

## Background

This consultation builds on previous work and consultations undertaken over a number of years:

- In November 2011, the European Parliament adopted a Resolution<sup>1</sup> on insolvency proceedings, which included recommendations for harmonising specific aspects of national insolvency law. A study commissioned by the European Parliament had identified and outlined disparities between national insolvency laws which may create obstacles, competitive advantages and/or disadvantages and difficulties for companies, including those with cross-border activities or foreign ownership within the EU.<sup>2</sup>
- The Commission Communication of December 2012<sup>3</sup> further highlighted certain areas where differences between national insolvency laws could hamper the establishment of an efficient internal market and the free movement of capital. The existing Regulation No 1346/2000 on insolvency proceedings<sup>4</sup> therefore underwent a recast<sup>5</sup>. The new Regulation 848/2015 will enter into force mid-2017; however, its scope is limited to jurisdictional and applicable law issues for cross-border insolvency proceedings.
- With a view to the appropriateness of national insolvency regimes as such, on 12 March 2014 the Commission adopted a Recommendation on a new approach to business failure and insolvency addressed to the Member States<sup>6</sup>. This Recommendation aims at establishing minimum standards for:
  - preventive restructuring procedures enabling debtors in financial difficulty to restructure at an early stage with the objective of averting insolvency, and
  - debt discharge, within prescribed periods, for honest bankrupt entrepreneurs as one of the steps necessary to provide them with a second chance.

The Member States were invited to implement the Recommendation by 14 March 2015. A certain number of Member States have undertaken reforms following the Recommendation, however, those who did have chosen selectively among its provisions.<sup>7</sup>

- The public consultation on the Capital Markets Union<sup>8</sup> asked for stakeholders' views as to what specific aspects of insolvency laws would need to be harmonised in order to support the EU capital market. A number of investors advocated an approach aiming at least at the identification of common principles in the area of insolvency at the EU level.

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<sup>1</sup> European Parliament Resolution of 15 November 2011 with recommendations to the Commission on insolvency proceedings in the context of EU company law, P7\_TA (2011) 0484.

<sup>2</sup> INSOL Europe, Harmonisation of Insolvency Law at EU level, 2010, PE 419.633.

<sup>3</sup> COM(2012) 742 final.

<sup>4</sup> COM(2012) 744 final.

<sup>5</sup> Regulation 2015/848, OJ L 2015.

<sup>6</sup> C(2014) 1500 final.

<sup>7</sup> For more details please see the evaluation of the implementation of the Commission Recommendation on a new approach to business failure and insolvency, 30 September 2015:

[http://ec.europa.eu/justice/civil/files/evaluation\\_recommendation\\_final.pdf](http://ec.europa.eu/justice/civil/files/evaluation_recommendation_final.pdf).

<sup>8</sup> COM/2015/063 final of 18 February 2015.