

Opinion of the European Committee of the Regions — Boosting start-ups and scale-ups in Europe: regional and local perspective

(2017/C 342/07)

Rapporteur: Tadeusz Truskolaski (PL/EA), Mayor of Białystok

Reference(s): Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU

COM(2016) 723 final

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on 'Europe's next leaders: the start-up and scale-up initiative'

COM(2016) 733 final

I. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Recital 1

Text proposed by the Commission	CoR amendment
<p>The objective of this Directive is to remove obstacles to the exercise of <i>fundamental freedoms, such as the free movement of capital and freedom of establishment</i>, which result from differences between national laws and procedures on preventive restructuring, insolvency and second chance. This Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective <i>national</i> preventive restructuring frameworks which enable them to continue operating; that honest over indebted entrepreneurs have a second chance after a full discharge of debt after a reasonable period of time; and that the effectiveness of restructuring, insolvency and discharge procedures is improved, in particular with a view to shortening their length.</p>	<p>The objective of this Directive is to remove obstacles to the exercise of freedoms <i>linked to the single market</i>, which result from differences between national laws and procedures on preventive restructuring, insolvency and second chance. This Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective preventive restructuring frameworks which enable them to continue operating; that honest over indebted entrepreneurs have a second chance after a full discharge of debt after a reasonable period of time; and that the effectiveness of restructuring, insolvency and discharge procedures is improved, in particular with a view to <i>responding to the requirements of worker consultation (Article 27 of the Charter of Fundamental Rights) and shortening their length. The preventive solutions sometimes referred to as 'pre-pack' are part of a growing trend in modern insolvency law which favours approaches aimed at the recovery of a company in difficulties or at least saving the parts of it which are still economically viable, rather than the traditional approach of liquidation.</i></p>

Reason

Self-explanatory.

Amendment 2

Article 1.1

Text proposed by the Commission	CoR amendment
(a) preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency;	(a) preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency which seek to resolve a specific problem, to reduce the liability due to all or some of the creditors or to transfer all or part of the company's viable activities to another company under conditions that entitle creditors to a dividend worth at least as much as they would have received in the event of liquidation;

Reason

Self-explanatory.

Amendment 3

Article 3.1

Text proposed by the Commission	CoR amendment
Member States shall ensure that debtors and entrepreneurs have access to early warning tools which can detect a deteriorating business development and signal to the debtor or the entrepreneur the need to act as a matter of urgency.	Member States shall ensure that debtors and entrepreneurs, as well as workers and their representatives , have access to early warning tools which can detect a deteriorating business development and signal to the debtor or the entrepreneur the need to act as a matter of urgency.

Reason

Self-explanatory.

Amendment 4

Article 3.2

Text proposed by the Commission	CoR amendment
Member States shall ensure that debtors and entrepreneurs have access to relevant up-to-date, clear, concise and user-friendly information about the availability of early warning tools and any means available to them to restructure at an early stage or to obtain a discharge of personal debt.	Member States shall ensure that debtors and entrepreneurs, as well as workers and their representatives , have access to relevant up-to-date, clear, concise and user-friendly information about the availability of early warning tools and any means available to them to restructure at an early stage or to obtain a discharge of personal debt.

Reason

Self-explanatory.

Amendment 5

Article 3.3

Text proposed by the Commission	CoR amendment
<i>Member States may limit the access provided for in paragraphs 1 and 2 to small and medium-sized enterprises or to entrepreneurs</i>	

Reason

It is not clear why and according to what criteria (number of employees, turnover, etc.) certain companies should be excluded from the early warning mechanisms.

Amendment 6

Article 4 (add a new paragraph after Article 4(4))

Text proposed by the Commission	CoR amendment
	<i>Member States shall establish specific provisions allowing employees to consider, prior to restructuring, the possibility of buying out a company by forming a cooperative, including entering into discussions with creditors, administrators, auditors, financial institutions, trade unions and public authorities in order to offer a viable and long-term buyout option that would not be considered a solution of last resort.</i>

Reason

The loss of resources in the event of a business undergoing a major restructuring or going into liquidation is a loss for the EU economy as a whole. In order to save the business, as many options as possible should be available, including the possibility of transforming the business into a cooperative.

