



Brussels,  
D(2014)

## Opinion

**Title**      **DG JUST - Impact Assessment on a new approach to business failure and insolvency**

(resubmitted draft version of 22 January 2014)\*

### **(A) Context**

In 2012, the Commission put forward a proposal for broadening the scope of Regulation 1346/2000 on insolvency proceedings (EIR) to include pre-insolvency and debtor-in possession proceedings as well as certain personal insolvency proceedings. However, the EIR proposal deals with laws and jurisdictional rules applicable to cross-border insolvencies and does not affect the content of national insolvency proceedings. The Commission also adopted in 2012 a Communication on a new approach to business failure and insolvency which outlined several areas where action at European Union level could be taken in order to diminish the uncertainty created by the disparities between national insolvency laws and create a more business-friendly environment. While almost all Member States have fully in-court restructuring proceedings, the possibilities for less formal, hybrid restructuring procedures are limited in several of them. Therefore, the current initiative proposes certain minimum standards for (i) a preventive restructuring procedure of firms and (ii) giving a second chance to honest entrepreneurs who once failed.

### **(B) Overall opinion: POSITIVE**

**While the report has been improved along the lines of the recommendations in the Board's first opinion it requires some further work. First, the explanation of why the proposed minimum standards are considered to provide an optimal insolvency regime should be reinforced. Second, the report should better refer to likely impacts and in particular clarify some of the foreseen costs under the different options, including those related to Member States' reporting obligations. Third, although Member States' views are now better presented, the report should still more transparently present the views of other categories of stakeholders. Finally, the report should discuss clear evaluation arrangements, setting out the main criteria/indicators on which success will be assessed in line with set objectives.**

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\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

**(C) Main recommendations for improvements**

**(1) Further strengthen the analysis of the problems.** Although the presentation of the problems has been improved, the report should still reinforce the explanation of why the proposed minimum standards are considered to provide an optimal insolvency regime and why some Member States have neither put national hybrid procedures in place nor plan to despite the likely benefits identified.

**(2) Better explain likely impacts.** The report should still better demonstrate to what extent the measures contained in the proposed Recommendation are broadly sufficient in order to achieve a second chance culture for viable businesses encountering temporary financial difficulty. While the report presents some estimates of the costs of providing training to judges, it should also briefly explain the rationale for the assumptions and attempt to provide broad estimates at the level of individual Member States, including for any potential reporting obligations. The report and the executive summary sheet should clearly mention if microenterprises are affected and, if so, how. The legal basis should be mentioned.

**(3) Better present stakeholders' views and propose clearer evaluation arrangements.** While the presentation of Member States' views has been improved, the report should still clarify the views of other categories of stakeholders. The report should also strengthen the section on future evaluation, setting out the main criteria/progress indicators on which the success of the initiative will be evaluated and explaining what the review of implementation will cover and why foreseeing it after only two years is regarded as appropriate.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report*

**(D) Procedure and presentation**

The report should present more clearly the extent of differences between Member States' hybrid procedures, for instance by summarizing information from the external study and presenting the information in Annex 5 in a clearer and more transparent way. The 'executive summary sheet' should clearly mention what the proposed minimum standards and the preferred option are.

**(E) IAB scrutiny process**

Reference number	2013/JUST+/082
External expertise used	No
Date of IAB meeting	Written procedure An earlier version of this report was submitted to the IAB in November 2013, for which the Board issued an opinion on 19 December 2013