

# 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.

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## [Commissioner Pierre Moscovici: College read-out and remarks on the Italian budget](#)

Bonjour, et buongiorno a tutti.

Valdis a présenté les différents éléments du paquet que nous avons agréé avec les autorités italiennes, après plusieurs semaines de négociations difficiles et je partage totalement son analyse, nous l'avons partagé à chaque instant avec les nuances, les questions, les réserves qui peuvent être présentées. Mais je veux, au-delà de ce qu'il a dit tirer trois enseignements politiques et généraux de cet accord.

D'abord, fondamentalement, sur la méthode, cet accord est la victoire du dialogue politique que la Commission a toujours privilégié sur la confrontation. Certains auraient peut-être voulu une crise. Nous nous voulions une solution. Certains auraient voulu pointer l'Europe et la Commission comme technocratique. Nous souhaitons au contraire montrer que nous pouvions apporter des réponses. Et nous avons conduit des discussions politiques au plus haut niveau, à Rome, à Bruxelles, à Buenos Aires, avec Premier ministre Conté qui présente cet accord en parallèle au Sénat, avec le Ministre Tria, avec les acteurs économiques du pays. Un débat s'est ouvert. Chacun a pu présenter ses positions, chacun a pu expliquer ses vues. Nous avons comparé les chiffres et finalement nous sommes parvenus à converger sur des paramètres communs. Cela a pris du temps, et cela a demandé beaucoup d'énergie. Mais, au final, je crois que l'intelligence et le sens de l'intérêt général, celui de l'Union européenne, celui de la Zone euro et celui de l'Italie ont prévalu et permettez que jen sois content.

J'ajoute que les Etats-membres ont apprécié notre engagement à faire respecter le Pacte et que la Commission Européenne a apprécié en retour le soutien qu'ils nous ont apporté car dans cette discussion l'implication de l'Eurogroupe, de la totalité des ministres a été extrêmement utile et importante.

Aujourd'hui, nous avons les éléments nécessaires pour éviter l'ouverture d'une procédure de déficit excessif sur base de la dette contre l'Italie et je m'en réjouis.

Deuxième enseignement: cet accord est aussi une démonstration forte que nos règles budgétaires fonctionnent et qu'elles offrent un cadre indispensable pour dialoguer, mais aussi et d'abord pour rétablir le sérieux budgétaire. Ma conviction profonde, et elle se confirme aujourd'hui, c'est que nos règles fonctionnent mieux quand elles sont appliquées dans un esprit constructif et non pas dans une logique disciplinaire. Quand elles incitent plutôt qu'elles sanctionnent. Quand elles sont dissuasives et non pas punitives. Quand elles sont flexibles et intelligentes et non pas rigides et mécaniques et aujourd'hui, une fois de plus, nous montrons que nos règles sont compatibles avec les choix démocratiques, sont compatibles avec des changements politiques que nous n'avons pas à commenter, à apprécier, à juger. Mais choix démocratiques et politiques qui doivent en retour respecter la règle du jeu commune, pour défendre notre bien commun qui est l'euro. Troisième enseignement, c'est le fait que ce respect des règles avec l'intelligence souhaitée se traduit dans l'accord à la fois sur les mesures proposées, sur les one-offs, sur les dépenses éligibles pour la clause pour circonstances exceptionnelles.

Nous avons obtenu, et je veux le dire, ici un projet de budget qui n'affiche plus une deconsolidation budgétaire. Et pour apprécier l'accord, je crois qu'il faut quand même mesurer le chemin parcouru depuis la soumission du premier projet de budget par le gouvernement italien et depuis notre opinion du 21 novembre. Vraiment, ce chemin est tout de même très important. Je rappelle qu'en septembre dernier et dans les projets de budgets reçus en octobre et novembre, le gouvernement proposait initialement de creuser le déficit structurel dans des proportions sans précédent. C'est ce qui avait justifié notre démarche. C'était 0.8 point dans les documents du gouvernement italien; c'était 1.2 point dans nos prévisions économiques d'automne.