Amendment 7

Article 8.1

Text proposed by the Commission	CoR amendment
(f) the terms of the plan, including, but not limited to: <ul style="list-style-type: none"> (i) its proposed duration; (ii) any proposal by which debts are rescheduled or waived or converted into other forms of obligation; (iii) any new financing anticipated as part of the restructuring plan 	(f) the terms of the plan, including, but not limited to: <ul style="list-style-type: none"> (i) its proposed duration; (ii) any proposal by which debts are rescheduled or waived or converted into other forms of obligation; (iii) any new financing anticipated as part of the restructuring plan; (iv) <i>the impact on employees and subcontractors of restructuring plans;</i> (v) <i>the impact on the pensions of retired employees;</i>

Reason

Self-explanatory.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS (CoR)

1. welcomes the European Commission's communication on 'Europe's next leaders: the start-up and scale-up initiative' as a development and extension of the Small Business Act; at the same time calls on the Commission to update the Small Business Act and to maintain its homogeneity;
2. agrees with the concerns expressed in the communication that the continuing excessive fragmentation of the single market (including the digital single market) might constrain the growth potential of start-ups and scale-ups;
3. restates its full support for measures aimed at developing innovative entrepreneurship and dismantling the obstacles to its development;
4. points out that start-up and scale-up businesses tend to accommodate flexible forms of employment, including teleworking, flexible working hours, temporary agency work and employee leasing, contract work and work- and job-sharing. When presented as a genuine option for the employee, such forms of employment can have a positive impact of achieving a work/life balance and help to address long-term unemployment;
5. emphasises that cooperation between European, national, regional and local public authorities is of great importance to creating conditions enabling start-ups to scale up;
6. calls on the Commission to take steps to encourage Member States to ensure that all levels of education (both business and non-business) take greater account of subjects such as creativity, entrepreneurship, economics and finance;
7. stresses the role played by regions' and cities' achievements in the innovation-driven development of the world economy due to the fact that they are able to adapt in a flexible way to evolving market, technological and cultural circumstances;
8. points out that support for innovative operators with particularly fast growth rates has an effect on other market operators. Together with the current trend of efforts to promote the circular economy, the social economy and the sharing economy⁽¹⁾, support measures and legal facilitation will produce synergies, thus contributing to the development of societies as a whole;
9. emphasises that measures to more closely link sectoral strategies, intertwining research, business and public authorities at all levels, will be crucial to ensuring that the objectives achieved have a common denominator;

Removing regulatory, informational and legal barriers

10. emphasises that the heterogeneity and instability of EU Member States' laws are one of the key problems constraining the expansion of European start-ups⁽²⁾;
11. encourages the Commission to attempt to clearly define start-ups and scale-ups, and to further streamline legal solutions for SMEs;
12. agrees with the current analytical line developed in the Horizon 2020 programme (concerning the possibility of making use of expert recommendations) and in the work of the European Observatory for Clusters and Industrial Change;
13. proposes revising the set of tools and measures after three measurement cycles so as not only to collect illustrative data on start-ups and scale-ups, but also to develop research on qualitative aspects, which will make it easier to identify problems;

⁽¹⁾ *The local and regional dimension of the sharing economy*, rapporteur: Benedetta Brighenti, ref.: CDR 2698/2015; *Collaborative economy and online platforms: a shared view of cities and regions*, rapporteur: Benedetta Brighenti, ref.: CDR 4163/2016; *The role of the social economy in restoring economic growth and combating unemployment*, rapporteur: Luís Gomes, ref.: CDR 1691/2015.

⁽²⁾ *Smart Regulation for SMEs*, rapporteur: Christian Buchmann, ref.: CDR 5387/2016.

14. welcomes the fact that, in keeping with the European Commission's policy priorities under the Single Market Strategy, COSME programme measures are largely geared to supporting start-ups and scale-ups;

15. expresses concern about the slow pace of efforts to rectify the fragmentation of tax systems, in particular value-added tax (VAT) systems, in the 28 EU Member States. This fragmentation constrains SMEs' — and especially start-ups' — development and cross-border trade;

16. suggests that the Commission make additional funds available to help start-ups develop and implement strategies for protecting intellectual property rights;

Further economic activity — second chance

17. recognises the problem of ineffective and excessively long business insolvency proceedings in EU Member States that deprive many honest but over-indebted entrepreneurs of a second chance;

18. welcomes the proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU, of 22 November 2016 (COM(2016) 723) — which aims to reduce the key barriers to the free flow of capital stemming from differences in Member States' restructuring and insolvency frameworks; expresses the concern, however, that the proposal is limited to financial aspects, with employed workers treated as creditors of a company on the same footing as banks or other investors, and that the recovery of a company is presented purely as a financial reorganisation of stakeholders;

19. finds the Commission's argument for the added value of implementing the proposed legislative solutions at EU level convincing and therefore considers the proposal for a directive consistent with the principles of subsidiarity and proportionality;

20. expresses concern that the current inability to harmonise Member States' legal systems relating to insolvency proceedings means that this legislative instrument will not make a meaningful contribution to increasing the number of start-ups remaining on the market for longer than two to three years;

