

Brussels, 24 March 2021

## EFAA's Contribution to the Public Consultation on Enhancing the Convergence of Insolvency Laws

EFAA for SMEs welcomes the Commission's consultation on [Enhancing the Convergence of Insolvency Laws](#) to address major discrepancies in national substantive insolvency laws of the Member States. The importance of this initiative is underlined by the fact that a lack of liquidity and the risk of insolvency have been major problems for SMEs during the COVID-19 pandemic. SMEs also need quick and adapted procedures in case of insolvency. Indeed, helping SME clients stay liquid and solvent, and positioned to recover and participate in a renaissance of the EU economy, has been one of the main preoccupations of accountants since the pandemic first struck. Accordingly, in September 2020 EFAA for SMEs and SMEunited conducted [this webinar](#) for its members and in December 2020 issued [this call to action](#).

SMPs play a key advisory role in guiding and serving their SME clients. This role covers not only traditional accountancy and tax matters but extends to the entire range of their SME clients' activities and business life. Accountants often play a key role in bankruptcy and insolvency proceedings, in which role their duties and responsibilities include the following: preparation of financial statements; valuation and quantification of assets; acting as professional witness; providing forensic information; acting as receivers or liquidators; providing general insolvency services; sequestration procedures; and acting as trustee. SMPs are the main advisors of SMEs and their advice is trusted and respected.

EFAA for SMEs invites the European Commission to recognise the key role played by the accountancy profession in business and society through the professional services it delivers to SMEs. This role, and the quality of these services, are the result of regulated, high-quality, and continuous professional education and training together with adherence to high ethical standards. Furthermore, given the vital role accountants play in this area, we believe that they and their representatives, such as EFAA for SMEs, are uniquely placed to provide input to this consultation and help the Commission improve insolvency regulation. Accordingly, we make the following specific points in relation to the consultation.

Firstly, we strongly support measures to reduce the fragmentation of insolvency frameworks. This is a significant problem for the internal market and there is an urgent need for greater convergence. The reduction of discrepancies will improve legal certainty for EU cross-border business, especially for corporate governance, investors or creditors.

Secondly, whilst EFAA for SMEs welcomes the aim of addressing major discrepancies, it also invites the European Commission to envisage the development of specific procedures for SME which are tailored to their specificities, less expensive and which can fast-track insolvency. Such a common substantial set of rules would also benefit the provision of cross-border services in insolvency matters.<sup>1</sup>

Thirdly, and in line with the conclusions of the study conducted by the University of Leeds<sup>2</sup>, EFAA for SMEs agrees that Insolvency Practitioners should be appropriately qualified and possess appropriate knowledge and experience. In this respect, EFAA for SMEs would like to underline that professional accountants are highly qualified, follow strict ethical rules and must undertake continuing professional development. Furthermore, again in line with the study's findings,

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<sup>1</sup> The following can be mentioned as example:

- the USA SBRA (Small Business Reorganization Act) for SMEs adopted in 2019, in force since 2020. This decreases the requirements for insolvencies for small enterprises and boosted the appearance of other specific SME insolvency systems in other countries. Read more [here](#).
- Australia recently changed its Insolvency Framework to help small businesses restructure and survive the economic impact of COVID-19. Where restructuring is not possible, businesses will be able to wind up faster, enabling greater returns for creditors and employees. Two new processes were made available for small businesses as of 1 January 2021: a simplified liquidation framework; and a small business restructuring plan. Read more [here](#).
- Another country to be considered for having recently developed a SME insolvency system is Singapore (including microenterprises). Read more [here](#).

<sup>2</sup> "Study on a new approach to business failure and insolvency" is available at: <https://op.europa.eu/en/publication-detail/-/publication/3eb2f832-47f3-11e6-9c64-01aa75ed71a1/language-en>

concerning the principles laying down parameters for the qualifications of insolvency practitioners, as Member States seems to be performing well, EFAA for SMEs believes that no further action at EU level is necessary.

Finally, as the Commission pursues convergence, we urge that they be guided by the principle of subsidiarity, the “think-small first” principle and the need for “smart regulation”. In addition, Member States should actively engage in strengthening education and training with respect to insolvency and should entrust Professional Accountancy Organisations with achieving these objectives. SME access to high-quality and trusted professional advisors should also be ensured.

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EFAA for SMEs, the [European Federation of Accountants and Auditors for Small and Medium-sized enterprises](#), is the umbrella organisation for national accountants and auditors’ organisations whose individual members provide professional services primarily to SMEs. EFAA for SMEs has 13 members throughout Europe representing over 350,000 accountants and auditors.

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