



2016/0359(COD)

19.9.2017

AMENDMENTS

61 - 298

Draft opinion
Enrique Calvet Chambon
(PE608.079v01-00)

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

Proposal for a directive
(COM(2016)0723 – C8-0475/2016 – 2016/0359(COD))

Amendment 61
Hugues Bayet

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The objective of this Directive is 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. This Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective national 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.

Amendment

(1) The objective of this Directive is 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. This Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective national preventive restructuring frameworks which enable them to continue operating while contributing as fully as they would in the event of liquidation to satisfying the creditors' claims; 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. *Preventive solutions, sometimes called 'pre-pack', are a feature of a growing trend in modern insolvency law towards favouring approaches which, unlike the traditional approach of liquidating a business which is in crisis, have the aim of restoring it to health or at least salvaging those of its units that are still economically viable. That practice is praiseworthy and often helps to preserve jobs.*

Or. fr

Amendment 62
Tom Vandenkendelaere

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The objective of this Directive is 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. This Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective national 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.

Amendment

(1) The objective of this Directive is to remove obstacles to the free movement of capital and freedom of establishment ***stemming*** from differences between national laws and procedures on preventive restructuring, insolvency and second chance, ***thereby contributing to the establishment of a true Capital Markets Union***. This Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective national 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.

Or. en

Amendment 63

Enrique Calvet Chambon

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Restructuring should enable enterprises in financial difficulties to continue business in whole or in part, by changing the composition, conditions or structure of assets and liabilities or of their capital structure, including by sales of assets or parts of the business. Preventive restructuring frameworks should above all

Amendment

(2) Restructuring should enable enterprises in financial difficulties to continue business in whole or in part, by changing the composition, conditions or structure of assets and liabilities or of their capital structure, including by sales of assets or parts of the business. Preventive restructuring frameworks should above all

enable the enterprises to restructure at an early stage and to avoid their insolvency. Those frameworks should maximise the total value to creditors, owners and the economy as a whole and should prevent unnecessary job losses and losses of knowledge and skills. They should also prevent the build-up of non-performing loans. In the restructuring process the rights of all parties involved should be protected. At the same time, non-viable businesses with no prospect of survival should be liquidated as quickly as possible.

enable the enterprises to restructure at an early stage and to avoid their insolvency. Those frameworks should maximise the total value to creditors, owners and the economy as a whole and should prevent unnecessary job losses and losses of knowledge and skills. They should also prevent the build-up of non-performing loans (*NPL*), *which absorb bank capital, reduce the efficiency of capital allocation, weigh heavily on the balance sheets of certain credit institutions and represent a challenge to the European banking system stability and hamper the development of the Banking Union. Deteriorating loan portfolios and increasing losses force banks to curtail their credit supply further increasing pressures on the non-financial sector to deleverage. Still, increased prudential oversight to incentivise banks to write off or restructure impaired loans should be considered. A robust supervision, including to ensure prudent provisioning and strong capital buffers, can enhance banks' incentives to recognise losses. Access to timely financial information on distressed borrowers, collateral valuations, and recent NPL sales are fundamental for the development of an active market for NPL restructuring. Thus, collateral should be periodically valued by reliable and independent third parties and subject to enhanced supervisory scrutiny. Banks should obtain sound appraisals of the current fair value of the collateral from qualified professionals. Therefore, a comprehensive, co-ordinated effort is now crucial, notably through a legal framework for NPL to explore possible initiatives to facilitate the development of secondary markets for NPL should be necessary.* In the restructuring process the rights of all parties involved should be protected. At the same time, non-viable

businesses with no prospect of survival
should be liquidated as quickly as possible.

Or. en

Justification

Amends and replaces AM3 of the draft opinion.

