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TO EUROPEAN COMMISSION - DG FISMA
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I. Introduction

The mission of the **INSOL Europe** is to take and maintain a leading role in European business recovery, turnaround and insolvency issues, to facilitate the exchange of information and ideas amongst its members and to discuss business recovery, turnaround and insolvency issues with who are affected by those procedures. The association encourages greater international co-operation and communication within Europe and also with the rest of the world.

To that end, INSOL Europe gathers academics, judges, lawyers and insolvency practitioners from the European Union and beyond. It organises international meetings on topics related to national and international insolvencies. It also publishes the 'Eurofenix' magazine (quarterly) as well as a stand-alone series of comparative law texts (Technical Series) arising from events organised by the INSOL Europe Academic Forum and the Judicial Wing of INSOL Europe. It possesses a large network of institutional and private correspondents throughout the EU and beyond through its eleven working groups and committees covering a wide aspect of the work undertaken.

Within INSOL Europe, the standing EU Study Group, composed of a research team on comparative law, a majority of whose members are regular attendees at meetings organised by official European and other international bodies (e.g. UNCITRAL's bi-annual meetings). Members of this Group are active academics, lawyers, insolvency practitioners or national officers. In the course of 2020, some of their work has resulted in the publication of two Guidance Notes on Directive 2019/1023 on Restructuring and Insolvency with the aim of assisting EU Member States with putting the restructuring frameworks mandated by the Directive in place as soon as possible. The guidance notes offer technical insights and policy considerations relevant to national implementations of the EU Restructuring Directive on the key points of classification of claims, voting, and confirmation of restructuring plans, including by way of a cross-class cram-down (Guidance Note #1, April 2020) and on the stay of individual enforcement actions to be enacted pursuant to Articles 6 and 7 of the Directive (Guidance Note #2, May 2020). The goal is to offer guidance by insolvency experts to national regulators where no similar restructuring frameworks exist or where equivalent restructuring frameworks do already exist, refining and adapting them to the Directive.

INSOL Europe has recognised experience as a regular contributor to the debate relating to the harmonisation of insolvency laws in Europe. Indeed, in 2014 and as a follow up to the 2012 Communication of the Commission on 'A new approach to business failure and insolvency', INSOL Europe provided a comprehensive and condensed report on restructuring mechanisms available at that time in the 28 Member States, together with recommendations by 28 national experts for an early preventive restructuring mechanism ('Study on a new approach to business failure and insolvency – Comparative legal analysis of the Member States' relevant provisions and practices'). This report followed the INSOL Europe report published in 2010 and entitled 'Harmonisation of Insolvency Law at EU Level' which was prepared at the request of the European Parliament. In particular, this report identified a number of areas of insolvency law where harmonisation at EU level was worthwhile and achievable, including an evaluation as to what extent harmonisation of insolvency law could facilitate further harmonisation of company law in the EU. INSOL



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Europe was also an invited non-governmental organisation at the European Commission Insolvency Conference held in Brussels on 12 July 2016, entitled 'Convergence of insolvency frameworks within the European Union - the way forward'.

These are the reason why INSOL Europe would like to continue making submissions and to contribute to the forthcoming work of the European Union staff as follows:

INSOL Europe comments on Recommendation 16 # Insolvency

Recommendation 16: Insolvency

Recommendation 16a

The Commission is invited to adopt a legislative proposal for minimum harmonisation of certain targeted elements of core non-bank corporate insolvency laws, including a definition of triggers for insolvency proceedings, harmonised rules for the ranking of claims (which comprises legal convergence on the position of secured creditors in insolvency), and further core elements such as avoidance actions.

Do you agree that recommendation 16a is important?

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important**

Don't know / no opinion / not relevant

Recommendation 16b

The Commission is invited to set up an expert group tasked with elaborating common terminology for principal features of the various national insolvency laws.

Do you agree that recommendation 16b is important?

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important**

Don't know / no opinion / not relevant

Recommendation 16c

In cooperation with the EBA, the Commission is invited to analyse how the current bank supervisory reporting framework should be modified so that banks provide to supervisors the data on non-performing exposures that allows an analysis of the effectiveness of national insolvency systems of Member States. On the basis of this supervisory reporting data, EBA should start providing the Commission with bi-annual monitoring reports on the effectiveness of national insolvency systems of Member States.



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Do you agree that recommendation 16c is important?

1 - Not important at all

2 - Rather not important

3 - Neutral

4 - Rather important

5 - Very important

Don't know / no opinion / not relevant

If you disagree with all or part of recommendation 16, how would you amend it?

2000 character(s) maximum

On 16a, as a general recommendation, there is a need for a balanced and thoughtful approach to harmonisation, as by its very nature, insolvency law interfaces with many other laws and systems (in particular regarding issues as triggers for insolvency proceedings (on the impact on directors' duties before 'insolvency') or ranking of claims (impact on the feasibility for a restructuring plan to be adopted if there is no chance to recover any claims in case of liquidation). However, **striving for minimum harmonisation of certain aspects of insolvency law would seem to be very worthwhile** (including avoidance actions and analogous provisions relating to connected parties). The debate relating to issues that would be most appropriate for minimum harmonisation could start with a study on the feasibility (or not) to harmonise issues covered by Articles 7 et seq of the European Insolvency Regulation (EU) 2015/848.

On 16b, **experts should be selected by their knowledge in comparative legal research in insolvency matters** to achieve a common terminology for principal features of the various national insolvency laws. Any EU added value can only be achievable if, firstly, there is a common understanding among experts of what will be exactly expected by the forthcoming legislative proposal and, second, if the participants are aware of the meaning of the various concepts existing in a number of Member States (for a better comparison and understanding exercise) as well as the concepts developed in texts adopted by UNCITRAL.

On 16c, the banking sector issues appear to be already well dealt with by the BRRD, therefore there is **no certainty that any added value would arise from a separate initiative**. In addition, the question of the effectiveness of MS insolvency systems should not be dealt through the exclusive channel of the 'bank supervisory reporting framework' (mainly focused on NPLs).

Yours sincerely

A handwritten signature in blue ink, appearing to read "Caroline Taylor".

Caroline Taylor
Director of Administration
INSOL Europe