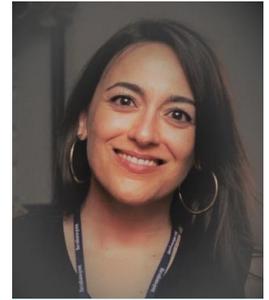


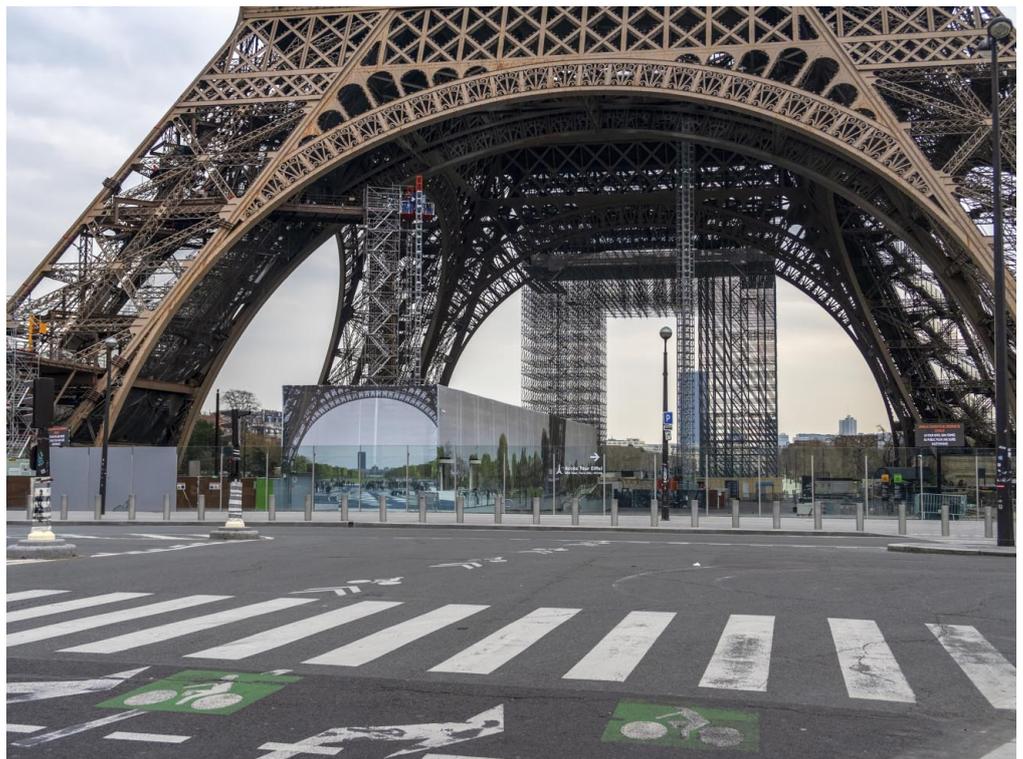
# A closer look at... The impact of COVID-19 on (pre-)insolvency



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IF ALL COUNTRIES ARE TRYING TO PREVENT THE SPREADING OF THE COVID-19 WITH MASSIVE NATIONWIDE LOCKDOWNS, PREVENTING THE INSOLVENCY OF BUSINESSES IS ALSO ESSENTIAL



**A**t the time of writing, our personal and professional life has totally changed since the COVID-19 emerged. INSOL Europe has just announced that many of our events are postponed.

Countries, one after another, imposed restrictions on citizens' free movement and banned travels. Offices, courts, schools, and universities are being closed everywhere... Lockdowns spread across the world, including the US and India. In order to fight this highly contagious respiratory illness, the lockdowns are being extended and reinforced... In many countries, businesses are

being closed... Only groceries and pharmacies are allowed to remain open. Italy shut down all non-essential factories and businesses on an attempt to slow down the rate at which COVID-19 is spreading... *Circa* one billion people are now on lockdown across the world...

COVID-19 has a severe impact on lives and on the economy. If all countries are trying to prevent the spreading of the COVID-19 with massive nationwide lockdowns, preventing the insolvency of businesses is also essential.

In the European Union, the European Commission is coordinating a common

European response to the outbreak of COVID-19 not only in order to reinforce public health sectors, but also to mitigate its socio-economic impact, in particular to support firms and ensure that the liquidity of our financial sector can continue to support the economy.