Amendment 64
Hugues Bayet

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Restructuring should enable enterprises in financial difficulties to continue business in whole or in part, by changing the composition, conditions or structure of assets and liabilities or of their capital structure, including by sales of assets or parts of the business. Preventive restructuring frameworks should above all enable the enterprises to restructure at an early stage and to avoid their insolvency. Those frameworks should maximise the total value to creditors, owners and the economy as a whole and should prevent unnecessary job losses and losses of knowledge and skills. They should also prevent the build-up of non-performing loans. In the restructuring process the rights of all parties involved should be protected. At the same time, non-viable businesses with no prospect of survival should be liquidated as quickly as possible.

Amendment

(2) Restructuring should enable enterprises in financial difficulties to continue business in whole or in part, by changing the composition, conditions or structure of assets and liabilities or of their capital structure, including by sales of assets or parts of the business, ***if those operations, like the liquidation of assets, also contribute to the satisfaction of creditors' claims.*** Preventive restructuring frameworks should above all enable the enterprises to restructure at an early stage and to avoid their insolvency. Those frameworks should ***even*** maximise the total value to creditors ***in comparison with that which they would receive in the event of the liquidation of assets,*** owners and the economy as a whole and should prevent unnecessary job losses and losses of ***operations,*** knowledge and skills. They should also prevent the build-up of non-performing loans. In the restructuring process the rights of all parties involved should be protected, ***including those of workers.*** At the same time, non-viable businesses with no prospect of survival should be liquidated as quickly as possible.

Or. fr

Amendment 65
Sander Loones

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Restructuring should enable enterprises in financial difficulties to continue business in whole or in part, by changing the composition, conditions or structure of assets and liabilities or of their capital structure, including by sales of assets or parts of the business. Preventive restructuring frameworks should above all enable the enterprises to restructure at an early stage and to avoid their insolvency. Those frameworks should maximise the total value to creditors, owners and the economy as a whole and should prevent unnecessary job losses and losses of knowledge and skills. They should also prevent the build-up of non-performing loans. In the restructuring process the rights of all parties involved should be protected. At the same time, non-viable businesses with no prospect of survival should be liquidated as quickly as possible.

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Or. en

Amendment 66
Andrea Cozzolino

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Restructuring should enable enterprises in financial difficulties to

Amendment

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continue business in whole or in part, by changing the composition, conditions or structure of assets and liabilities or of their capital structure, including by sales of assets or parts of the business. Preventive restructuring frameworks should above all enable the enterprises to restructure at an early stage and to avoid their insolvency. Those frameworks should maximise the total value to creditors, owners and the economy as a whole and should prevent unnecessary job losses and losses of knowledge and skills. They should also prevent the build-up of non-performing loans. In the restructuring process the rights of all parties involved should be protected. At the same time, non-viable businesses with no prospect of survival should be liquidated as quickly as possible.

continue business in whole or in part, by changing the composition, conditions or structure of assets and liabilities or of their capital structure, including by sales of assets or parts of the business ***or the business itself***. Preventive restructuring frameworks should above all enable the enterprises to restructure at an early stage and to avoid their insolvency. Those frameworks should maximise the total value to creditors, owners and the economy as a whole and should prevent unnecessary job losses and losses of knowledge and skills. They should also prevent the build-up of non-performing loans. In the restructuring process the rights of all parties involved should be protected. At the same time, non-viable businesses with no prospect of survival should be liquidated as quickly as possible.

Or. it

Amendment 67
Andrea Cozzolino

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Businesses should also have access to restructuring operations involving outright transfer of the going concern. In such cases of indirect continuity, this allows the company to remain in business and hold its value, thereby protecting the interests of creditors, workers and allied activities, an advantage in no way undermined by a purely formal change of ownership.

Or. it

Amendment 68

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) All workers should have the right to protection of their claims in the event of the insolvency of their employer, as set out in the European Social Charter;

Or. en

Amendment 69

Tom Vandenkendelaere

Proposal for a directive

Recital 5

Text proposed by the Commission

Amendment

(5) Excessive length of restructuring, insolvency and discharge procedures in several Member States is an important factor triggering low recovery rates and deterring investors from making business in jurisdictions where procedures risk taking too long.

