Changing the insolvency landscape of Europe

Amsterdam, 27 January 2017

Good morning.

It is a great pleasure to represent the Commission at this truly international conference which gathers so many distinguished experts in the field of restructuring and insolvency from across the European Union and beyond.

We welcome the opportunity to present and hear views from participants on the most recent developments at European level in this field, and in particular on the recently adopted Commission proposal on preventive restructuring procedures, second chance and measures to increase the efficiency of procedures.

As you know, the proposal is a follow-up to our 2014 Recommendation on a new approach to business failure and insolvency. The project of harmonisation of insolvency laws has received further impetus in the context of the Commission's priority initiatives on the Capital Markets Union and the Single Market Strategy.

The 2015 Capital Markets Union Action Plan announced a legislative initiative on business insolvency, including early restructuring and

second chance. This initiative was intended to address the main barriers to the free flow of capital and build on national regimes that work well.

The Single Market Strategy also stated that the Commission would support honest entrepreneurs and propose legislation to ensure that Member States provide a regulatory environment that is able to accommodate failure without dissuading entrepreneurs from trying new ideas again.

The ECOFIN Council Conclusions of July 2016 on a roadmap to complete the Banking Union underlined the importance of the work on minimum harmonisation in the field of insolvency law to support efforts to reduce future levels of non-performing loans, improve the management of non-performing loans in the Member States and increase the resilience of Member States economies to economic shocks.

We developed these policy actions by looking at the current inefficiencies and gaps, at trends in the markets and the recent reforms in the Member States. We noticed three main areas where we could improve our insolvency laws:

1. First, we can and should create in Europe a **rescue culture** where companies in financial difficulties have more opportunities to

restructure at an early stage rather than enter liquidation procedures.

Currently, every year in the EU, **200,000 firms go bankrupt**. This means 600 companies every day. Half of all companies in Europe do not survive past their first five years of existence.

In most MS, the most likely outcome for companies in financial difficulties is still a liquidation procedure. True, this is most likely the case for medium and small enterprises, but these are 99% of all our companies.

And for companies, insolvency is not just about the one company involved: **one in six insolvencies happens as a knock-on effect of a previous insolvency.**

As a result of the failure of these companies, over 1.7 million people lose their jobs each year. These people have to look for new jobs and face uncertainty for their futures.

When companies go into liquidation, **investors – including banks - recover less of their money**. Unsecured creditors, such as small suppliers, often do not recover anything.

The proposal will give debtors access to early warning tools to detect a deteriorating development of their business;

It will give companies in financial difficulty, wherever they are located in the EU, the chance to restructure at an early stage, and thus avoid insolvency when the company immediately loses value.

The debtor is in control of his assets and affairs which ensures a minimum disruption of the operation of the business. Appropriate supervision by an insolvency practitioner can be put in place in complex cases or where certain measures might affect the entire body of creditors (such as a general stay of enforcement).

The debtor can benefit from a court-ordered, temporary stay of enforcement actions, i.e. a "breathing space" to facilitate negotiations with creditors and successful restructuring. The stay should not be in principle longer than 4 months, but could be extended if necessary to ensure the success of restructuring negotiations.

To ensure that creditors' rights are properly reflected in the adoption of restructuring plans, they shall be treated in different classes reflecting their interests: as a minimum, secured creditors should vote separately from unsecured creditors.

A court confirmation will be necessary in certain well defined circumstances, where there are dissenting creditors or where the plan provides for new financing.

The proposal also facilitates new financing and interim financing, in that it guarantees a minimum protection from avoidance actions in subsequent insolvency procedures. Member States may go further and give new financing super-priority status, but this is not an obligation for the Member States.

Shareholders shall not be allowed to obstruct unreasonably the adoption of restructuring plans which are able to restore the viability of the business.

In terms of impacts, first, the proposal will **increase the number of viable companies** which can be saved and which are now forced into liquidation procedures, thus helping preserve know-how and jobs.

