

Technical Update Autumn 2020: Have your say!

Myriam Mailly writes about the information in relation to the latest consultations issued by European and International Organisations which may be of interest for INSOL Europe members



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During the COVID-19 pandemic, national legislations relating to insolvency have been amended in order to cope with the COVID-19 situation and to prevent insolvencies of viable businesses caused by it.

As the consequences of the pandemic situation may still have an impact on our economies for the next few months (or years!), great attention should be paid to the next EU/International actions aiming at reforming national insolvency laws.

Against this background, we would like to draw your attention to a number of recent initiatives published by the European Commission and projects conducted by the EBRD.

Final report of the High-Level Forum on Capital Markets Union

First of all, the European Commission published a call for feedback to the recommendations issued in the **Final Report of the High-Level Forum on Capital Markets Union** published on 10 June 2020. This report which can be found at: https://ec.europa.eu/info/publications/cmu-high-level-forum_en sets out a series of recommendations aimed at moving the EU's capital markets forward, contains three recommendations on insolvency.

Firstly, the European 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 (Recommendation 16a).

The second recommendation is for the European Commission to set up an expert group tasked with elaborating a common terminology for the main features of the various national insolvency laws (Recommendation 16b).

The last recommendation is an invitation for the European Commission to analyse how the current bank supervisory reporting framework should be modified so that banks provide to supervisors the data on non-performing exposures. This would allow for an analysis of the effectiveness of the national insolvency systems of the 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 (Recommendation 16b).

The call for feedback from stakeholders on the report ended on 30 June but the contribution of INSOL Europe is available at: www.insol-europe.org/eu-study-group-news

EU 'New Consumer Agenda'

Secondly, the European Commission has issued a public consultation on 30 June and which will end on 6 October 2020 on a '**New Consumer Agenda**'. Indeed, in view of the

current implementation of the EU Directive on Restructuring and Insolvency in Member States and the various international initiatives in the consumers' insolvencies, we are of the opinion that the EU's new 'Consumer Agenda' cannot ignore the need to modernise personal insolvency laws at an EU level.

In consequence, the EU institutions would need to address more fully the critical issues facing the large number of ordinary consumers suffering from financial distress, by focusing on the appropriate principles applicable to individual debtors in order to complete and make coherent the EU insolvency piece of legislation already in place.

That conclusion may also complete the CMU New Action Plan objectives as a proper (minimum) harmonised personal insolvency regime in the EU and may serve individual debtors and their families which may in turn contribute to a sustainable economic growth. Indeed, consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang.

At the very least, a constructive discussion of these issues might signal the potential dangers of certain approaches and produce durable solutions sooner or later.

If you want more information on the way to contribute to this public consultation, please send me an email to technical@insol-europe.org

Looking forward to hearing from you in due course!



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Revised version of the EBRD core insolvency principles

The EBRD has recently published a revised version of the EBRD core insolvency principles, in relation to which INSOL Europe provided substantive feedback working to a tight deadline (during the Summer).

The consultation within INSOL Europe which was coordinated by Paul Omar, Niculina Somlea and myself saw responses forthcoming from 23 jurisdictions represented within our organisation.

The revised principles as at September 2020 are available at www.insol-europe.org/eu-study-group-news

EBRD Insolvency Assessment on Business Reorganisations

I am also pleased to inform you that the European Bank for Reconstruction and Development (EBRD) launched on 1st September an **Insolvency Assessment on Business Reorganisations** with various partners including INSOL Europe.

The Assessment aims to provide detailed guidance on legislative gaps to address an expected increase in businesses needing to use formal restructuring procedures following the coronavirus pandemic.

Structured as a questionnaire, the assessment will provide an up-to-date map of restructuring frameworks across the EBRD regions in Europe, Asia and Africa. It aims to provide an overview of the options within pre-insolvency and insolvency frameworks across the economies where the EBRD

engages, but, for benchmarking purposes, *the consultation is also open to countries where the EBRD does not invest at present.*

The results of the assessment as well as a report summarising its findings will be made publicly available online and will also be published in due course on the INSOL Europe website.

The survey is available in English, French and Russian and will be open for public consultation until **31 October 2020** at <https://ebrd-restructuring.com/>

So, please do not hesitate to make your voice heard! We count on the wide participation of INSOL Europe members given the fact that the EBRD has decided to extend the scope of the questionnaire to non-EBRD countries. Do not miss this opportunity!

For additional information, please send me an email to technical@insol-europe.org

Join one of our working groups

We strongly encourage any professional acting in the area of businesses or individuals in distress to join any INSOL Europe working groups (the list of the WGs as well as contact details of their respective co-/chairs are available from the INSOL Europe website at www.insol-europe.org/about-us/about-our-working-groups).

You may also use another channel to make your voice heard by being in contact with the INSOL Europe Country Coordinator in your own jurisdiction (the list of the INSOL Europe Country Coordinator is available at www.insol-europe.org/country-coordinators). ■

COVID-19 Tracker

Please note that the **Lexis-Nexis & INSOL Europe COVID-19 Tracker of insolvency**

which has been published for free for all INSOL Europe members is still available from the INSOL Europe website at: www.insol-europe.org/technical-content/covid19

A table published by the European Commission which provides an overview of measures taken by Member States and other useful links related to measures taken in the COVID-19 context is also available at www.insol-europe.org/eu-study-group-links



Other Useful Links



> Email
technical@insol-europe.org

> LinkedIn
www.linkedin.com/company/insol-europe/

COVID Coffee Breaks
> www.insol-europe.org/publications/web-series

Updated Insolvency Laws
> www.insol-europe.org/technical-content/updated-insolvency-laws

National Insolvency Statistics
> www.insol-europe.org/technical-content/national-insolvency-statistics

EIR Case Register
> <http://tinyurl.com/y7tf2zc4>

European Insolvency Regulation
> www.insol-europe.org/technical-content/useful-links-to-be-aware-of-before-applying-the-recast-insolvency-regulation-2015848

> www.insol-europe.org/technical-content/outcomes-of-national-insolvency-proceedings-within-the-scope-of-the-eir-recast

> www.insol-europe.org/technical-content/state-of-play-of-national-insolvency-data-by-outcomes-currently-available

> www.insol-europe.org/national-texts-dealing-with-the-eir-2015

EU Directive on Restructuring and Insolvency (2019)
> www.insol-europe.org/technical-content/eu-draft-directive

> www.insol-europe.org/technical-content/eu-directive-on-restructuring-and-insolvency

Brexit Publications
> www.insol-europe.org/technical-content/brexit-publications

USBC Chapter 15 Database
> www.insol-europe.org/technical-content/introduction

Academic Forum Publications
> www.insol-europe.org/academic-forum-documents

> www.insol-europe.org/academic-forum-news

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