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MEETING OF THE SME ENVOYS NETWORK, 6 JUNE 2014, MADRID

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I. Background

In the end of 2012, the Commission adopted a **communication on a new approach to insolvency in Europe** launching an overall reflection with stakeholders.

It defines a roadmap to promote a 'second chance approach' for businesses in difficulties consisting of a:

- **Revision of the existing regulation (Regulation 1346/2000)** on cross border insolvencies. This regulation applies whenever the debtor has assets or creditors in more than one Member State and determines the relevant jurisdiction. Council and EP are still negotiating on the Commission proposal.
- **Public consultation on a new approach to business failure and insolvency (summer 2013)** to which BUSINESSEUROPE submitted its input. It aimed to identify those situations where disparities between national insolvency and restructuring laws create obstacles, competitive disadvantages or difficulties for companies with cross-border activities or ownership within the EU.
- More recently (March 2014), a **Recommendation on a new approach to business failure and insolvency** setting out a series of common principles/minimum standards for Member States to adapt their national insolvency procedures. Its objectives are to shift the focus from liquidation to restructuring and to give honest businesses a second chance. Here are some of the proposed principles:
 - a. Ensuring availability at national level of a **preventive restructuring framework** (e.g. with the debtor keeping some control over the day-to-day operation of his business);
 - b. **Facilitating negotiation of restructuring plans** (e.g. possibility to suspend proceedings; possibility to resort to mediation);
 - c. Proposing shorter **discharge periods** (period at the end of which the bankrupt is no longer bound by the restrictions placed upon him/her by the bankruptcy order) without the need to resort to court to officialise the expiry of the discharge.



- d. Including safeguards such as the differentiation between entrepreneurs who have acted dishonestly or in bad faith, either before or after the bankruptcy proceedings were opened and other entrepreneurs who objectively deserve a second chance.

II. Key BUSINESSEUROPE messages

- BUSINESSEUROPE is **generally supportive of the new EU approach to insolvency**.
- BUSINESSEUROPE strongly believes in **promoting the idea of second chance** for those cases where the entrepreneur's failure was not due to fraudulent or irresponsible behavior.
- The ability to re-start increases entrepreneurs' willingness to take risks in business, especially in the **digital economy** where risks are higher and therefore entrepreneurs might not be immediately successful. In order to make progress towards a more entrepreneurial Europe which will increase its competitiveness, entrepreneurs need to find a framework that **does not stigmatise** them at the first failed attempt¹.
- Ensuring fast and effective insolvency proceedings with a focus on **pre-insolvency and restructuring** would foster investment and lead to a higher survival rate of viable businesses. **Alternative out-of-court procedures** is a valid route to providing relief to overburdened national judicial systems and to deliver swifter justice.
- BUSINESSEUROPE **welcomes the recent Commission's Recommendation on a new approach to business failure and insolvency** which identified common standards/principles (see above, points a) to d)) to shift the focus from liquidation to restructuring and to help fighting the stigma of insolvency. A **Recommendation was at this stage the preferable follow-up to the Commission communication from 2012** since any fully-fledged harmonisation of national insolvency rules would have faced several challenges:
 - Wide nature of the concept of insolvency which involves many different procedures at national level (liquidation, restructuring, winding-up etc).
 - An intervention would probably trigger unintended consequences since insolvency laws are frequently linked to other fields of law: labour, company, tax, and criminal law.

¹ *2014 Study Accelerating Europe's Comeback* by Accenture in collaboration with BUSINESSEUROPE identifies 'second chance' policies as an action to foster growth and innovation through entrepreneurship. They '*promote a higher acceptance of failure such as adapting bankruptcy rules to the new unstable business environment to make it easier for business to start, grow and further flourish*'.