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Or. en

Amendment 70

Tom Vandenkendelaere

Proposal for a directive

Recital 6

Text proposed by the Commission

Amendment

(6) All these differences translate into additional costs for investors when assessing the risks of debtors entering financial difficulties in one or more

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Member States and the costs of restructuring companies having establishments, creditors or assets in other Member States, such as is most clearly the case of restructuring international groups of companies. Many investors mention uncertainty about insolvency rules or the risk of lengthy or complex insolvency procedures in another country as a main reason for not investing or not entering into a business relationship with a counterpart outside their own country.

Member States and the costs of restructuring companies having establishments, creditors or assets in other Member States, such as is most clearly the case of restructuring international groups of companies. Many investors mention uncertainty about insolvency rules or the risk of lengthy or complex insolvency procedures in another country as a main reason for not investing or not entering into a business relationship with a counterpart outside their own country. ***Small and medium sized enterprises in particular do not, for the most part, have the resources to assess risks related to cross-border activities.***

Or. en

Amendment 71

Hugues Bayet

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) All these differences translate into additional costs for investors when assessing the risks of debtors entering financial difficulties in one or more Member States and the costs of restructuring companies having establishments, creditors or assets in other Member States, such as is most clearly the case of restructuring international groups of companies. Many investors mention uncertainty about insolvency rules or the risk of lengthy or complex insolvency procedures in another country as a main reason for not investing or not entering into a business relationship with a counterpart outside their own country.

Amendment

(6) All these differences translate into additional costs for investors ***or banks*** when assessing the risks of debtors entering financial difficulties in one or more Member States ***or when assessing the risks associated with taking over viable operations run by undertakings in difficulty*** and the costs of restructuring companies having establishments, creditors or assets in other Member States, such as is most clearly the case of restructuring international groups of companies. Many investors mention uncertainty about insolvency rules or the risk of lengthy or complex insolvency procedures in another country as a main reason for not investing or not entering into a business relationship with a counterpart outside their own country.

Amendment 72
Sander Loones

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) Those differences lead to uneven conditions for access to credit and to uneven recovery rates in the Member States. A higher degree of harmonisation ***in the field of restructuring, insolvency and second chance is thus indispensable*** for a well-functioning single market in general and for a working Capital Markets Union in particular.

Amendment

(7) Those differences lead to uneven conditions for access to credit and to uneven recovery rates in the Member States. A higher degree of harmonisation ***could thus be beneficial*** for a well-functioning single market in general and for a working Capital Markets Union in particular, ***but it is essential to leave sufficient flexibility to Member States that have already introduced well-functioning restructuring, insolvency and second chance regimes.***

Or. en

Amendment 73
Tom Vandenkendelaere

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) Those differences lead to uneven conditions for access to credit and to uneven recovery rates in the Member States. A higher degree of harmonisation in the field of restructuring, insolvency and second chance is thus indispensable for a well-functioning single market in general and ***for a working*** Capital Markets Union in particular.

Amendment

(7) Those differences lead to uneven conditions for access to credit and to uneven recovery rates in the Member States, ***and hamper the free movement of capital in the internal market.*** A higher degree of harmonisation in the field of restructuring, insolvency and second chance is thus indispensable for a well-functioning single market in general and ***the establishment of a*** Capital Markets Union in particular.

Amendment 74
Tom Vandenkendelaere

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) The obstacles to the exercise of fundamental freedoms are not limited to purely cross-border situations. An increasingly interconnected single market - where goods, services, capital and workers circulate freely – with an ever stronger digital dimension means that very few companies are purely national if all relevant elements are considered, such as their client base, supply chain, scope of activities, investor and capital base. Even purely national insolvencies may have an impact on the functioning of the single market through the so-called domino effect of insolvencies, whereby an enterprise's insolvency may trigger further insolvencies in the supply chain.

