures across the three key dimensions mentioned above.

The analysis assesses the options in relation to three objectives: whether they (i) allow a higher recovery value, (ii) lead to a shorter duration of insolvency proceedings and (iii) reduce legal uncertainty and information costs. The analysis also considers carefully their cost-effectiveness and coherence.

**Impacts of the preferred option**

Based on the comparison of effectiveness and efficiency, option 1 (targeted harmonisation through a directive) is selected as the preferred option. The detailed analysis found that a more comprehensive harmonisation (Option 2) would yield higher benefits with regard to two of the three objectives, but this would also come at a higher cost, notably in terms of potential inconsistencies with other pieces of law (property law, company law, labour law). The targeted harmonisation (Option 1) would deliver comparable benefits (to Option 2) but in a more cost effective manner.

The preferred option is expected to bring significant economic benefits for investors (creditors), companies, including SMEs, and, in general, the wider economy. Creditors will in particular benefit from expected higher value recovery as well as reduced information and learning costs. Investors from third countries will enjoy similar benefits, making it more attractive for them to invest in the EU. Companies across the EU will face more uniform insolvency regimes and lower legal uncertainty about what will happen if they become insolvent. Micro and small companies will benefit directly from the creation of a special alleviated insolvency regime that will be more proportional to their needs.

The qualitative and quantitative assessment suggests that the targeted harmonisation could lead to significant reductions in both costs and time of recovery. This is expected to boost recovery rates by about 1.5 percentage points, which, when extrapolating empirical estimates in economic studies, could lead to a reduction of funding costs by 1.5 basis points and an increase in cross-border portfolio asset holdings by about 1.5 percentage points. When quantified on the basis of available data and plausible assumptions, direct and indirect benefits are expected to exceed 10 billion EUR annually. Meanwhile, the total costs are expected to be limited (and would largely accrue to Member States). Some indirect costs are also expected for companies due to a higher liability of directors. The initiative may also positively, although marginally, affect digitalisation, transition to a climate-neutral economy and Sustainable Development Goals.



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