# Bankruptcy

When a company can no longer pay its debts and activities are discontinued

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## What you should know about it:

- The terms bankruptcy and insolvency are used to define legal proceedings relating to when a company do not have enough resources to pay all of their financial liabilities to their creditors. The two terms can lead to some confusion as they are sometimes used interchangeably. It is the case at the European Level, where bankruptcy and insolvency both refers to the same regulation on **cross-border insolvency** (click here to know more). Nevertheless, the use of the legal terms can vary according to national law.
- When a bankruptcy occurs and a company **insolvency procedure** has been initiated, it is generally associated with considerable cuts and uncertainties for the affected workers, the works councils and the unions who represent the workforce's interests. A bankrupt/insolvent company may owe outside creditors such as financial institutions (e.g. banks), suppliers, and landlords among others partial or full payments for outstanding debt. At the same time, the company as an employer may have internal debts to workers if they have not paid part or all of wages and remuneration owed to workers. As the different creditors will have claims during the procedure, it is crucial that worker's claims are protected.
- In case of **insolvency of the employer**, workers and the bodies representing them should be well aware of **Directive 2008/94/EC** on the protection of workers in the event of the insolvency of their employer.
- The Directive provides for **minimum standards regarding workers' claims** against employers who are in a state of insolvency. The Member States have to appoint a **guarantee institution** that will take over the outstanding pay claims and have to lay down detailed rules about the functioning of the guarantee institution (click here to know more).
- It is also important to know that to ensure the **equal treatment of all workers**, Member States are not allowed to either set a minimum duration for the labour contract or exclude fixed-term contracts or agency workers.
- As regards the **involvement of public authorities**, in some case of bankruptcy/insolvency, an insolvency/preventive restructuring practitioner will be appointed as a third party (generally an administrator or a liquidator).
- The insolvency may concern the group as a whole, but it might also only cover certain legal entities belonging to the controlling undertaking. This consideration is especially important for the EWC/SE WC as the condition of their functioning won't be impacted in the same way.
- Bankruptcies may involve **collective redundancies, closures** and or in some case a **take-over**.

## Your mission is to...

- Anticipate bankruptcy/insolvency in your company by identifying signs of company crises. Try to observe the economic and financial situation and prospective development of the company or group. Use trade union resources and information on the issue at European and national level.
- Gather all information that helps to understand the economic aspects of the Bankruptcy but also possible "hidden" motivations of the management.
- Once an insolvency procedure is set, your role is also to:
    - Ensure that workers are protected with regard to the continuity of their employment contracts.
    - Ensure that the conditions of whether businesses can continue to operate during insolvencies are acceptable to workers.
    - Ensure that workers' claims such as wages and remunerations are respected.
- Check also the implementation in your national law of Directive 2002/74/EC amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of workers in the event of the insolvency of their employer: for example, Member States may stipulate that the Directive does not apply to supplementary company pension schemes. They also have the option to limit the liability of the guarantee institution regarding amount and time. However, they have to cover at least three months of the labour contract prior to the date of insolvency – this minimum period can be part of a reference period with a minimum duration of six months.

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# Timeline matrix

## Management obligations

### European Works Councils SE Works Councils

- If the rumours are true and an insolvency procedure is under way which may be of importance for the European workforce in terms of its potential effect, central Management has the obligation to inform the EWC or SE WC as soon as possible (see intended decision)

### Local worker representations

- If the rumours are well funded and a procedure is foreseen, Local Management has the obligation to inform the local representatives as soon as possible (see intended decision). In case more than one country is impacted, such information should be coordinated and provided within the same timeframe. This in particular relates to the effects of bankruptcy/insolvency procedure on countries and local sites affected.

### Worker representatives on the Board

- If the rumor is well-founded, Management should inform the board members about the insolvency procedure and it reasons and any plans that affect the workforce at a very early phase.

## Workers' rights and action

### European Works Councils SE Works Councils

- As soon as rumours may appear to have some substance, EWC/SE WC members should confront management with the information already obtained and ask for further details, including – when appropriate - the formal information and preparations for consultation of the EWC/SE WC. This can be done at a regular meeting or via their Select Committee, Secretary, Chair or other spokesperson in between meetings.
- Get in touch with your trade union coordinator and your European trade union federation to secure the full information of all concerned trade unions and start preparing a joint trade union response.

### Local worker representations

- As soon as rumours may appear to have some substance, local worker representatives should confront management with the information already obtained and ask for further details, including - when appropriate – the formal information and preparations for consultation. This can be done at regular

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meetings of the local representative bodies or via their Secretary, Chair or other spokesperson in between meetings. This can also be done by individual shop stewards or the EWC/SE WC members representing the country concerned.

- Any information obtained at local level should systematically be shared with the EWC/SE WC members of the other countries.

### Worker representatives on the Board

- Worker representatives have access to privileged information ason the board have access to the same information as other shareholder representatives and should be aware in some extent about the financial situation of the company. If any rumours about a possible insolvency case affecting the company and it has not been communicated to the board yet, then the issue can be raised at the next meeting. If however such information was already shared with the board, signals can be sent to the EWC , local worker representatives and/or trade union officers that indeed such restructuring is being prepared.

## Trade union action

### European Works Councils SE Works Councils

- Contact the respective ETUF: Check and follow any existing ETUF code of conduct/policy applicable in case of insolvency procedure and/or any pre-existing transnational framework agreement or similar company-specific document.
- Gather information on the reasons that might trigger the insolvency procedure: Is it a cash-flow insolvency (the company doesn't have money to pay but has assets) or a balance-sheet insolvency (the assets themselves are not enough to cover the debt). The latter can have worst consequences as it can lead to the liquidation of the company
- EWC coordinators should closely cooperate with the ETUF and EWC members in the concerned countries

### Local worker representations

- Rumours may be well-founded or not: initial exchanges with workers concerned maybe needed. Worker representatives may also check public information from the internet (press, corporate website, ...).

### Worker representatives on the Board

- In some cases, trade union officers may have a mandate on the company board. If that is not the case, then a close contact to the worker representatives who are on the board will be essential. This will allow rumours to be quickly verified and, if confirmed, to prepare further steps (see the following sections in the timeline).

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## Role of public authorities

### European Works Councils SE Works Councils

- No role of public authorities at this stage. However, you may inform yourself about the potential applicable national law and which court may have jurisdiction to open the insolvency case. Proceedings should take place in the courts of the Member State where the debtor's main interests are centred.

### Local worker representations

- No role of public authorities at this stage. However, you may inform yourself about the national law and the different step of an insolvency procedure in your country.

### Worker representatives on the Board

- In case of significant impacts on the local workforce, as it is often the case in insolvency procedure, worker representatives on the board may become prepared to ask management to inform public authorities.

# Further reading and resources

BANKRUPTCY

**Directive 2008/94/EC on the protection of workers in the event of the insolvency of their employer**

Category: Legal

Language: English

BANKRUPTCY

**Strengthening workers' voices in cases of insolvencies: guidelines and recommendations "more Democracy at work still needed" Elaborated by Syndex Europe, PCG-Project Consult GmbH and GLTPS.**

Organisation(s): ETUC

Category: Union guides

Language: English

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