



## **ANNEX I: ESBA Position on a new European approach to business failure and insolvency: “2<sup>nd</sup> Chance for Entrepreneurs”**

The European Small Business Alliance (ESBA) welcomes the Commission’s initiative regarding a new European approach to business failure and insolvency. Compared to the US, entrepreneurial culture in Europe is still in its infancy. Whereas in the US bankruptcy is viewed as an intrinsic part of the entrepreneurial learning curve, in the EU bankrupt entrepreneurs are stigmatized. For these entrepreneurs it is difficult to acquire another bank loan and to make a second start.

We would like to stress here, however, that a second chance for entrepreneurs should not and cannot be unconditional, as bankruptcies have implications for a large array of stakeholders. Furthermore, second chances should be limited to honest bankruptcies/entrepreneurs.

As regards to the differences in national law and proceedings, ESBA believes that a level playing field is desirable. Particularly for those entrepreneurs dealing cross-border, harmonization of some sort would ease bankruptcy proceedings, stimulate cross-border trade and contribute to the Single Market altogether. For the same reasons, the responsibilities of companies’ directors in this context should be similar or the same in all EU countries. Lastly, if disqualification is to be recognized by all Member States, the grounds and proceedings for disqualification should be as harmonized as possible (ref. the professional qualifications proposal).

ESBA supports the European objective to limit the discharge and debt settlement period to a maximum of three years in order to facilitate second chance. In some Member States the discharge period is limited to one year (UK). However, it is important to note that the average time to complete insolvency proceedings in the UK is equally 1 year (at a cost to the estate of 6%). It may be desirable to have a longer discharge period in countries where these proceedings take more time, correspondingly.

Fast track procedures should be limited to honest bankruptcies only. ESBA would also suggest limiting the fast track procedure to first-time bankruptcies. Serial bankruptcy should not fall within this scope.

ESBA suggest making registered accountants responsible for reporting obvious fraudulent behavior at early stages. Random check in receivership proceedings could determine whether this has happened in particular cases.

As regards making insolvency proceedings more efficient for SMEs, it should be noted that the majority of SMEs (92%) are micro companies with less than 10 employees. These companies are generally lower in resources and should receive special assistance in these proceedings. Reduced costs and a reshuffle of priority of claims are also amongst the options. Here it is important to note that (in the UK) a staggering 27% of corporate insolvencies are caused by another company’s insolvency. This figure must be kept in mind when establishing the priority of claims. Furthermore, in

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light of these figures it is crucial to ensure that only honest bankruptcies are offered a second chance. The Commission might also consider allowing a reasonable percentage of the debt to SME

creditors to be taken over by the newly established company of the bankrupt entrepreneur. This is to minimize the chain-effect of bankruptcies.

ESBA welcomes the Danish system of 'Early Warning', which is supported by the Danish government and recommend for the European Commission to take this as a best practice example. The system allows Entrepreneurs (or often their relatives or business partners) to report impending bankruptcy. Early Warning will come in to assess the company and, in many cases, has proven to be able to save the company by means of (limited) financial support and business mentoring. In cases where the company cannot be saved, Early Warning ensures bankruptcy proceedings with the least amount of (collateral) damage. ESBA urges the European Commission to work together with the Member States towards creating a government supported 'Early Warning System' in each Member State.