



Financial Services User Group's (FSUG)

response

**to the Consultation
on the future
of European
Insolvency Law**



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FSUG response to the Consultation on the future of European Insolvency Law

The FSUG considers European Insolvency Law to be an important part of future European legislation. The questionnaire accompanying the consultation suggests respondents to express further opinions and gives just a choice between 'Yes' and 'No' and little space for further explanations. Furthermore, there is only one question that is strictly connected with financial services users. That is the reason why our response is structured in the following way: General remarks, Answer to Question 5 and Additional remarks, regarding the influence of insolvencies on financial services users that could be interesting for your further work.

General remarks

Insolvency law in many European countries gives priority to tax administrations and places them in the most favourable position to recover outstanding taxation liabilities. Individuals, without an expertise and support, are often unable to receive appropriate compensation. That is why European regulations should give priority to the natural person.

Answer to Question 5

In recent years, new procedures for dealing with over-indebtedness of private individuals and self-employed persons have been put in place in many countries. Most of these schemes are not covered by the Insolvency Regulation because they do not fulfil the Regulation's conditions for insolvency proceedings because the debtor often maintains full control over its assets and not all Member States provide for the appointment of an insolvency practitioner. Moreover, certain of the Insolvency Regulation's provisions are not adapted to deal with 'private bankruptcy'.

Should the Insolvency Regulation be applicable to over-indebted private individuals and self-employed persons?

Lack of harmonisation within 'private bankruptcy' has caused detriments for consumers (for examples, see Further remarks) when we review and compare procedures in different Member States. Best practices with regard to personal insolvency procedures are difficult to identify and spread as consumers do not have enough power and resources for lobbying and information dissemination. However, the outcome of this consultation should provide for minimum standards to be applied in all Member States.

It should be noticed that private bankruptcy is completely different from company bankruptcy as household time perspective is closed and depends on current life-cycle phase. That is why private insolvencies require separate regulations.

In any case, in an environment where economic conditions are either deteriorating or at least uncertain, households must be protected from the consequences caused by over-indebtedness. Some Member States have already taken measures trying to protect the most vulnerable households (i.e. law 3869/2010 in Greece). These measures can be considered as best practices for application in other Member States.

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Further remarks

There are already examples that there is an arbitrage when it comes to insolvency law. So called 'bankruptcy tourism' is a sign that people move to other countries just to wipe out their debts. There is evidence that some Irish citizens use British courts to write off debt in Ireland just because the British law is more consumer-oriented. On the one hand, it shows that people could find more favourable solutions thanks to freedom of movement, while on the other hand, they are forced to leave their country of origin just because it does not provide adequate solution to their financial problems. That is why it is worth seeking to achieve minimum harmonisation also in the area of consumer insolvencies.