Amendment

(9) The obstacles to the exercise of fundamental freedoms are not limited to purely cross-border situations. An increasingly interconnected single market - where goods, services, capital and workers circulate freely – with an ever stronger digital dimension means that very few companies are purely national if all relevant elements are considered, such as their client base, supply chain, scope of activities, investor and capital base. Even purely national insolvencies may have an impact on the functioning of the single market through the so-called domino effect of insolvencies, whereby an enterprise's insolvency may trigger further insolvencies in the supply chain, ***to which small and medium sized enterprises are particularly vulnerable.***

Or. en

Amendment 75
Hugues Bayet

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) Regulation (EU) 2015/848 of the European Parliament and of the Council⁶² deals with issues of jurisdiction, recognition and enforcement, applicable law and cooperation in cross-border

Amendment

(10) Regulation (EU) 2015/848 of the European Parliament and of the Council⁶² deals with issues of jurisdiction, recognition and enforcement, applicable law and cooperation in cross-border

insolvency proceedings as well as with the interconnection of insolvency registers. Its scope covers preventive procedures which promote the rescue of an economically viable debtor as well as procedures which give a second chance to entrepreneurs. However, Regulation (EU) 2015/848 does not tackle the discrepancies between those procedures in national law. Furthermore, an instrument limited to cross-border insolvencies only would not remove all obstacles to free movement, nor would it be feasible for investors to determine in advance the cross-border or domestic nature of the future potential financial difficulties of the debtor. There is a need therefore to go beyond matters of judicial cooperation and to establish substantive minimum standards.

⁶² Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19).

insolvency proceedings as well as with the interconnection of insolvency registers. Its scope covers preventive procedures ***initiated by a public decision*** which promote the rescue of an economically viable debtor as well as procedures which give a second chance to entrepreneurs. However, Regulation (EU) 2015/848 does not tackle the discrepancies between those procedures in national law ***and does not concern confidential procedures***. Furthermore, an instrument limited to cross-border insolvencies only would not remove all obstacles to free movement, nor would it be feasible for investors to determine in advance the cross-border or domestic nature of the future potential financial difficulties of the debtor. There is a need therefore to go beyond matters of judicial cooperation and to establish substantive minimum standards.

⁶² Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19).

Or. fr

Amendment 76

Hugues Bayet

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) It is necessary to lower the costs of restructuring for both debtors and creditors. Therefore the differences which hamper the early restructuring of viable enterprises in financial difficulties and the possibility of a second chance for honest entrepreneurs should be reduced. That should bring greater transparency, legal

Amendment

(11) It is necessary to lower the costs of restructuring for both debtors and creditors, ***who often bear those costs indirectly because of the reduction of their reimbursement***. Therefore the differences which hamper the early restructuring of viable enterprises in financial difficulties and the possibility of a second chance for

certainty and predictability in the Union. Also, it should maximise the returns to all types of creditors and investors and encourage cross-border investment. Greater coherence should also facilitate the restructuring of groups of companies irrespective of where the members of the group are located in the Union.

honest entrepreneurs should be reduced. That should bring greater transparency, legal certainty and predictability in the Union. Also, it should maximise the returns to all types of creditors and investors and encourage cross-border investment. Greater coherence should also facilitate the restructuring of groups of companies irrespective of where the members of the group are located in the Union.

Or. fr

Amendment 77
Tom Vandenkendelaere

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) It is necessary to lower the costs of restructuring for both debtors and creditors. Therefore the differences which hamper the early restructuring of viable enterprises in financial difficulties and the possibility of a second chance for honest entrepreneurs should be reduced. That should bring greater transparency, legal certainty and predictability *in the Union*. Also, it should maximise the returns to all types of creditors and investors and encourage cross-border investment. Greater coherence should also facilitate the restructuring of groups of companies irrespective of where the members of the group are located in the Union.

Amendment

(11) It is necessary to lower the costs of restructuring for both debtors and creditors. Therefore the differences which hamper the early restructuring of viable enterprises in financial difficulties and the possibility of a second chance for honest entrepreneurs should be reduced. That should bring greater transparency *in the Union, and more* legal certainty and predictability *for both debtors and creditors*. Also, it should maximise the returns to all types of creditors and investors and encourage cross-border investment. Greater coherence should also facilitate the restructuring of groups of companies irrespective of where the members of the group are located in the Union.

