

Addendum to our consultation respons

While we acknowledge that the issues identified by the Commission may, in varying degree, affect the good functioning of the internal market, we think harmonizing may be very difficult as many of these issues are connected to other areas of law or dig deeply into legal traditions of Member States. Furthermore, certain issues may have a direct effect on the position of certain (secured) creditors, which could have negative consequences for the financial markets, including financial stability and the availability of credit to businesses and entrepreneurs.

Instead, we would invite the Commission to take a look into measures that may improve the predictability, efficiency and speed of insolvency law. We are confident that there are issues that could be more easily harmonised at short term, thus providing a step by step approach to improve the outcome of insolvencies. In our view, the following issues could be looked into:

1. Whether it is sufficient if Member States provide uniform information about the ranking in the e-Justice portal and whether the insolvency administrator should be required to explain how the ranking of the creditors is applied, rather than harmonising the substance.
2. Whether the way in which creditors are informed can be optimised, e.g. by developing best practices of Member States establishing an electronic register accessible to creditors. These registers could be used to administer important developments in the insolvency and their planning, for example to inform unsecured creditors ahead about the expected distribution of assets and the timeframe that is foreseen for that or to inform creditors about the final distribution. In addition: the way creditors are involved in insolvency proceedings.
3. To what extent preliminary distributions (i.e. distributions before the final distribution) occur in practice and whether it would be helpful to establish best practices to promote them, as this would allow creditors to get their quota earlier.
4. To explore the introduction of time limits with certain steps within insolvency, such as:
 - a. Filing of claims;
 - b. Filing of reports by insolvency practitioners;
 - c. Preliminary and final distributions.
5. Information requirements from the (directors of) the bankrupt company to the insolvency practitioner.
6. Requirements for courts to act quickly on insolvency decisions, such as: decisions on opening the procedure, on appointing the insolvency practitioner, on pay out to the creditors, and on disputes between the creditors and insolvency practitioner which may arise.
7. Possibilities to continue the bankrupt company after opening insolvency proceedings, including guarantees for affected creditors.
8. Alternative, fast-track, procedures where insolvency estates contain little value, as to resolve them more quickly against lower cost.