

## ETUC position on insolvency

Adopted at the ETUC Executive Committee on 5-6 March 2013

The ETUC welcomes the revision of the Regulation on insolvency proceedings<sup>1</sup>. It is essential to improve the protection of workers against the threat of insolvency and to strengthen their position in the case of insolvency, especially in the current context where the risk that companies are becoming unable to meet their responsibilities towards their workers is dramatically increasing.

In insolvency proceedings workers need to be protected with regard to a) the continuity of their employment contracts, b) the issue of whether businesses can continue to operate during insolvency, and c) their outstanding claims.

The ETUC welcomes the fact that the Regulation recognises that worker interests, as well as the interests of other stakeholders, can often be better protected if legal alternatives to liquidation are provided. The proposal improves the possibility of pre-insolvency proceedings with the aim of rescuing the company and adjusting debt.

The best protection of workers against insolvency is often to avoid the bankruptcy of the undertaking. Therefore minimum capital requirements for companies need to be strengthened, so as to increase companies' financial buffers against temporary economic difficulties. Furthermore it is important that pre-insolvency proceedings serve to avoid bankruptcies, and protection of workers' interests in these proceedings needs to be improved.

Currently secondary proceedings are by necessity winding-up proceedings, which stands in the way of a successful company restructuring. The proposal changes this, so that a company may in the future continue to operate as a "going concern" (the assumption being that the business will function without being liquidated over the next 12 months).

Since workers are the most important "stakeholders", their outstanding wages should be secured by guarantee institutions and they should also have a favoured position in the order of financial claims in the case of insolvency. It is not acceptable that the workers are not having preferential rights. The ETUC considers that the management should be liable for unpaid workers' claims.

The possibility of collective proceedings must be established for the workers as creditors in insolvency proceedings. Liquidators should be required to initiate and facilitate where necessary e.g. in companies without trade union representation, a process whereby workers can act collectively in relation to their rights as creditors.

The current practice, which is not changed in the proposal, is that the jurisdiction for opening insolvency proceedings is established along the concept of the centre of a debtor's main interests. The current legal situation allows companies to locate or transfer their registered offices or transfer assets to countries where worker protection is weaker in order to take advantage of insolvency regimes which benefit shareholders. This "regime shopping" must be stopped so that companies cannot seek out the national insolvency regime which is the least advantageous to worker interests. For the ETUC the introduced changes are completely inadequate, as no change to the concept has been proposed. The ETUC asks for the introduction of a clear criterion being a

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<sup>1</sup> COM(2012) 744 final Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings

definition of the “real seat” of a company’s operations. The opening of the main insolvency proceedings should be linked to this “real seat”.

The Regulation defines what a “group of companies” is and provides for rules in the case where the group is affected by insolvency. For the ETUC it is essential that the insolvency in one member of the group of companies does not endanger the viability of and employment in other parts of the group. In the interests of workers, the transparency of companies operating cross-border, particularly groups of companies, must be improved and not only in the case of insolvencies.

The ETUC wants to avoid the situation in which courts of a Member State that do not have jurisdiction over the contract of employment suddenly gain jurisdiction in employment law matters due to the opening of insolvency proceedings. The legislation to be applied and the jurisdiction must be those of the employment contract.

Worker protection in national labour laws and/or national insolvency laws must not be weakened by the revision.

A number of reforms to European company law and corporate governance are needed in order to put insolvency proceedings in a broader context with the aim of avoiding them as far as possible. The ETUC asks for worker involvement rights (information, consultation and participation) to be inserted into the proposal and be strengthened in general, so that workers can receive more information about the company, and take action in the interests of the long-term sustainability of companies and against the risk of insolvency.

The transparency of companies on both financial and nonfinancial issues needs to be substantially increased. Companies should be obliged to provide information on a wide variety of aspects, such as training, employee turnover, accidents/sickness, etc., which are crucial to the long term viability of companies. In general, the trend of increasing competition between national regulatory regimes and the tendency to see company law as an instrument of increased competition at the expense of workers' protection need to be stopped.