Or. en

Amendment 78

Hugues Bayet

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Removing the barriers to effective restructuring of viable enterprises in financial difficulties contributes to minimising job losses, losses for creditors in the supply chain, preserves know-how and skills and hence benefits the wider economy. Facilitating a second chance for entrepreneurs avoids their exclusion from the labour market and enables them to restart entrepreneurial activities, drawing lessons from past experience. Finally, reducing the length of restructuring procedures would result in higher recovery rates for creditors as the passing of time would normally only result in a further loss of value for the enterprise. Moreover, efficient insolvency frameworks would enable a better assessment of the risks involved in lending and borrowing decisions and smooth the adjustment for over-indebted enterprises, minimizing the economic and social costs involved in their deleveraging process.

Amendment

(12) Removing the barriers to effective restructuring of viable enterprises in financial difficulties contributes to minimising job losses, losses for creditors in the supply chain, preserves know-how and skills and hence benefits the wider economy. ***In order to attain that objective and to preserve employment and operations, it is necessary to enable these procedures to be conducted in whole or in part in a confidential framework, which in particular requires the rights of workers to be better specified.*** Facilitating a second chance for entrepreneurs avoids their exclusion from the labour market and enables them to restart entrepreneurial activities, drawing lessons from past experience. Finally, reducing the length of restructuring procedures would result in higher recovery rates for creditors as the passing of time would normally only result in a further loss of value for the enterprise. Moreover, efficient insolvency frameworks would enable a better assessment of the risks involved in lending and borrowing decisions and smooth the adjustment for over-indebted enterprises, minimizing the economic and social costs involved in their deleveraging process.

Or. fr

Amendment 79

Hugues Bayet

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) In particular small and medium sized enterprises should benefit from a more coherent approach at Union level, since they do not have the necessary resources to cope with high restructuring costs and to take advantage of the more efficient restructuring procedures in some Member States. Small and medium enterprises, especially when facing financial difficulties, often do not have the resources to hire professional advice, therefore early warning tools should be put in place to alert debtors to the urgency to act. In order to help such enterprises restructure at low cost, *model restructuring plans should also be developed nationally and made available online*. Debtors should be able to use and adapt them to their own needs and to the specificities of their business.

Amendment

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Or. fr

Amendment 80
Tom Vandenkendelaere

Proposal for a directive
Recital 13

Text proposed by the Commission

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more coherent approach at Union level, since they do not have the necessary resources to cope with high restructuring costs and to take advantage of the more efficient restructuring procedures in some Member States. Small and medium enterprises, especially when facing financial difficulties, often do not have the resources to hire professional advice, therefore early warning tools should be put in place to alert debtors to the urgency to act. In order to help such enterprises restructure at low cost, model restructuring plans should also be developed nationally and made available online. Debtors should be able to use and adapt them to their own needs and to the specificities of their business. ***Finally, professional advice from practitioners in the field of restructuring should be made available at low cost.***

Or. en

Amendment 81
Andrea Cozzolino

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Member States may introduce provisions allowing one or more creditors to propose an alternative plan to counter the debtor's position of strength and the risks of it being abused, especially in companies where partners and managers are more closely identified with each other. Each Member State should stipulate the conditions under which creditors may legitimately propose such a plan.

