

Preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures

2016/0359(COD) - 26/06/2019 - Final act

PURPOSE: to remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures concerning preventive restructuring, insolvency, discharge of debt, and disqualifications and to guarantee a second chance to entrepreneurs after bankruptcy.

LEGISLATIVE ACT: Directive (EU) 2019/1023 of the European Parliament and of the Council on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

CONTENT: the Directive aims to ensure a second chance to bankrupt entrepreneurs and to facilitate access by viable companies in financial difficulty to preventive restructuring frameworks at an early stage in order to prevent their insolvency.

Key elements of the new rules include the following:

Early warning and access to information

Debtors shall have access to one or more clear and transparent early warning tools which can detect circumstances that could give rise to a likelihood of insolvency and can signal to them the need to act without delay.

Early warning tools may include alert mechanisms when the debtor has not made certain types of payments or advisory services provided by public or private organisations.

Preventive restructuring frameworks

Where there is a likelihood of insolvency, debtors will have access to a preventive restructuring framework that enables them to restructure, with a view to preventing insolvency and ensuring their viability, thereby protecting jobs and maintaining business activity. Member States may also provide that preventive restructuring frameworks are available at the request of creditors and employees' representatives, subject to the agreement of the debtor. They may limit that requirement to obtain the debtor's agreement to cases where debtors are SMEs.

Facilitating negotiations on preventive restructuring plans

Member States shall ensure that debtors accessing preventive restructuring procedures remain totally, or at least partially, in control of their assets and the day-to-day operation of their business.

The Directive provides for the appointment, in certain cases, of a restructuring practitioner to assist in the development of the plan. Practitioners appointed by a judicial or administrative authority shall receive

suitable training and have the necessary expertise in relation to their responsibilities. They shall be subject to regulatory and control mechanisms including measures concerning the accountability of practitioners who fail to perform their duties.

Practitioners in the field of restructuring, insolvency, and discharge of debt that are appointed by judicial or administrative authorities must be suitably trained and have the necessary expertise for their responsibilities. They should be subject to oversight and regulatory mechanisms which should include effective measures regarding the accountability of practitioners who have failed in their duties,

Restructuring plans

The new rules provide for a number of elements to be included in a plan, including:

- the debtor's assets and liabilities at the time of submission of the plan, including the value of the assets, a description of the debtor's economic situation and the situation of the workers, and a description of the causes and extent of the debtor's difficulties;
- the affected parties and their classes into which they have been grouped;
- the terms of the restructuring plans and in particular any proposed restructuring measures, and, if applicable, the proposed duration of any proposed restructuring measure and the general consequences for employment.

Stay of individual enforcement actions

Member States shall ensure that debtors can benefit from a stay of individual enforcement actions to support the negotiations of a restructuring plan in a preventive restructuring framework. The initial duration of a stay of individual enforcement actions shall be limited to a maximum period of no more than four months. Member States may enable judicial or administrative authorities to extend the duration of a stay of individual enforcement actions or to grant a new stay of individual enforcement actions, at the request of the debtor, a creditor or, where applicable, a practitioner in the field of restructuring.

Full discharge of debts

Member States shall ensure that insolvent entrepreneurs have access to at least one procedure that can lead to a full discharge of debt after a maximum period of three years, under the conditions defined in the Directive.

Duties of directors

Where there is a likelihood of insolvency, directors must have due regard, as a minimum, to the following: (i) the interests of creditors, equity holders and other stakeholders; (ii) the need to take steps to avoid insolvency; and (iii) the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business.

Workers

The Directive stipulates that Member States shall ensure that existing rights of workers under national and Union law are not affected by the process of preventive restructuring (e.g. the right to collective bargaining and the right to information and consultation).

ENTRY INTO FORCE: 16.7.2019.

TRANSPOSITION: no later than 17.7.2021.