

# THE BUSINESS INSOLVENCY DIRECTIVE

## WHAT CAN THE ACCOUNTANCY PROFESSION EXPECT?

**FACTS.**PROFESSIONAL MATTERS  
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### INTRODUCTION

In November 2016, the European Commission issued the proposed Directive 2016/0359 COD<sup>1</sup> on business insolvency, preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures (the Business Insolvency Directive).

In December 2018, the European Parliament and the Council approved the proposal with a number of amendments. The final compromise<sup>2</sup> attempts to establish a well-balanced insolvency regime that takes into account the interests of the debtor, creditors and other relevant parties, whilst leaving flexibility for Member States to choose their approach on implementing these principles.

Accountancy Europe has issued its position<sup>3</sup> on the Business Insolvency Directive in October 2017. This factsheet provides an overview of the Directive's main provisions on the potential involvement of the accountancy profession as restructuring practitioners.

Professional accountants have the expertise to support businesses experiencing financial difficulties. We invite Member Bodies to get informed about the respective national transposition and share the information with their members.

### WHO ARE THE RESTRUCTURING PARTNERS?



The Business Insolvency Directive (article 2.15) defines a “practitioner in the field of restructuring” as any person or body appointed by a judicial or administrative authority to carry out, in particular, one of these tasks:

- to assist the debtor or the creditors in drafting or negotiating a restructuring plan
- to supervise the activities of the debtor during the negotiations on a restructuring plan and report to a judicial or administrative authority
- to take partial control over the assets or affairs of the debtor during negotiation

Although the Business Insolvency Directive defines the practitioner as a restructuring one, it leaves space for Member States to appoint a practitioner during insolvency as well (article 26). The Commission has consciously avoided defining ‘insolvency’ due to the diverse existing definitions across the European Union (EU) (article 2).

<sup>1</sup> COM(2016) 723 final - 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, [online] available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0723>

<sup>2</sup> Text of final compromise from Presidency to Coreper of 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, [online] available at: <https://data.consilium.europa.eu/doc/document/ST-15556-2018-INIT/en/pdf>

<sup>3</sup> Accountancy Europe, (2017). *EU Business Restructuring & Insolvency*, [online] available at: <https://www.accountancyeurope.eu/publications/eu-business-restructuring-insolvency/>

## WHEN ARE RESTRUCTURING PRACTITIONERS INVOLVED?



In principle, the appointment of a restructuring practitioner is not mandatory for every case but made on ad-hoc basis depending on the circumstances or the debtors' needs. The decision will be made by a national judicial or administrative authority.

As a minimum requirement, Member States shall involve a practitioner when (article. 5):

- the 'general stay' of individual enforcement actions is granted by the judicial or administrative authority who decides that such a practitioner is necessary. By 'general stay' the Commission refers to the 'stay of individual enforcement actions' which means temporary suspension of the right to seize the assets or business of the debtor <sup>4</sup>
- the restructuring plan needs to be confirmed by a judicial or administrative authority
- it is requested by the debtor or by a majority of the creditors, provided that the cost is borne by them

## WHAT ARE THE CRITERIA FOR APPOINTING A PRACTITIONER?



The Business Insolvency Directive sets out criteria for Member States to appoint a practitioner. More specifically, article 26 and 27 indicate the following:

- appointed practitioners should receive suitable training and have the necessary expertise. Qualifications can also be acquired during the exercise of the profession via training provided by professional associations or other bodies. Some Member States have national prerequisites to become a restructuring practitioner as we mentioned in an internal survey in 2017. For instance, in France and Italy it is possible to qualify as a restructuring practitioner if you follow a specific training (3 years in France and 18 months in Italy). Other Member States demand additional requirements such as previous professional experience in the insolvency field (Spain, Lithuania) or legal background (Belgium). In the UK, requirements include specific number of: (i) years of post-qualification experience (ii) cases handled by the practitioner (iii) years of expertise in the insolvency field
- debtors and creditors will have the possibility to object to the selection or request for replacement
- remuneration of practitioners shall be governed by rules consistent with an efficient resolution of procedures, and Member States shall ensure appropriate procedures to resolve any disputes over remuneration

Member States will also ensure:

- ✓ clear, transparent and fair conditions for eligibility of practitioners
- ✓ publicly available information about their supervision authority
- ✓ appropriate regulatory mechanisms for an effective supervision of their work, including measures for the accountability of practitioners who have failed in their duties
- ✓ electronic means of communication for the practitioner

The European Commission is expected to share best practices to improve the quality of training across the EU, and Member States are invited to encourage the development of codes of conduct for practitioners.

## WHAT IS COMING NEXT?



The European Parliament is planning to endorse the agreed text at the end of March 2019. Following that, Member States will have two years (and another one year if necessary) - from the day the draft text enters in the EU Official Journal <sup>5</sup> to implement the new rules in their national legislation.

<sup>4</sup> For detailed explanations see article 2(4)

<sup>5</sup> Official Journal of the European Union, [online] available at: <https://eur-lex.europa.eu/oj/direct-access.html>