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Insolvency laws: Increasing convergence of national laws to encourage cross-border investment

AEIP feedback

AEIP welcomes the Commission's proposal for a directive harmonising certain aspects of insolvency law. In our input we underline that **pension funds honour their pension obligations as well as welcome efficient insolvency procedures for investors that can lead to a better functioning Capital Market Union.**

First, it is important to have insolvency rules in place to **protect employees' pension rights** which are part of the obligations under an employment contract and/or pension plan. Consequently, it is crucial for **employers who become insolvent to prioritise payment of any premiums owned to pension funds.** The current proposal does not make an explicit reference to this obligation. At the national level, Member States apply specific rules prior to transfer of an undertaking to collect the appropriate assets to cover pension premiums. For instance, in the Netherlands, a judicial doctrine on the basis of the Dutch Pension Act **obliges pension funds to pay out pension entitlements**, even if the employer has not paid the respective obliged pension premiums. In an insolvency procedure, pension premium liabilities are transferred as parts of obligations under the employment contract. Such protections should be maintained, to avoid that the costs of an employer not paying pension premiums after becoming insolvent, are offloaded on a pension fund and thereby the collective of pension fund beneficiaries.

The current proposal insufficiently respects employees' rights. It should complement the already applicable national insolvency rules and **recognise national approaches and procedures that protect the interests of members and beneficiaries of pension schemes** in case a sponsoring undertaking becomes insolvent. In line with existing national approaches and procedures, **pension premium claims should remain collectible and enforceable**, for instance, in the pre-pack procedure by making the acquirer of (part of) the business liable for unpaid pension premiums.

Second, **pension funds are mainly 'not-for-profit' and aim to offer pensions after retirement in line with national social and labour law.** At the same time, they are **important institutional investors** that contribute to long-term investment and sustainable economic growth, also in light of the development of the Capital Markets Union (CMU). Therefore, **pension funds welcome the aim of the proposal to make insolvency proceedings more efficient by removing any obstacles to a well-functioning Capital Market Union.** Nevertheless, AEIP would like to underline that as **social institutions IORPs fall under the provisions of national social and labor law.** Notable, in relation to pension funds the proposal should improve cross-border procedures and assist cross-border activities, but significantly **not through interfering with national social or labour law or tax law.**

We ask the Commission to consider the above points, in order to ensure the proper functioning of pension funds and the protection of the interests of members and beneficiaries of the pension scheme if a sponsoring undertaking becomes insolvent.

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