Et aujourd'hui, sur la base d'une méthodologie qui est commune cette détérioration est ramenée à zéro ! Ça permet quand même de voir que le dialogue n'a pas été, comme je le disais, qu'une forme, mais a été extrêmement substantiel.

Cet accord s'appuie d'abord sur la révision de l'hypothèse de croissance des autorités italiennes de 1,5% en septembre à 1,0% aujourd'hui. Vous vous souviendrez que l'hypothèse initiale n'avait pas été validée par le Conseil budgétaire national, contrairement aux dispositions européennes. Avec la perspective d'une validation, précisément par ce Conseil budgétaire, ceci marque aussi un retour à la méthode commune, et aussi, il faut le dire quand même, à plus de réalisme économique car le 1% correspond bien d'avantage au consensus des précisions de toutes les institutions internationales que le 1.5% précédent. Et ce retour est, je crois, absolument bienvenu.

J'ajoute que les 9 Mds de mesures présentées par les autorités italiennes ainsi que la flexibilité accordée par la Commission au titre des circonstances exceptionnelles forment un paquet cohérent à la fois budgétairement, mais aussi politiquement, et n'oublions pas que les 2

milliards d'euros de gel sont à cet égard une assurance supplémentaire. Il appartient maintenant au gouvernement italien de présenter ses propres éléments au Parlement italien qui décidera souverainement. Pour ce qui nous concerne, comme l'a dit Valdis Dombrovskis et c'était l'esprit de la discussion à la Commission ce matin, nous demeurons vigilants et nous poursuivrons un dialogue qui est approfondi mais toujours constructif.

This has been a difficult year for a lot of people in Italy, with the collapse of the Morandi Bridge in Genoa and the devastating storms and floods that claimed so many lives. I am very pleased that we have been able to confirm the possibility to consider as exceptional, and to discount from our assessment of the structural effort, the planned expenditure to improve the safety of road infrastructure and to protect communities against the risk of flooding.

In short, the agreement reached today shows unambiguously that the European Commission is not the enemy of the Italian people, that we are not a machine made up of insensitive bureaucrats, imposing austerity and denying democracy. I hope that after today we can move beyond these caricatures.

And I hope that today we can also put to rest any doubts over Italy's place in Europe and at the heart of the euro area which emerges strengthened from this positive outcome.

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## Wage and task profiles of employment in Europe in 2030

Europe's labour market is set to become even more polarised, largely due to the growth of jobs at the very bottom of the wage distribution. However, across the EU28, there is considerable heterogeneity in the patterns of structural change by job-wage quintile, with many Member States projected to upgrade their occupational structure towards higher paying jobs.

This latest short report from Eurofound, which forms part of the Cedefop-Eurofound joint report *Skills forecast: Trends and challenges to 2030* examines the implications of projected structural change for the wage and task structure of employment in Europe up to 2030.

*'Structural change is expected to move much faster in the Member States who joined the Union after 2004,' says Donald Storrie, Chief Researcher at Eurofound, 'and we forecast big changes in the occupational wage and task structure in these countries in the run up to 2030.'*

A major driver of the structural change is globalisation. Recent decades have seen significant changes in the global distribution of labour, and global competition and market opportunities are likely to continue to impact upon

the structure of employment in Europe.

In this context, relative wages and productivity are the key determinants of which jobs will remain and grow in Europe and which will be lost to foreign competition. As manufacturing still dominates global trade, it is the main sector impacted by globalisation.

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## Agreement on unfair trading practices in the food supply chain will protect all EU farmers

The new European law will cover agricultural and food products traded in the food supply chain, banning for the first time up to 16 unfair trading practices imposed unilaterally by one trading partner on another. Other practices will only be permitted if subject to a clear and unambiguous upfront agreement between the parties involved.

The European Commission had tabled its legislative proposal in April 2018 to ensure more fairness in the food chain and provide a minimum protection across the EU. This is the first time that EU level legislation will be implemented in this area. The new framework grants Member States the authority to enforce the new rules and impose sanctions in case of established infringements.

