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Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2016/0359(COD) Procedure completed
Preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures Amending Directive 2012/30/EU 2011/0011(COD)	
Subject 3.45.01 Company law 3.45.03 Financial management of undertakings, business loans, accounting	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Legal Affairs		28/11/2016
		 NIEBLER Angelika	
		Shadow rapporteur	
		 COFFERATI Sergio Gaetano	
		 ZŁOTOWSKI Kosma	
		 MARINHO E PINTO António	
		 DURAND Pascal	
		 BERGERON Joëlle	
		Committee for opinion	Rapporteur for opinion
 Employment and Social Affairs			17/01/2017
	 MARTIN Edouard		
 Economic and Monetary Affairs			24/11/2016
		 CALVET CHAMBON Enrique	
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	3641	12/10/2018
	Justice and Home Affairs (JHA)	3622	05/06/2018
	Justice and Home Affairs (JHA)	3584	08/12/2017
	Justice and Home Affairs (JHA)	3546	08/06/2017
European Commission	Commission DG	Commissioner	
	Justice and Consumers	JOUROVÁ Věra	
European Economic and			

Key events

22/11/2016	Legislative proposal published	COM(2016)0723	Summary
16/01/2017	Committee referral announced in Parliament, 1st reading		
08/06/2017	Debate in Council	3546	
08/12/2017	Debate in Council	3584	
02/07/2018	Vote in committee, 1st reading		
02/07/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
21/08/2018	Committee report tabled for plenary, 1st reading	A8-0269/2018	
10/09/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/09/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
23/01/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
27/03/2019	Debate in Parliament		
28/03/2019	Results of vote in Parliament		
28/03/2019	Decision by Parliament, 1st reading	T8-0321/2019	Summary
06/06/2019	Act adopted by Council after Parliament's 1st reading		
20/06/2019	Final act signed		
20/06/2019	End of procedure in Parliament		
26/06/2019	Final act published in Official Journal		

Technical information

Procedure reference	2016/0359(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2012/30/EU 2011/0011(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 053-p1; Treaty on the Functioning of the EU TFEU 114
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/08618

Documentation gateway					
Legislative proposal		COM(2016)0723	22/11/2016	EC	Summary
Document attached to the procedure		SWD(2016)0357	23/11/2016	EC	
Document attached to the procedure		SWD(2016)0358	23/11/2016	EC	
Reasoned opinion	IE_CHAMBER	PE601.062	07/03/2017	NP	
Reasoned opinion	IE_SENATE	PE601.063	07/03/2017	NP	
European Central Bank: opinion, guideline, report		CON/2017/0022 OJ C 236 21.07.2017, p. 0002	07/06/2017	ECB	Summary
Committee draft report		PE610.684	25/09/2017	EP	
Amendments tabled in committee		PE613.399	16/11/2017	EP	
Committee opinion	EMPL	PE601.220	05/12/2017	EP	
Committee opinion	ECON	PE608.079	07/12/2017	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0269/2018	21/08/2018	EP	
Amendments tabled in committee		PE637.252	19/03/2019	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0321/2019	28/03/2019	EP	Summary
Draft final act		00093/2018/LEX	20/06/2019	CSL	
Commission response to text adopted in plenary		SP(2019)437	30/07/2019	EC	

Additional information	
Research document	Briefing

Final act
Directive 2019/1023 OJ L 172 26.06.2019, p. 0018 Summary

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

PURPOSE: to put in place an insolvency framework and encourage effective preventive restructuring, second chance, including measures to increase the efficiency of restructuring.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: insolvency matters have a strong Union dimension. An increasingly interconnected single market with stronger digital dimension means that very few companies operate at purely national level. Many investors mention uncertainty over insolvency rules or the risk of lengthy or complex insolvency procedures in another country as a main reason for not investing outside their own country.

The [2015 Insolvency Regulation](#) focuses on resolving the conflicts of jurisdiction and laws in cross-border insolvency proceedings, and ensures the recognition of insolvency-related judgments across the EU. It does not harmonise the substantive insolvency laws of the Member States.

