

The attractiveness of national insolvency laws from a statistical viewpoint

Myriam Maily, Technical Officer of INSOL Europe, explains why statistics are important for our industry



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THE EUROPEAN COMMISSION HAS LISTED A NUMBER OF CRITERIA WHICH WOULD FURTHER IMPROVE THE QUALITY OF INSOLVENCY STATISTICS AT EUROPEAN LEVEL



Since our last issue, updated and additional national insolvency statistics have been published on the INSOL Europe website. The compilation of this kind of data is indeed crucial on a number of specific aspects.

Statistics as a means of measuring the efficiency of national insolvency frameworks

From a national point of view, insolvency statistics are generally used as a tool to show the country's good social and economic health. Depending on the degree of details which are published at national level,

insolvency statistics can shed some light on the type of proceedings available in a national insolvency framework ('on paper') and whether they are used in the day-to-day practice ('real world'). They can consequently be used as an indicator to enable creditors to secure their choice in lending in one Member State rather than another.

From the debtors' point of view, figures can also highlight the success of a specific type of proceedings rather than another.

From a European perspective, national statistics are a means of measuring the efficiency of national insolvency laws from a cross-border investment angle.

The collection of national statistics required in the Draft Directive on Preventive Restructuring, Insolvency and Second Chance

As a reminder, the European Commission has published on 22 November 2016 a Directive proposal on Preventive restructuring, Insolvency and Second Chance (COM(2016) 723 final).

The main goal of this legislative Proposal is to provide legal certainty to cross-border investors and companies operating across the EU. To achieve this goal, the European Commission has developed minimum standards on key

aspects of preventive restructuring and insolvency proceedings including those enabling over-indebted entrepreneurs to get a “fresh start” by a discharge of their debts provided that certain conditions are met.

The underlying idea is to ensure that minimum standards are available throughout the European Union to avoid too many liquidations of viable companies in financial difficulties and to give honest entrepreneurs who learned from business failure a “second chance”.

Back to statistics, the Directive proposal (2016) contains a title V which is entitled “Monitoring of restructuring, insolvency and discharge procedures”. In that title, the European Commission has listed a number of criteria which would further improve the quality of insolvency statistics at European level (art. 29 “Data collection”).

To that end, Member States would be required to communicate on a yearly basis the number of proceedings (preventive restructurings, liquidation proceedings and those leading to a full discharge of debt for natural persons), their outcome, length and average costs.

In addition, the European Commission would ask Member States to compile other information including, where relevant, the number of applications rejected for lack of available funds in the debtor’s estate, the recovery rates for secured and unsecured creditors separately, as well as the number of proceedings with zero or no more than two percent total recovery rate in respect of each type of proceedings falling under the scope of the Directive proposal.

Among the figures to be provided by the Member State, the Directive proposal also includes the information which would enable to point out the number of preventive restructurings which failed within the specific time period of three years and those relating to the opening of new proceedings against an entrepreneur who was previously discharged of his/her debts.

Last but not least, these figures should be produced by national authorities taking into account several criteria, and more precisely: (1) the size of the debtors involved depending on the weight of the working force, (2) whether debtors are natural or legal persons, and (3) where relevant, whether the procedures concern only entrepreneurs or all natural persons in respect of the discharge provisions.

The role of INSOL Europe in the collection of national insolvency statistics in Europe

In a near future, reliable national insolvency statistics should then be required from Member States in order to improve the quality of insolvency statistics at European level but even more for assessing the efficiency of national insolvency frameworks.

This is the reason why national contributions as a first step are essential. Indeed, the collection of insolvency data by INSOL Europe is necessary before going into a deeper analysis on a long-term project within or with the involvement of the EU Study Group which would help the European institutions in designing the future of the European Insolvency Law. ■

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