

Spotlight on the INSOL Europe “EU Relations Working Group”

Myriam Maily writes about the information available on the INSOL Europe website about the EU ‘Directive proposal’, and in particular how the potential changes expected in national insolvency legislations will play when the time comes for the Directive to apply.



MYRIAM MAILLY
INSOL Europe Co-Technical Officer

Published on 22 November 2016, the initial version of the Directive proposal contains a number of provisions in three distinct main parts, namely preventive restructuring frameworks (Title II), second chance for entrepreneurs (Title III) and measures to raise the efficiency of restructuring, insolvency and second chance (Title IV).

The other titles are horizontal in scope, for example, Title I contains a provision on the availability of early warning tools for debtors, be they legal or natural persons engaged in a

trade, business or professional activity (entrepreneurs).

At this stage, it seems fair to say that the contents of the Directive Proposal relating to Title II is now well known: there are provisions which aim to put in place common core elements for preventive restructuring frameworks to give debtors in financial difficulty, be they legal or natural persons, effective access to procedures facilitating early negotiation of restructuring plans, their adoption by creditors and the possible confirmation by a judicial or administrative authority. Some debates have started very early on that part of the Directive proposal, and in

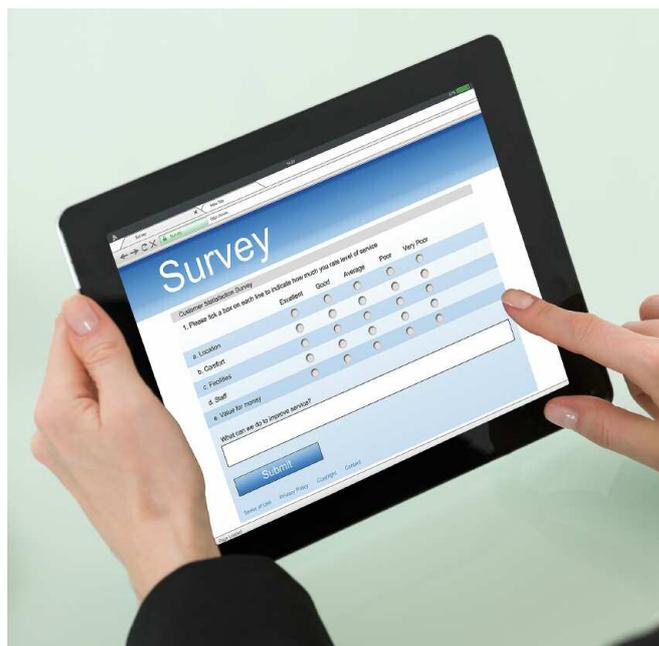
particular to assess whether it would be possible or desirable for some Member States to put in place a system of classes of creditors, where absent from their current legislation. Some look into how to protect the legitimate interest of the creditors by ensuring that the debtor benefits from an automatic general stay of enforcement proceedings in view of making progress in the negotiations on a restructuring plan. Others concern the extent of the right of shareholders to be protected in relation with the cross-class cram-down mechanism, etc.... It is true that this part of the proposal can be highly controversial depending on the main features of the domestic insolvency legislations.

EU Relations Working Group

This is the reason why a short questionnaire has been sent to local experts under the aegis of the INSOL Europe “EU Relations Working Group” chaired by Robert Van Galen and assisted by Paul J. Omar (INSOL Europe Technical Research Coordinator) and myself. The aim of that questionnaire is to deliver a clear and concise information on several selected aspects of the Directive proposal so as to assess the elements which were already adopted or not yet in place in various domestic legislations.



A SHORT QUESTIONNAIRE HAS BEEN SENT TO LOCAL EXPERTS UNDER THE AEGIS OF THE INSOL EUROPE “EU RELATIONS WORKING GROUP”



Compliance update

I am pleased to inform INSOL Europe members that relevant information on the compliance (or not) of certain domestic insolvency legislations with the Directive proposal (as published in November 2016) is now available for the following countries: Bulgaria, Czech Republic, Cyprus, Denmark, England & Wales, Estonia, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia and Spain at www.insol-europe.org/technical-content/eu-draft-directive.



Specific comments were also made by national reporters from Luxembourg, Bulgaria, Estonia and Slovakia.

On behalf of the INSOL Europe “EU Relations Working Group”, we would like to thank the national reporters for their willingness to cooperate in this project within such a short period of time.

If you want to contribute as well, please do not hesitate to send any relevant information, articles etc... to me at mailly.myriam@orange.fr

And let’s keep a watchful eye on the on-going negotiations concerning the EU Directive proposal! ■

For updates on new technical content recently published on the INSOL Europe website, visit: www.insol-europe.org/technical-content/introduction or contact Myriam Mailly by email: technical@insol-europe.org

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