Reviews of the implementation of the [2014 Recommendation](#) on restructuring and second chance showed that, despite reforms in the area of insolvency, the latter has not led to the desired impact in terms of consistent changes across all Member States that would facilitate the rescue of businesses in financial difficulty and give a second chance to entrepreneurs. There are still several Member States where a business cannot be restructured before it is insolvent.

As regards the second chance, important discrepancies have remained as to the duration of the discharge period. Such differences in Member States' legal frameworks mean continuing legal uncertainty, additional costs for investors in assessing their risks, less developed capital markets and persisting barriers to the efficient restructuring of viable companies in the EU, including cross-border enterprise groups.

IMPACT ASSESSMENT: four options were considered in the impact assessment. The selected option was to set up a harmonised minimum legal framework for restructuring and second chance for entrepreneurs, with a non-binding provision on second chance for consumers, and to make procedures more efficient.

CONTENT : The proposed directive lays down rules on:

1) Preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency. This will help companies continue their activity and preserve jobs. Companies in financial difficulties, especially SMEs, will have access to early warning tools to detect a deteriorating business situation and ensure restructuring at an early stage. Flexible preventive restructuring frameworks will simplify lengthy, complex and costly court proceedings. Where necessary, national courts must be involved to safeguard the interests of stakeholders. The duration of the stay of individual enforcement actions will be limited to a maximum period of no more than four months, with an extension possible in prescribed cases

2) Procedures leading to a discharge of debts incurred by over-indebted entrepreneurs and allowing them to take up a new activity. This enables entrepreneurs to benefit from a second chance, as they will be fully discharged of their debt after a maximum period of 3 years. Entrepreneurs disqualified on grounds linked to their over-indebtedness should have the benefit of short disqualification orders to offer them an effective second chance, but Member States have a large margin of discretion

3) Measures to increase the efficiency of the procedures relating to these points as well as of insolvency procedures. This will reduce the excessive length and costs of procedures in many Member States, which results in legal uncertainty for creditors and investors and low recovery rates of unpaid debts.

Lastly, training, specialisation of practitioners and courts, and the use of technology (e.g. online filing of claims, notifications to creditors) will improve the efficiency and length of insolvency, restructuring and second chance procedures.

BUDGETARY IMPLICATIONS: the proposal does not have implications for the EU budget.

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

OPINION OF THE EUROPEAN CENTRAL BANK on a 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.

The European Central Bank (ECB) is exercising its right to submit an opinion, since the proposed directive contains provisions falling within the ECB's fields of competence, including the task of the European System of Central Banks (ESCB) to contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system and the tasks conferred upon the ECB pursuant to the Treaty concerning policies relating to the prudential supervision of credit institutions.

General observations: the ECB welcomes the key objective of the proposed directive to reduce the most significant barriers to the cross-border flow of capital stemming from differences in Member States' business and corporate restructuring frameworks.

It would, however, like to see more ambitious action undertaken to lay a common ground for a substantive harmonisation of Member States' insolvency laws. This would ensure a more comprehensive harmonisation in the long term and contributing to a well-functioning Capital Markets Union.

At a minimum, the ECB considers that the overarching objectives of insolvency proceedings within the Member States should be further harmonised, including a commonly agreed balance between the rights of creditors and debtors.

In addition to legislative reforms, a code of best practice or principles could be considered as a tool to orient national insolvency laws towards a more harmonised approach in the long term. Furthermore, the proposal offers a unique opportunity to put in place a pan-European regime, which builds on common underlying concepts and harmonised key elements regarding the definition of the triggers for the opening of reorganisation proceedings.

Lastly, the proposed directive does not apply to procedures related to debtors that are credit institutions, investment firms and collective investment undertakings, central counterparties and central securities depositories, insurance undertakings and reinsurance undertakings. Unintended consequences for these institutions may arise due to the impact on financial contracts with their commercial counterparties. The ECB feels that careful attention should be paid to any potentially unintended consequences.