Attending the final negotiating meeting with the European Parliament and Council representatives, Phil **Hogan**, Commissioner for Agriculture and Rural Development, said: *"Today's agreement paves the way for a first-time EU law which provides significant protection for all EU farmers, their organisations as well as small and mid-range businesses. They will now be protected against all bigger operators acting unfairly and outside the rules. I would like to express my appreciation to all the negotiators, whose constructive approach and hard work ensured today's political agreement. I am particularly pleased that the agreement was achieved within a remarkably short eight months of the proposal's presentation by the Commission."*

The agreement reached today will apply to anyone involved in the food supply chain with a turnover of €350 million with differentiated levels of protection provided below that threshold. The new rules will cover retailers, food processors, wholesalers, cooperatives or producers' organisations, or a single producer who would be engaging in any of the unfair trade practices identified.

The unfair trading practices to be banned include: late payments for perishable food products; last minute order cancellations; unilateral or retroactive changes to contracts; forcing the supplier to pay for wasted

products and refusing written contracts.

Other practices will only be permitted if subject to a clear and unambiguous upfront agreement between the parties: a buyer returning unsold food products to a supplier; a buyer charging a supplier payment to secure or maintain a supply agreement on food products; a supplier paying for a buyer's promotion, advertising or marketing campaign.

The implementation of these will not lead to higher prices for consumers. In the course of the public consultation conducted by the Commission before presenting the proposal, consumer organisations encouraged the regulation of these practices because of their negative effect on consumers in the longer term.

An important element of the directive is that Member States can introduce a higher scope above €350 million in their national legislation or take further measures, should they so wish. The agreement also includes a review clause set at 4 years, which means that the provisions of the legislative text will have to be evaluated and possibly reviewed during the course of the next parliamentary mandate.

Member States will designate authorities in charge of enforcing the new rules, including the ability to impose fines and initiate investigations based on complaints. Confidentiality can be requested by parties filing a complaint, to address concerns about possible retaliation. The Commission will set up a coordination mechanism between enforcement authorities to enable the exchange of best practice.

Following today's agreement, a vote will now take place in the European Parliament and the Council to formally endorse the text. Once fully adopted, Member States will have to transpose the new legislative text into their national law.

## **Background**

The Commission Work Programme 2018 states that *"the Commission will propose measures to improve the functioning of the food supply chain to help farmers strengthen their position in the market place and help protect them from future shocks"*.

This initiative follows the references to the food chain in President Juncker's State of the Union speeches of 2015 and 2016, and is a political response to the resolution by the European Parliament adopted in June 2016 inviting the European Commission to submit a proposal for an EU-level framework concerning unfair trading practices. Moreover, in December 2016, the Council called on the Commission to undertake an impact assessment with a view to proposing an EU legislative framework or other non-legislative measures to address unfair trading practices.

The Commission has been working towards a fairer and more balanced food supply chain since the beginning of its mandate. In 2016 the Commission set up the [Agricultural Markets Task Force](#) (AMTF) to assess the role of farmers

in the wider food supply chain and make [recommendations](#) on how it can be strengthened. On the basis of these recommendations, the Commission launched an [inception impact assessment](#) and a [public consultation](#) on the improvement of the food supply chain in 2017, which in turn helped identify the specific unfair trading practices that operators frequently consider to be exposed to.

A [recent EU-wide opinion poll](#) published in February 2018 shows that a great majority of respondents (88%) considers that strengthening farmers' role in the food supply chain is important. 96% of the respondents to the 2017 public consultation on the modernisation of the CAP agreed with the proposition that improving farmers' position in the value chain including addressing UTPs should be an objective of the EU's Common Agricultural Policy.

### **For More Information**

[European Commission acts to ban unfair trade practices in the food supply chain](#)

[Commission proposal against unfair trading practices in the food supply chain](#)

[MEMO: Tackling unfair trading practices in the food supply chain](#)