

Insurance Europe comments on the EC proposal for a directive on harmonising of insolvency and enforcement laws

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Summary

Insurance Europe would like to take the opportunity to share its views regarding the European Commission's work on the harmonisation of insolvency and enforcement laws. As the largest institutional investors in Europe and total assets of approximately €9.9tn, insurers invest in a wide range of assets across all member states. Therefore, the insurance industry is a keen observer of the ongoing EC work targeted at boosting cross-border investment in the EU.

Insurance Europe supports the objective behind the EC proposal on preventive restructuring and insolvency procedures. More specifically, Insurance Europe believes that minimum requirements regarding such legal proceedings could help address specific cross-border investment barriers, stemming from wide differences in national legislative frameworks.

As a general comment, Insurance Europe believes that the EC work should aim to identify and subsequently replicate successful practices from member states.

However, Insurance Europe believes that streamlining the legal process should not come at the expense of investors' rights. A reduction in such rights may in fact have the opposite effect of deterring cross-border investment altogether.

General comments

The lack of harmonisation of insolvency and enforcement laws in the EU means that there are still too many *de jure* as well as *de facto* hurdles, which constrain a free movement of capital and cross border investment. The freedom to enter into international financial transactions should be fostered by reducing regulatory and practical obstacles by creating a reliable legal framework within the EU. Against this background, Insurance Europe supports the efforts by the EC to harmonise the corresponding insolvency rules within the remit of the CMU.

The legal status of creditors varies significantly across member states. This poses a challenge to investors as legal framework disparities create serious obstacles in relation to credit risk assessments, pricing, and risk management. While Insurance Europe welcomes the introduction of minimum criteria for the procedures

surrounding a business or asset in distress, it highlights that best practices from member states should be used as a basis to inform the minimum standards with respect to eg loan enforcement and insolvency regimes, administrative and court conduct practices.

Regarding the EC's directive proposal, Insurance Europe believes the following concerns need to be addressed:

- Enabling companies and entrepreneurs to make use of **"early warning tools"** can help them detect early warning signs of deteriorating business conditions. This could spur action to prevent distress situations before they become severe, reducing the likelihood of debtor default, and minimising the losses borne by investors. However, **the proposal does not specify what such tools may be** – Insurance Europe would welcome further clarifications/suggestions on this point.
- Insurance Europe welcomes the proposals for a restructuring process to be created in member states where currently this can only happen subject to triggering formal insolvency proceedings. This enables companies to formally restructure their financial obligations without having to go into liquidation/insolvency, potentially leading to better recovery outcomes. However, a careful balance must be struck between allowing restructuring and rolling back investor rights. Of concern are the following two elements of the proposal:
 - **Stay periods** – currently the directive gives judicial authorities powers to impose stay periods on *"all types of creditors, including secured and preferential creditors"*. Furthermore, the proposal enables judicial authorities to extend stay periods after an initial decision had been made. This presents investors with uncertainty regarding the exact length of such periods and may deter investment.
 - **Hold-out investors and voting to accept restructuring plans** – the proposal enables courts to effectively force a restructuring decision on a large portion of creditors (as high as 25%), regardless of claim seniority. This undermines the very concepts of "secured debt" and "seniority" of claims and is another source of uncertainty for insurers. The latter could be forced to accept unfavourable terms with the downside ultimately being passed on to policyholders.

Overall, Insurance Europe believes that harmonisation of insolvency laws and procedures and enabling restructuring proceedings is a step in the right direction in encouraging cross-border investment and the insurance industry stands ready to engage further on this important topic.

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