

IMPLEMENTATION OF THE CREDIT INSTITUTIONS REORGANISATION AND WINDING UP DIRECTIVE - A REGULATORY IMPACT ASSESSMENT

Purpose and intended effect

The Credit Institutions Reorganisation and Winding Up Directive (2001/24/EC) creates rules to ensure that reorganisation measures or winding up proceedings adopted by the administrative or judicial authorities of the home State of an EU credit institution are recognised and implemented throughout the Community. The Directive provides that, with some exceptions, the national law of a credit institution's home State will apply in the event of a reorganisation or winding up proceedings, including in respect of its branches in other Member States. The Directive also provides that only the administrative or judicial authorities in the home Member State of a credit institution can authorise the implementation of reorganisation measures or the opening of winding up proceedings in respect of that credit institution, including in respect of its branches in other Member States.

The principal purposes of the Directive are:

- to simplify proceedings when an EU credit institution is in financial difficulties, enabling efficient reorganisation or distribution of assets; and
- to ensure that all EU creditors are treated equally.

It is not the purpose of the Directive to harmonise reorganisation and winding up arrangements across Member States. Therefore, in implementing the Directive the fundamental principle, which we have followed wherever possible, is to maintain existing insolvency law, making only the minimum changes necessary to comply with the requirements of the Directive.

To ensure a consistent approach in UK law, we also have taken into account the approach adopted in the Insurers (Reorganisation and Winding Up) Regulations 2004 which implemented the Insurers Reorganisation and Winding Up Directive (2001/17/EC) which put in place a similar regime for insurance undertakings.

The UK Government must implement the Directive. The Directive provides only very limited flexibility for Member States to decide how they implement it. Implementation in the UK will be by means of Regulations.

Scope of the Directive

The provisions of the Directive apply to reorganisation measures and winding up proceedings affecting credit institutions and their branches set up in Member States other than those in which they have their head offices, as defined in Article 1(1) and (3) of the Banking Consolidation Directive (2000/12/EC). A credit institution as defined by the Banking Consolidation Directive is "an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account", or an electronic money institution (within the meaning of Directive 2000/46/EC).

Article 2(3) of the Banking Consolidation Directive contains a number of exceptions, such as central banks, municipal banks and credit unions. We have applied the Regulations to the provisions of UK insolvency law in relation to the following entities: companies, building societies, partnerships and limited liability partnerships, in so far as they are credit institutions within the meaning of the Directive.

Benefits

The Directive will simplify the processes for conducting cross-border insolvency proceedings and for clarifying, in advance of any insolvency, the legal basis on which insolvency proceedings will take place.

The principal benefits of the Directive are:

- costs of reorganisations and winding ups should be reduced due to:
 - * the avoidance of multiple separate proceedings in different Member States;
 - and
 - * the ability of officials acting in insolvency proceedings to have automatic recognition and enforcement of the proceedings and their effects throughout the EU without the need to make applications to foreign courts.
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- it will be possible to take action more quickly and effectively to protect the interests of creditors when an EU credit institution gets into financial difficulties; and
 - a single set of proceedings for EU credit institutions will ensure that creditors are treated equitably.

It is not possible to quantify the benefits likely to arise from the implementation of the Directive.

Business sectors affected

The main business sectors which will be affected are:

- credit institutions; and
- finance, property and professional services, in particular insolvency practitioners.

Other business sectors will only be affected to the extent that individual firms may be creditors of a credit institution undergoing reorganisation or winding up procedures.

The implementation of this Directive will not affect charities and voluntary organisations (except to the extent that such bodies may be creditors of a credit institution undergoing reorganisation or winding up procedures). Likewise small businesses will not be affected except to the extent that they are creditors of affected credit institutions - so no small business litmus test has been carried out.

Compliance costs for a typical business

Most of the provisions of the Directive only affect credit institutions once they are in financial difficulties. Due to the regime of prudential supervision of credit institutions under EC law cases of cross border reorganisation measures or winding up proceedings being undertaken are rare. Therefore, the impact on UK businesses of the Directive will be very limited.

There are requirements in the Directive to enable creditors from other Member States to lodge claims and for them to be kept informed of the progress of the reorganisation or winding up measures and these will impose some additional costs (principally due to the translation requirements).

There may be some familiarisation and training costs. These costs will fall mainly on insolvency practitioners and those providing financial or legal advice. These costs should be very modest and absorbed into existing staff training and continuing professional education.

It is not possible to quantify the likely additional costs.

Competition issues

For the most part the costs associated with implementing the Directive will only apply to credit institutions, which are undergoing reorganisation measures or winding up proceedings. The Directive requirements will apply equally to all credit institutions and it is not expected that the Directive will give rise to higher costs for new credit institutions as opposed to established credit institutions, nor will it affect the structure of the market. The Directive will not affect the ability of firms to choose the price, quality, range or location of their products.

A competition filter has been completed and our view is that these proposals will not raise competition issues.

Consultation

The Treasury's proposals for implementing the Directive were put out for consultation on 28th November 2003. The consultation ended on 27th February 2004 and the Treasury received nine responses.

No responses to the consultation were able to provide estimates of the savings or costs associated with implementing the Directive.

Contact point

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Ministerial Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

RUTH KELLY

April 2004