Or. it

Amendment 82
Tom Vandenkendelaere

Proposal for a directive
Recital 15

Text proposed by the Commission

Amendment

(15) Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, it is often not possible to draw a clear distinction between the consumer and business debts of an entrepreneur. A second chance regime for entrepreneurs would not be effective if the entrepreneur had to go through separate procedures, with different access conditions and discharge periods, to discharge his business personal debts and his non-business personal debts. For these reasons, although this Directive does not include binding rules on consumer over-indebtedness, Member States should be able to also apply the discharge provisions to consumers. *deleted*

Or. en

Amendment 83
Markus Ferber

Proposal for a directive
Recital 15

Text proposed by the Commission

Amendment

(15) Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, it is often not possible to draw a clear distinction between the consumer and *deleted*

business debts of an entrepreneur. A second chance regime for entrepreneurs would not be effective if the entrepreneur had to go through separate procedures, with different access conditions and discharge periods, to discharge his business personal debts and his non-business personal debts. For these reasons, although this Directive does not include binding rules on consumer over-indebtedness, Member States should be able to also apply the discharge provisions to consumers.

Or. en

Amendment 84
Sander Loones

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, *it is often not possible to draw* a clear distinction between the consumer and business debts of an entrepreneur. A second chance regime for entrepreneurs *would* not be effective if the entrepreneur had to go through separate procedures, with different access conditions and discharge periods, to discharge his business personal debts and his non-business personal debts. For these reasons, although this Directive does not include binding rules on consumer over-indebtedness, Member States should be able to also apply the discharge provisions to consumers.

Amendment

(15) Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, *while in some jurisdictions* a clear distinction *is made* between the consumer and business debts of an entrepreneur, *in other jurisdictions making this distinction is more difficult and not common practice. In these jurisdictions*, a second chance regime for entrepreneurs *might* not be effective if the entrepreneur had to go through separate procedures, with different access conditions and discharge periods, to discharge his business personal debts and his non-business personal debts. For these reasons, although this Directive does not include binding rules on consumer over-indebtedness, Member States should be able to also apply the discharge provisions to consumers.

Amendment 85
Tom Vandenkendelaere

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) The earlier the debtor can detect its financial difficulties and can take appropriate action, the higher the probability of avoiding an impending insolvency or, in case of a business whose viability is permanently impaired, the more orderly and efficient the winding-up process. Clear information on the available preventive restructuring procedures as well as early warning tools should therefore be put in place to incentivise debtors who start to experience financial problems to take early action. Possible early warning mechanisms should include accounting and monitoring duties for the debtor or the debtor's management as well as reporting duties under loan agreements. ***In addition***, third parties with relevant information such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development.

Amendment

(16) The earlier the debtor can detect its financial difficulties and can take appropriate action, the higher the probability of avoiding an impending insolvency or, in case of a business whose viability is permanently impaired, the more orderly and efficient the winding-up process. Clear information on the available preventive restructuring procedures as well as early warning tools should therefore be put in place to incentivise debtors who start to experience financial problems to take early action. Possible early warning mechanisms should include accounting and monitoring duties for the debtor or the debtor's management as well as reporting duties under loan agreements. ***Moreover***, third parties with relevant information such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development. ***In addition, the Commission should promote, in line with its digital single market strategy, the use and development of new IT technologies for notifications and online communications, to ensure more effective early warning procedures.***

Amendment 86
Sander Loones

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) The earlier the debtor can detect its financial difficulties and can take appropriate action, the higher the probability of avoiding an impending insolvency or, in case of a business whose viability is permanently impaired, the more orderly and efficient the winding-up process. Clear information on the available preventive restructuring procedures as well as early warning tools should therefore be put in place to incentivise debtors who start to experience financial problems to take early action. Possible early warning mechanisms should include accounting and monitoring duties for the debtor or the debtor's management as well as reporting duties under loan agreements. In addition, third parties with relevant information such as accountants, **tax and social security** authorities could be incentivised or obliged under national law to flag **a negative development**.