In specific terms, the ECB suggests that:

- the proposed directive should be used as a vehicle for further harmonisation of the definition of insolvency proceedings, rather than giving rise to further conceptual fragmentation;
- the concept of likelihood of insolvency should be further elaborated with further guidance provided to national legislators regarding the scope and content of the concept. This could be provided through regulatory technical standards to be adopted by the Commission by means of delegated legislative powers;
- there is a need for a clear hierarchy between the proposed directive and other Union legal acts such as Directives [98/26/EC](#) and [2002/47/EC](#) and [Regulation \(EU\) No 648/2012](#) by providing expressly that the provisions of these legal acts prevail over the proposed directive;

- it should be clarified to what extent entities regulated by Directives [2009/110/EC](#) and [Directive \(EU\) 2015/2366](#) of the European Parliament and of the Council, namely payment institutions and electronic money institutions, may utilise the proposed directive's preventive restructuring framework;
- it should also be clarified to what extent the proposed directive, including the stay of enforcement actions, would operate without prejudice to the enforceability of close-out netting arrangements between credit and financial institutions, on the one hand, and corporate debtors, on the other hand.

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

The Committee on Legal Affairs adopted the report by Angelika NIEBLER (EPP, DE) on 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.

The objective of the proposed Directive is to contribute to the proper functioning of the internal market and 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 on preventive restructuring, insolvency and second chance.

The committee responsible recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Preventive restructuring procedures: Members propose that Member States 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. Warning tools may for example include accounting and control obligations for the debtor or the debtor's management or reporting duties under loan agreements.

Member States shall make available to the public, and in particular to SMEs, on a dedicated website how debtors and entrepreneurs can access early warning tools in their Member State.

Preventive restructuring frameworks: preventive solutions are a growing trend in modern insolvency law. The trend goes towards favouring approaches that, unlike the traditional approach of liquidating a business in crisis, have the aim of restoring it to health or, at least, saving those of its units which are still economically viable. That practice often helps to maintain jobs or reduce avoidable job losses.

Member States may provide that access to restructuring proceedings is limited to enterprises that have not been finally sentenced for serious breaches of accounting and bookkeeping obligations under national law. They may also provide for restructuring frameworks to be available at the request of creditors and workers representatives, with the agreement of the debtor. Member States shall ensure that representatives of the debtors workers receive clear and transparent information on the restructuring procedure.

Stay of individual enforcement actions: such an application should only be possible if there is not yet an obligation to apply for commencement of insolvency proceedings. The duration of the suspension of individual enforcement action would be limited to a maximum period not exceeding four months.

For reasons of legal certainty, the total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed ten months. The total duration of the stay shall be limited to two months if the registered office of the company has been transferred to another Member State within a three-month-period prior to the filing of a request for the opening of restructuring proceedings.

Restructuring plans: these plans should be validated by a judicial or administrative authority and submitted to workers' representatives for information and consultation. They should contain information on organisational aspects relating to employment consequences, e.g. redundancies, short-time working and similar. They should not affect workers' rights and claims and should not affect occupational pension funds or schemes.

Restructuring plans that result in the loss of more than 25% of the workforce should be validated by a judicial or administrative authority.

Member States shall ensure that the procedures provided for in national law allow creditors, including workers affected by a waiver plan, to have a right to vote on the adoption of the restructuring plan, after having been duly informed about the procedure and its potential consequences for the company.

Members States shall ensure that workers rights, such as the right to collective bargaining and industrial action and the right to information and consultation should not be compromised by the restructuration process. Member States shall also ensure that workers are always treated as a preferential and secured class of creditors.

A second chance for entrepreneurs: Members propose that honest entrepreneurs who are over-indebted may be fully discharged of their debts in accordance with the directive. Entrepreneurs who violate employment or competition law shall be excluded from a full discharge. Member States shall provide entrepreneurs affected by the second chance with business support and regeneration actions which help to relaunch their entrepreneurial capacity.

Members propose that over-indebted entrepreneurs may be fully discharged from their debts for the first time after five years (instead of three years) at the latest from the date on which the judicial or administrative authority took a decision on the application to open the procedure or from the date on which implementation of the repayment plan started.

Member States may provide for longer discharge periods in cases where an entrepreneur applies for a second or any subsequent discharge procedure.

The difficulties faced by micro- and small enterprises that do not comply with the core of a repayment plan should be taken into account with regard to compliance with insolvency and restructuring procedures.