21. recalls the adoption on 20 May 2015 by the European Parliament and the Council of Regulation (EU) 2015/848 on insolvency proceedings in the various Member States and supports the approach whereby insolvency proceedings are no longer to be seen merely in terms of liquidation, but as a tool for ensuring that the resources of the company — including its employees' right to work — are preserved and, as far as possible, ensuring the company's survival. Also welcomes the establishment, by June 2019, of a digital system of interconnected insolvency registers to be set up in each Member State, and which it will be possible to access free of charge through the European e-Justice Portal. Nonetheless draws attention to the fact that additional support is needed to increase the specialisation of judges and the professionalism of practitioners involved in such procedures;

22. welcomes the European Parliament legislative resolution of 5 April 2017 on the proposal for a Regulation of the European Parliament and of the Council on Money Market Funds (COM(2013)0615) and the proposed establishment of a new category of money market fund (MMF), the low-volatility net asset value (LVNAV) MMF specifically designed for small companies in the real economy;

23. calls on public authorities at national, regional and local level to initiate or become actively involved in:

— campaigns to raise public awareness of what it means to fail when pursuing business success,

— campaigns to promote a culture of rescuing businesses rather than liquidating them,

— campaigns to promote an early warning tool,

— measures to promote economic and financial education for entrepreneurs, primarily aimed at future entrepreneurs or start-ups with a view to improving their level of knowledge and changing their approach to the various sources of capital,

- targeted training programmes for entrepreneurs making a fresh start, and financial support measures with advantageous terms to rescue ailing businesses that show signs of being viable in the future;

Creating new opportunities

24. considers that there is a need to facilitate SME start-ups in the single market, in particular by setting appropriate thresholds for exempting them from national reorganisation and re-registration requirements;

25. encourages the Commission to work towards laying the groundwork for a start-up visa and a catalogue of conditions enabling safe and beneficial use to be made of qualified intellectual and financial capital from third countries that is able to contribute to the development of the EU economy;

26. welcomes the Commission's efforts to improve access to public procurement for start-ups and scale-ups and stresses the need to closely monitor the transposition and implementation of Directive 2014/24/EU on public procurement at Member State level in order to ensure that the Member States make full use of existing provisions for improving SMEs' access to public procurement;

27. welcomes the idea of establishing innovation brokers, responsible for putting together networks of buyers interested in innovative public procurement, linking them with innovative companies and helping such companies access venture capital;

28. commends the proposed alterations to the Horizon 2020 programme to support a bottom-up, cross-sectoral approach and radical innovation characterised by a high degree of social significance and high growth potential;

29. welcomes the further strengthening of the Enterprise Europe Network (EEN) by expanding its range of services to include specialised advice on scaling up, information about national and European rules, financing opportunities, partnerships, and how to access cross-border public procurement;

30. emphasises the importance of the EEN regional offices forging strong cooperative links with local business incubators, accelerators and science and technology parks, because these institutions are in daily and close contact with start-ups and are thus well aware of their real problems and needs;

31. emphasises that the intensification announced by the Commission of efforts to create connections between clusters and local and regional entrepreneurial ecosystems — in particular with regard to matchmaking between investors and large companies and networking of local decision-makers — should be extended to include connecting start-ups with research hubs, as potential providers of technological and non-technological innovative solutions;

32. calls on the Commission to introduce support measures with the aim of launching innovative business incubators to help and support entrepreneurs during the initial stages of their business, improving their business management skills, enabling alternative financing options, reaching agreements with 'driver' enterprises ('elevator pitch'), supporting international expansion, etc.;

33. draws attention to the widening technological gap between metropolitan regions and less-developed and peripheral regions. In this regard, suggests that the Commission take measures to support the networking of leading regions with regions that have economies based on agriculture;

34. although much still remains to be done, welcomes the progress that has been made in terms of entrepreneurship in less-developed regions, and suggests that the Commission continue supporting the current initiatives to promote business development in these regions and that it consider implementing new ones, such as a separate instrument dedicated to networking projects;

35. underlines that additional measures to strengthen and network actors working to promote entrepreneurship in traditional economic sectors, including the craft sector and the cultural and creative industries, rural and peripheral regions, and peri-urban areas would be highly desirable;

36. welcomes the Commission's idea of creating a European platform to connect start-ups with potential partners (alongside existing public and private platforms). This instrument would strengthen the development of networks of entrepreneurial ecosystems and clusters in Europe;

37. welcomes the planned direction for the Commission's work in this field (the Digital Skills and Jobs Coalition, the Blueprint for Sectoral Cooperation on Skills and the big data tool);

38. supports the initiative to extend the Erasmus for Young Entrepreneurs programme to incubators and entrepreneurs in international markets;

39. expresses concern that the communication — which tackles an unusually broad topic — is too superficial when it comes to planned activities and only selectively goes into future actions (e.g. information about the programme of the digital innovation hubs is absent, and a proposal to set up a European Innovation Council is merely alluded to without specifying the way in which it will work);

40. calls on the Commission to put forward more detailed information on the competences that this council is to have, as well as its legislative mandate;