Amendment

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Or. en

Amendment 87
Markus Ferber

Proposal for a directive
Recital 16

Text proposed by the Commission

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Amendment

(16) The earlier the debtor can detect its financial difficulties and can take appropriate action, the higher the probability of avoiding an impending insolvency or, in case of a business whose viability is permanently impaired, the more

orderly and efficient the winding-up process. Clear information on the available preventive restructuring procedures as well as early warning tools should therefore be put in place to incentivise debtors who start to experience financial problems to take early action. Possible early warning mechanisms should include accounting and monitoring duties for the debtor or the debtor's management as well as reporting duties under loan agreements. In addition, third parties with relevant information such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development.

orderly and efficient the winding-up process. Clear information on the available preventive restructuring procedures as well as early warning tools should therefore be put in place to incentivise debtors who start to experience financial problems to take early action. Possible early warning mechanisms should include accounting and monitoring duties for the debtor ***taking into consideration the lack of financial resources of SMEs*** or the debtor's management as well as reporting duties under loan agreements. In addition, third parties with relevant information such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development.

Or. en

Amendment 88
Andrea Cozzolino

Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The early warning phase, designed to anticipate the emergence of the crisis, is intended to assist by flagging difficulties arising for debtors and offering them the possibility of a rapid analysis and solution of the economic and financial problems facing the company, making available - on a voluntary basis - various resources for this purpose, without dictating given lines of conduct or necessarily revealing the existence of a crisis to third parties. It is therefore important to leave the Member States to decide on whether to restrict mandatory monitoring provisions to SMEs, bearing in mind that SMEs themselves are frequently unable to initiate restructuring

processes independently because of a number of factors undermining their competitiveness (being undersized, lacking in strong in corporate governance, effective operational procedures and monitoring and planning resources) and are less able to afford to do so.

Or. it

Amendment 89
Markus Ferber

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) A restructuring framework should be available to debtors to enable them to address their financial difficulties at an early stage, when it appears likely that their insolvency may be prevented and the continuation of their business assured. A restructuring framework should be available before a debtor becomes insolvent according to national law, i.e. before the debtor fulfils the conditions for entering collective insolvency procedure which entail normally a total divestment of the debtor and the appointment of a liquidator. ***A test of viability should not therefore be made a pre-condition for entering negotiations and for granting a stay of enforcement actions. Rather,*** the viability of an enterprise should most often be an assessment to be made by affected creditors who in their majority agree to some adjustments of their claims. However, in order to avoid the procedures being misused, the financial difficulties of the debtor should reflect a likelihood of insolvency and the restructuring plan should be capable of preventing the

Amendment

(17) A restructuring framework should be available to debtors to enable them to address their financial difficulties at an early stage, when it appears likely that their insolvency may be prevented and the continuation of their business assured. A restructuring framework should be available before a debtor becomes insolvent according to national law, i.e. before the debtor fulfils the conditions for entering collective insolvency procedure which entail normally a total divestment of the debtor and the appointment of a liquidator. The viability of an enterprise should most often be an assessment to be made by affected creditors who in their majority agree to some adjustments of their claims. However, in order to avoid the procedures being misused, the financial difficulties of the debtor should reflect a likelihood of insolvency and the restructuring plan should be capable of preventing the insolvency of the debtor and ensuring the viability of the business.

insolvency of the debtor and ensuring the viability of the business.

Or. en

Amendment 90

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) *To promote efficiency and reduce delays and costs, national preventive restructuring frameworks should include flexible procedures limiting the involvement of judicial or administrative authorities to where it is necessary and proportionate in order to safeguard the interests of creditors and other interested parties likely to be affected. To avoid unnecessary costs and reflect the early nature of the procedure, debtors should in principle be left in control of their assets and the day-to-day operation of their business. The appointment of a restructuring practitioner, whether a mediator supporting the negotiations of a restructuring plan or an insolvency practitioner supervising the actions of the debtor, should not be mandatory in every case, but made on a case-by-case basis depending on the circumstances of the case or on the debtor's specific needs. Furthermore, there should not necessarily be a court order for the opening of the restructuring process which may be informal as long as the rights of third parties are not affected. Nevertheless, a degree of supervision should be ensured when this is necessary to safeguard the legitimate interests of one or more creditors or another interested party. This may be the case, in particular, when a general stay of individual enforcement*

Amendment

(18) A degree of supervision should be ensured when this is necessary to safeguard the legitimate interests of one or more creditors or another interested party. This may be the case, in particular, when a general stay of individual enforcement actions is granted by the judicial or administrative authority or where it appears necessary to impose a restructuring plan on dissenting classes of creditors.

actions is granted by the judicial or administrative authority or where it appears necessary to impose a restructuring plan on dissenting classes of creditors.