Practitioners: the Commission shall facilitate the sharing of best practices between Member States with a view to improving the quality of training across the Union, including by means of networking and the exchange of experiences and capacity building tools, and if necessary shall organise training for members of judiciary and administrative authorities dealing with restructuring, insolvency and second chance

matters.

Member States shall:

- establish effective sanctions for failure to comply with the practitioners' obligations;
- ensure that information about the authorities exercising supervision or control over practitioners in the field of restructuring is publicly available;
- ensure that second chance entrepreneurs have access to relevant, up-to-date, clear, concise and user-friendly information about the availability of administrative, legal, business or financial support tailored to them and any means available to them to facilitate the setting-up of a new business;

Lastly, any debtor involved in restructuring or insolvency proceedings in one Member State who is also active in another Member State should inform the competent authority of both Member States at the start of one of those proceedings.

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

The European Parliament adopted by 327 votes to 34 with 142 abstentions, a legislative resolution on 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.

The proposed directive aims to provide a second chance for insolvent, honest entrepreneurs, and to facilitate the access of viable enterprises in financial difficulty to effective national preventive restructuring frameworks that enable them to continue operating.

Parliaments position in first reading following the ordinary legislative procedure amended the Commissions proposal as follows:

Early warning and access to information

Debtors should 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 the following:

- alert mechanisms when the debtor has not made certain types of payments;
- advisory services provided by public or private organisations;
- incentives under national law for third parties with relevant information about the debtor, such as accountants, tax and social security authorities, to flag to the debtor a negative development.

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

The amended text provides that the appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall be decided on a case-by-case basis, except in certain circumstances where Member States may require the mandatory appointment of such a practitioner in every case.

Member States shall provide for the appointment of a practitioner in the field of restructuring, to assist the debtor and creditors in negotiating and drafting the plan, at least in the following cases: (i) where a general stay of individual enforcement actions is granted by a judicial or administrative authority; (ii) where the restructuring plan needs to be confirmed by a judicial or administrative authority by means of a cross-class cram-down; or (iii) where it is requested by the debtor or by a majority of the creditors.

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,

Stay of individual enforcement actions

Debtors may benefit from a stay of individual enforcement actions to support the negotiations of a restructuring plan in a preventive restructuring framework. Judicial or administrative authorities can refuse to grant a stay of individual enforcement actions where such a stay is not necessary. Member States may exclude certain claims or categories of claims from the scope of the stay of individual enforcement actions in well-defined circumstances.

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, at the request of the debtor, a creditor or, where applicable, a practitioner in the field of restructuring. Member States may provide for a minimum duration of not more than four months during which a stay of individual action cannot be lifted. The total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed twelve months. The expiry of a stay of individual enforcement actions without the adoption of a restructuring plan must not, of itself, give rise to the opening of an insolvency procedure which could end in the liquidation of the debtor.

Restructuring plans

Plans submitted for adoption or for confirmation by a judicial or administrative authority must contain at least the following information:

- the debtors assets and liabilities at the time of submission of the restructuring plan, including a value for the assets;
- a description of the economic situation of the debtor and the position of workers;
- a description of the causes and the extent of the difficulties of the debtor;
- the affected parties, whether named individually or described by categories of debt in accordance with national law, as well as their claims or interests covered by the restructuring plan;
- the classes into which the affected parties have been grouped, for the purpose of adopting the restructuring plan, and the respective values of claims and interests in each class;
- the terms of the restructuring plan, including, in particular, any proposed restructuring measures and, if applicable, the proposed duration of any proposed restructuring measure and the general consequences for employment.

The plan must include a statement of reasons that explains why the restructuring plan has a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business, including the necessary pre-conditions for the success of the plan. The following restructuring plans must be binding on the parties only if they are confirmed by a judicial or administrative authority:

- a) restructuring plans which affect the claims or interests of dissenting affected parties;
- b) restructuring plans which provide for new financing;
- c) restructuring plans which involve the loss of more than 25% of the workforce, if such loss is permitted under national law.

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

A new article on workers' rights has been introduced stipulating that Member States should 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).

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

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.