The EU State Aid rules enable Member States to take swift and effective action to support companies, in particular SMEs, facing economic difficulties due to the COVID-19 outbreak. Member States can design ample support measures in line with existing EU rules. First, they can decide to take measures, such as wage subsidies,

suspension of payments of corporate and value added taxes or social contributions. In addition, Member States can grant financial support directly to consumers, for example for cancelled services or tickets that are not reimbursed by the operators concerned. Also, the EU State Aid rules enable Member States to help companies cope with liquidity shortages and especially those needing urgent rescue aid and to compensate companies for the damage directly caused by these exceptional circumstances, including measures in sectors such as aviation and tourism.

To bring immediate relief to hard-hit SMEs, the EU budget will deploy its existing instruments to support these companies with liquidity, complementing measures taken at national level. In the coming weeks, EUR1 billion will be redirected from the EU budget as a guarantee to the European Investment Fund to incentivise banks to provide liquidity to SMEs and midcaps. This will help at least 100,000 European SMEs and small midcaps with about EUR 8 billion of financing. The EU budget will also provide credit holidays to the existing debtors that are negatively affected.

Member States are adopting aid packages to save companies affected by the COVID-19 related economic crisis.

For example, in France, aid measures to companies and employment reach 45 billion euros and an exceptional guarantee scheme to support bank financing for businesses, up to 300 billion euros, will be implemented.

These exceptional aid packages to companies affected by the COVID-19 related economic crisis should however be accompanied with new provisions amending the insolvency law.

For example, in France, an emergency bill of 18 March empowered the government to take, by ordinance, any measure modifying the insolvency law in

order to facilitate the preventive treatment of the consequences of the COVID-19 epidemic.

On 19 March, the French commercial courts have been instructed by the Ministry of Justice not to open new insolvency proceedings although the economic survival of many companies is jeopardised by the COVID-19 crisis. In an email addressed to all presidents of commercial courts, the Ministry of Justice explained that the opening of insolvency proceedings does not appear to be urgent and would be unnecessary and ineffective as the courts are now closed and not working as before. This email should be followed by clear measures.

Indeed, in case of insolvency caused by the COVID-19 crisis, all Member States should suspend the obligation to file for insolvency and the correlative directors' liability rules but only if the restructuring of the company is not compromised.

However, commercial courts should be able to open insolvency proceedings using digital means in order to allow companies to pay wages and save employment.

In case of insolvency proceedings already opened, the French commercial courts have been instructed by the Ministry of Justice to rule only on transfer plans in reorganisation or liquidation proceedings, when transfer plans can have a significant impact on employment.

Regarding the confidential and informal procedure of *conciliation*, the Ministry of Justice deems that the time-limits imposed by this procedure are not compatible with the current emergency situation either, as only five months are granted to reach a restructuring plan. On the contrary, the confidential and informal procedure of *mandat ad hoc* which does not impose time-limits, can provide support to companies that have not ceased their activity due to the COVID-19 crisis.

If this incentive to prevention

must be welcomed, it is insufficient. Further measures should be announced shortly.

Shouldn't this be the time for all Member States to implement the EU Directive on Restructuring and Insolvency as soon as possible?

Indeed, it appears to be urgent to implement a rescue culture in all Member States, as it is adapted to prevent the insolvency due to the current COVID-19 outbreak.

Preventive restructuring frameworks must be available for debtors to enable them to address their financial difficulties due to the COVID-19 outbreak when it appears likely that their insolvency can be prevented and the viability of the business can be ensured.

In order to enable the debtor to continue his business operations and preserve the value of his/her business during the pending negotiations on a restructuring plan, a general stay of individual enforcement actions should automatically be granted.

Majority-driven restructurings on pre-insolvency proceedings should also be facilitated.

New financing and interim financing should always be protected if its aim is to prevent liquidity problems resulting from the COVID-19 epidemic.

Faced with the COVID-19 outbreak effects on the companies' health, Member States must seize the opportunity to give a harmonised insolvency and pre-insolvency response! ■



**SHOULDN'T THIS BE THE TIME FOR ALL MEMBER STATES TO IMPLEMENT THE EU DIRECTIVE ON RESTRUCTURING AND INSOLVENCY AS SOON AS POSSIBLE?**