41. notes that ensuring that business and its environment, research circles and public authorities are given proper representation in the European Innovation Council is a key factor determining the quality of its work;

42. encourages the European Commission to analyse the possibility of supporting local and regional authorities in setting up teams composed of experienced representatives of business, who would help develop entrepreneurship and start-up and scale-up businesses in the area administered by the local or regional authority;

43. underlines the important role that local and regional authorities, academia and entrepreneurs themselves (the 'triple helix') have played and will continue to play in spreading an entrepreneurial spirit, constructing a culture of science and innovation in Europe's regions, and building strong regional entrepreneurial ecosystems;

44. calls on the Commission to involve local and regional authorities in the planned analysis of the peer review of the Member States' principles and practices in relation to start-ups and scale-ups. Local and regional authorities are in the closest proximity to local entrepreneurs and it is worth taking advantage of their significant expertise about local business environments;

45. considers that, with the digital single market, competition will take on a new dimension and every region will have to compete with other European entities that benefit from the same legal bases. This, therefore, is an opportunity for start-ups that have not had particularly good opportunities to date to internationalise and access new cross-border markets;

Access to finance

46. points out that start-ups' and scale-ups' recourse to innovative and non-standard solutions means that the effects of implementing them can only be predicted to a limited extent. This also makes it more difficult to access funds from regular programmes;

47. recommends that the Commission should loosen the financing system so that it can be more flexible towards innovative ideas, and that it should encourage bodies that distribute European funds to be more attentive to the selection of experts;

48. welcomes the Commission's idea of creating a European venture capital fund of funds, which might reduce the market fragmentation of venture capital funds in the EU;

49. proposes launching analyses of the possibility of bringing in local venture capital in local and regional authorities;

50. calls on the Commission to promote differentiation between the various sources of funding; venture capital funds, private equity and business angels are still underdeveloped in Europe;

51. commends the proposal to increase the budget for COSME and, with the proviso that no funds are diverted away from the Connecting Europe Facility or the Horizon 2020 programme, in principle also the proposal to increase the budget for EFSI, which allows for additional financing for SMEs in the start-up and scale-up phases. In particular, it would be useful

to promote integration and partnerships between SMEs and start-ups;

52. welcomes the direction of the Commission's measures that aim to create additional incentives for venture capital financing, e.g. by making it possible for private funds or local and regional authorities' funds to benefit from public guarantee when raising debt financing, as this can contribute to increasing equity and debt investments in start-ups and scale-ups;

53. calls for a non-financial support programme for start-ups and scale-ups to be developed at EU level, which will enable new markets to be explored, contributing to an increase in the number of jobs and the further development of innovation within the EU;

54. considers it necessary to enhance a structured European investment ecosystem by means of economic and fiscal support measures that attract and encourage private investment in innovative companies, so that they can develop and grow in optimal economic and financial conditions and achieve a high degree of competitiveness. To this end, it is particularly important to strengthen alternative financing instruments (risk capital, equity loans, guarantees, etc.). A genuine simplification of how financial instruments co-financed by the Structural Funds are implemented is therefore needed;

55. draws attention to the intensive development of crowdfunding platforms as an alternative source of financing for innovative solutions created by start-ups;

56. calls on the Commission to analyse the opportunities and risks of crowdfunding for European society, in particular those that directly impact investors who might not have the same access to information and might be less prepared for this kind of transaction compared to professional investors;

57. points out that a well-designed regulatory framework governing how crowdfunding platforms operate across the entire EU will enable the potential of this source to be fully harnessed. Standards ensuring that investors' interests are protected should be an integral part of this framework;

58. supports the strengthening of Startup Europe and the expansion of its scope beyond the ICT sector and web start-ups. In this regard, the Committee would recommend further simplification in order to provide increasingly smooth and effective guidance to start-ups that want to access the numerous possibilities offered by European programmes;

Start-up activity in areas of particular social importance

59. calls on the European Commission to adopt a strategy — based on existing areas of particular interest such as the silver economy, social entrepreneurship, and the triple helix model — relating to innovative and socially-focused business initiatives that enhance quality of life, so that the system of incentives supports bottom-up activities and social creativity;

60. draws attention to the scope for cooperation between start-ups and scale-ups, on the one hand, and large businesses, on the other. It is important to apply good practice from EU regions, where cooperation leads to synergies between businesses of different sizes and from different sectors;

61. welcomes the Commission's assurance that it will launch a Social Innovation Challenge Platform;

62. points out that linking such a platform with the public procurement system could produce added value, potentially affecting social enterprises' growth rate. However, the system would need to be made more flexible so that problems can be solved creatively — i.e. in an optimal way, from the point of view of the final beneficiaries — and not predictably, in terms of structural indicators.

Brussels, 12 July 2017.

The President
of the European Committee of the Regions
Markku MARKKULA