Second, it will **increase the recovery rates** for creditors. Data shows that the highest recovery rates for creditors are in economies where restructuring is the most common insolvency proceeding: 83 cents on the dollar, versus 57 cents on the dollar in countries where liquidation is the prevalent outcome. Yet, in many Member States liquidation is still the most likely outcome when companies are facing financial difficulties. The proposal will make it possible that restructuring will be the most likely outcome in all Member States.

Finally, it will help **prevent the accumulation of non-performing loans** and make our economies more resilient to economic shocks.

2. A second trend that we are seeing is to **give honest entrepreneurs a second chance** a reasonable period of time after a first failure.

Council conclusions in May 2011 recorded the Member States' commitment to reduce discharge periods for entrepreneurs to maximum 3 years by 2013. Yet today it is still very hard or impossible for entrepreneurs to have such an early restart. In some MS discharge periods are much longer (7 years in Austria for example), while in others the conditions for obtaining it are prohibitive (50% of claim to be repaid in Hungary).

Almost half of all potential entrepreneurs are held back by the fear of going bankrupt and of its consequences.

Many honest entrepreneurs caught in debt traps could return to the productive economy if they were given a second chance.

The proposal will put in place several measures to ensure an effective second chance. We aim at limiting the discharge period for honest, over-indebted entrepreneurs to a maximum of 3 years.

The discharge of entrepreneurial, and possibly private, debt will help to remove the loans that cannot be paid anyhow from credit institutions' balance sheets after a certain period of time.

This measure is expected to lead to 3 million new jobs. Based on past experiences in the Member States which have reduced their discharge periods, such measures are not likely to lead to an increase in the cost and availability of credit.

3. Finally, we need to have in place **more efficient restructuring, insolvency and second chance procedures,** to ensure a swifter handling of such cases and to increase the overall recovery rates and the residual value of potential non-performing loans**.**

The low recovery rates are, in no small part, due to the **length and inefficiency of procedures** in some Member States: in 10 Member States it takes creditors more than 2 years (and up to 4 years) to recover a claim in insolvency. Lengthy, inefficient and costly insolvency proceedings in some Member States were found to be a contributing factor to insufficient post-crisis debt deleveraging in the private sector and exacerbating debt overhang.

But procedures could be shortened and made more efficient, and thus limit the loss of value for all stakeholders involved.

First, we should improve the training and specialisation of the **judiciary and administrative authorities**, to ensure that they are able

to make complex decisions with potentially significant economic and social repercussions in the shortest period possible.

Second, we could improve the transparency of the rules on appointment, supervision and remuneration of **insolvency practitioners**, and thus contributing to mutual trust between courts and IPs in different Member States.

Finally, the introduction of **distance means of communication in court procedures** will contribute to shortening the length of procedures, but will also facilitate the higher participation of smaller and cross-border creditors for whom the disproportionate costs of pursuing their claims means that often they abandon such claims.
It is also important to collect concrete data on number of procedures, their outcome, length and costs in order to assess how Member States are implementing the directive and how well their systems are performing. The proposal puts in place data collection obligations for the Member States.

European Insolvency Regulation

The changing of the EU insolvency landscape started with the revision of the **Insolvency Regulation**: the Regulation will enable the

recognition of preventive restructuring procedures, a big step forward compared to the 2001 version of the Regulation. It will also enlarge the coverage of personal insolvency procedures leading to discharge of debt. Finally, the Regulation will provide for cooperation and communication in cross-border cases and will interconnect national insolvency registers, thus making the first step toward the digitalisation of insolvency procedures.

The Regulation will enter into application on 26 June 2017.

Instead of conclusions

Negotiations in the Council have started in mid-January and will continue at a sustained pace, at least under the Maltese Presidency of the Council.

The European Parliament has also designated a rapporteur and is expected to start consultations in the Legal Affairs Committee soon.

The Commission will assist constructively these negotiations and we would like to see significant progress being made in the shortest time possible, in order to ensure that its benefits can be quickly felt by those for whom it was designed.

Thank you for your attention.