

EFAA for SMEs Position regarding the Proposal for a Directive of the EU Commission on the harmonisation of certain aspects of insolvency law COM (2022) 702

Brussels, 17 March 2023

The [European Federation of Accountants and Auditors for SMEs](#), EFAA for SMEs, welcomes the European Commission's proposal for a directive on the harmonisation of certain aspects of insolvency law COM (2022) 702.

EFAA for SMEs supports the EU Commission's efforts to harmonise aspects of the national insolvency law regimes and to reduce legal uncertainty and barriers to cross-border investment within the EU.

EFAA for SMEs highlights that currently insolvency rules are fragmented and that the duration of insolvency proceeding differs between EU countries. These differences cause legal uncertainty regarding the result of insolvency proceedings and lead to higher costs for creditors.

Small- and medium-sized accountancy practices (SMPs) play a key role in accompanying SMEs in their activities, including when SMEs are facing economic difficulties, are restructuring or need advice on how to navigate to a more stable financial situation. SMPs have key expertise both in pre-insolvency matters and in insolvency proceedings.

Furthermore, accountants and auditors may also act as insolvency practitioners according to Article 2 (a) of the draft Directive. In this respect, draft Article 2(a) correctly emphasises that the term “insolvency administrator” refers to an administrator appointed by the authorities in restructuring, insolvency, and debt relief proceedings in accordance with Article 26 Directive (EU) 2019/1023. It should be noted, however, that according to Art. 2 sentence 1 letter q) subparagraph 2 iv) of the proposed directive, “accountants and advisors”, among others, are explicitly classified as a “party closely related to the debtor”. The legal consequences of such a blanket classification could hinder SMPs in the provision of necessary support or guidelines. This will not be in the interests of the creditor.

Therefore, EFAA strongly recommends

- to delete “accountants” from the list of Art. 2 q), and
- to explicitly state, that any party solely supporting an entity in the best interest of the creditors, shall be excluded from the legal consequences of being defined as a party closely related to the debtor.

EFAA’s following comments concentrate on the winding-up of insolvent micro-enterprises and the pre-pack proceeding, as both are going to be implemented for the first time in several member states.

1. Simplified liquidation proceedings for micro-enterprises

EFAA welcomes the introduction of the simplified winding-up proceedings as described in Art. 38(3) of the draft as it will create the framework for the orderly liquidation of micro-enterprises, whose proceedings might otherwise regularly be rejected due to a lack of sufficient insolvency assets. Furthermore, orderly liquidation will no longer be refused on the grounds that the debtor does not have sufficient assets to bear the costs of the proceeding.

According to the *Detailed explanation of the specific provisions of the proposal*, the appointment of an insolvency practitioner in the simplified winding-up proceedings (Article 39) should be an exception. However, EFAA stresses that SMEs facing insolvency are already struggling and, especially during liquidation proceeding, should not be left completely alone. Indeed, many SMEs lack sufficient knowledge on commercial and financial matters. Most SMEs will need the advice of an expert in deciding whether to start a liquidation proceeding, how to apply for it and how to wind it up. This is where SMPs can provide the necessary expert advice.

SMP advice would ensure a high level of expertise that guarantees the proper provision of orderly proceedings even without the appointment of an insolvency practitioner. Furthermore, qualified advice would lower the burden on the competent authorities that have to evaluate the acceptability of the opening of simplified winding-up proceedings as established in Art. 42 of the draft and, at the same time, safeguard the protection of the creditors.

2. Pre-pack proceeding

EFAA for SMEs welcomes the introduction of the pre-packed insolvency proceeding at EU level, which will allow enterprises to open shortened insolvency proceedings. EFAA believes that SMPs are perfectly equipped to render their services as “monitors” by providing the tasks listed in Art. 22(2)(a) to (d) of the draft. EFAA for SMEs would like to stress the key expertise of SMPs. SMPs are well qualified to fulfil these tasks in a suitable, efficient and proper manner. In particular, during the preparatory phase, they can steer the sale of the business. Furthermore, they are able to prepare the necessary economic key figures in a timely manner. They also ensure compliance with the relevant laws. Thus, SMPs can provide the necessary skills to guide the sales proceeding and to carry out all other tasks of the pre-pack proceeding.

EFAA for SMEs, the [European Federation of Accountants and Auditors for SMEs](#), is the umbrella organisation for national accountants and auditors’ organisations whose individual members provide professional services primarily to SMEs. EFAA has 15 members throughout Europe representing over 380,000 accountants and auditors. For almost 30 years, EFAA for SMEs has been the champion of small- and medium-sized accountancy practices (SMPs).

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