



Ms. Viviane Reding

Vice-President of the European Commission and
Commissioner for Justice
European Commission
Rue de la Loi 200
BE-1049 Brussels

4 November 2013

Re.: Consultation on a new European approach to business failure and insolvency

Dear Vice-President,

Dear Ms. Reding!

BUSINESSEUROPE is generally supportive of the new Commission's approach to insolvency which consists of a proposal to revise Council Regulation No 1346/2000 on insolvency proceedings and a wide stakeholder consultation with the objective of fostering a 'rescue and recovery' culture in the EU for viable businesses in financial difficulties.

Viable businesses should be given an opportunity of recovery across the EU. This is key for an employment fostering agenda.

From an internal market perspective, insolvency is a non-neglectable occurrence in practice since one in four insolvency procedures opened in the Member States has a cross-border nature.

BUSINESSEUROPE would, therefore, like to express the following views and concerns regarding the recent consultation on a new approach to business failure and insolvency in the EU:

- Research and fact-finding on differences of insolvency rules between Member States is a useful exercise to better understand this important part of business life. This should be combined with the EU Justice Scoreboard in order to have a better picture on how insolvency law are applied in practice by national courts. Regarding a possible European-level harmonisation exercise, we believe this should be a last resort measure, duly justified by a strong impact assessment.
- Insolvency is a wide concept that can bare different interpretations or cover multiple procedures in the Member States (e.g. liquidation, winding-up, restructuring). In addition, insolvency rules are highly affected by other non-insolvency law provisions. Therefore, in order to avoid triggering unintended



consequences the terminology used needs to be perfectly identified before advancing with any EU initiative.

- We strongly believe in promoting the idea of *second chance* for those cases where the entrepreneur's failure was not due to fraudulent or irresponsible behaviour.
- Any future EU initiative should not attempt to provide legal definitions for subjective concepts like 'honest entrepreneur' but rather provide for criteria which can allow to easily identifying those entrepreneurs who objectively deserve a second chance.
- This distinction is essential to combat the stigma of insolvency. This is even more relevant in situations where relevant authorities of member states share information about directors/managers who have been disqualified at the moment of registration of a new business activity. Exchanges of this nature among authorities are encouraged but any potential prejudice should be avoided against entrepreneurs who failed for reasons other than fraud or irresponsible behaviour.
- When a business is facing difficulties, the warning signs of a crisis may not always be obvious to those charged with overseeing the management and operations or their external advisors. Early warning systems can provide range of indicators of potential insolvency that, if identified early enough, allow the opportunity to avoid business failure. We agree that such systems should be made available, in particular for SMEs, and that there is consistency among member states on those indicators.
- The promotion of alternative out-of-court procedures for insolvency is a valid route to providing relief to overburdened national judicial systems and to deliver swifter a justice.

We remain at your disposal should you wish to discuss this subject further.

Yours sincerely,

Markus J. Beyrer