Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM (2016) 723 final).

Final document approved by the Committee

The Justice Committee of Italy's Chamber of Deputies,

Having examined, pursuant to parliamentary Rule of Procedure no. 127, the proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM (2016) 723 final),

Whereas:

On 1 February, a near-unanimous vote of the Chamber of Deputies approved Bill C. 3671-bis, which includes an enabling clause on a comprehensive reform of the laws on companies in financial difficulties and business insolvencies. The reform bill, currently under examination in the Senate (S. 2681), was designed with reference to the findings of the "Rordorf" Ministerial Committee. It seeks to revise collective insolvency procedures in Italy by means of the following measures: The introduction of a preventive "alert" system that, with a view to encouraging out-of-court settlement, gives early warning of imminent insolvency crises in companies and helps parties reach resolution; the granting of easier access to certified repayment and debt-restructuring agreements, again with a view to encouraging out-of-court settlement; the simplification of the rules of judicial procedure and, also with respect to case-law, a reduction in uncertainties of interpretation, which slow down the pace of insolvency proceedings; the revision of what are now regarded as obsolete rules relating to preferential creditors through the introduction of a system of non-possessory charges on movables; the elimination of the bankruptcy procedure and its replacement with a judicially mandated liquidation procedure under which the principal authority in charge of the procedure shall be the court-appointed liquidator who, in the event of fresh assets becoming available, may also arrange a settlement based on liquidation proceedings; the amendment of the legislation on preventive negotiated agreements, which remain the most effective instruments for resolving cases, and whose reform must both refer to consolidated good practices and address current regulatory deficiencies; compulsory administrative liquidation should essentially be discarded as a means of activating collective insolvency procedures, but retained solely for the purpose of enforcing insolvency procedures that are specifically aimed at discovering and punishing serious corporate misconduct; the introduction of the right of discharge from debts (without, therefore, the need for a court order) for minor insolvencies; an amendment of the rules on over-indebtedness both to align them with the reforms contained in the currently applicable Law no.

3 of 2012, and to ensure the amended rules will take account of the experience garnered since the enactment of Law no. 3; the development of a specific set of rules that will regulate crises and insolvencies for groups of companies, and thus fill a gap in the current body of bankruptcy law;

Observing that:

- The logic behind the proposal for a Directive is that bankruptcy or liquidation proceedings should be used only as a last resort, and preference should be given to alternative procedures that may help salvage companies with a chance of recovery;

- The objective, therefore, is to offer a flexible and effective response to the situation of serious difficulty in which the business world finds itself not only as a result of the economic and financial crisis, but also as a result of the absence of appropriate measures, such as early-warning mechanisms, for the protection of economically viable businesses;

- The proposed Directive aims essentially at promoting a "rescue culture" in which economically viable companies are helped to restructure and continue operations, but that also expedites the prompt liquidation of non-viable companies, and gives honest entrepreneurs a second chance;

Believing that,

- The guiding principles behind the Bill approved by the Chamber of Deputies are congruent with the rationale of this proposal for a Directive. The Bill even exceeds the proposed Directive, insofar as it envisions more powerful instruments for the protection of debtors and the different classes of creditors, and seeks to maintain companies in difficulty as going concerns;

- Given the advantages of the Bill in question, some of its provisions should be incorporated into the proposed Directive;

Mindful that the present final document needs to be forwarded without delay to the European Commission as part of the political dialogue, as well as to the European Parliament and the Council;

Expresses a favourable opinion on the proposal for a Directive submitted by the European Parliament and the Council (COM(2016) 723 final), and with the following provisos:

a) Article 1.2 should specify that the procedures referred to in paragraph 1 do not apply to public bodies that do not operate as business undertakings;

b) Article 2.2 should specify that restructuring plans refer also to the sale of an enterprise so that business continuity can be maintained indirectly as well as directly;

c) Article 5.3 needs to clarify that in certain instances Member States may demand the appointment of an experienced professional in restructuring proceedings, but are not absolutely required to do so;

d) Article 6 should also enable Member States to provide for an automatic stay of enforcement actions for an initial period. The article should also stipulate that enforcement actions may be stayed whenever necessary for the equal treatment of creditors of the same rank or for the smooth execution of the procedure;

e) The derogation envisaged in paragraph 3 of Article 7, which applies also to paragraph 1 of the same, should be extended to include paragraph 2, which would enable creditors to file for bankruptcy when the debtor becomes illiquid, and thus accelerate the process of liquidation and protect the debtor's assets. Member States should also have the power to authorise debtors to suspend or terminate pending contracts;

f) Article 9 needs to underscore the continuing validity of the principle that voting rights may be withheld from creditors who are only minimally affected by an insolvency. Paragraph 2 of the same article should specify that Member States have the power to mandate that creditors who have secured or unsecured guarantees with parties other than the debtor should be included in a distinct class;

g) Article 11 should clarify that notwithstanding the debtor's right of initiative, a third party shall have the right to submit an alternative proposal;

h) Article 12 needs to include a proviso that the partners in small and medium-sized enterprises should be able to make non-monetary contributions towards the restructuring plan, as already articulated in whereas clause 29 of the Proposal;

i) Letter b) of the second paragraph of article 13 should be eliminated because its contents are the same as in the preceding letter a);

l) Article 16 should grant Member States the right to configure the preferential claims of professional creditors by ensuring that the preferential claims remain unchanging in any subsequent insolvency proceedings. In paragraph 2 of the same article, the phrase "liquidation procedures" should be replaced with: "insolvency proceedings".