Or. en

Amendment 91
Sander Loones

Proposal for a directive
Recital 18

Text proposed by the Commission

(18) To promote efficiency and reduce delays and costs, national preventive restructuring frameworks should include flexible procedures limiting the involvement of judicial or administrative authorities to where it is necessary and proportionate in order to safeguard the interests of creditors and other interested parties likely to be affected. To avoid unnecessary costs and reflect the early nature of the procedure, debtors should in principle be left in control of their assets and the day-to-day operation of their business. The appointment of a restructuring practitioner, whether a mediator supporting the negotiations of a restructuring plan or an insolvency practitioner supervising the actions of the debtor, should not be mandatory in every case, **but** made on a case-by-case basis depending on the circumstances of the case or on the debtor's specific needs. Furthermore, there should not necessarily be a court order for the opening of the restructuring process which may be informal as long as the rights of third parties are not affected. Nevertheless, a degree of supervision should be ensured when this is necessary to safeguard the legitimate interests of one or more creditors or another interested party. This

Amendment

(18) To promote efficiency and reduce delays and costs, national preventive restructuring frameworks should include flexible procedures limiting the involvement of judicial or administrative authorities to where it is necessary and proportionate in order to safeguard the interests of creditors and other interested parties likely to be affected. To avoid unnecessary costs and reflect the early nature of the procedure, debtors should in principle be left in control of their assets and the day-to-day operation of their business. The appointment of a restructuring practitioner, whether a mediator supporting the negotiations of a restructuring plan or an insolvency practitioner supervising the actions of the debtor, should not be mandatory in every case, ***as such a requirement may not always be relevant, necessary, useful or in the interest of the debtor, especially in straightforward cases with few creditors involved, and may impose a disproportionately high administrative burden on some jurisdictions. Instead, it should be*** made on a case-by-case basis depending on the ***specific*** circumstances of the case or on the debtor's specific needs. Furthermore, there should not necessarily be a court order for the opening of the

may be the case, in particular, when a general stay of individual enforcement actions is granted by the judicial or administrative authority or where it appears necessary to impose a restructuring plan on dissenting classes of creditors.

restructuring process which may be informal as long as the rights of third parties are not affected. Nevertheless, a degree of supervision should be ensured when this is necessary to safeguard the legitimate interests of one or more creditors or another interested party. This may be the case, in particular, when a general stay of individual enforcement actions is granted by the judicial or administrative authority or where it appears necessary to impose a restructuring plan on dissenting classes of creditors.

Or. en

Amendment 92 **Markus Ferber**

Proposal for a directive **Recital 18**

Text proposed by the Commission

(18) To promote efficiency and reduce delays and costs, national preventive restructuring frameworks should ***include flexible procedures limiting the involvement of judicial or administrative authorities to where it is necessary and proportionate in order to safeguard the interests of creditors and other interested parties likely to be affected.*** To avoid unnecessary costs and reflect the early nature of the procedure, debtors should in principle be left in control of their assets and the day-to-day operation of their business. The appointment of a restructuring practitioner, whether a mediator supporting the negotiations of a restructuring plan or an insolvency practitioner supervising the actions of the debtor, should not be mandatory in every case, but made on a case-by-case basis depending on the circumstances of the case or on the debtor's specific needs.

Amendment

(18) To promote efficiency and reduce delays and costs, national preventive restructuring frameworks should ***be flexible and timely.*** To avoid unnecessary costs and reflect the early nature of the procedure, debtors should in principle be left in control of their assets and the day-to-day operation of their business. The appointment of a restructuring practitioner, whether a mediator supporting the negotiations of a restructuring plan or an insolvency practitioner supervising the actions of the debtor, should not be mandatory in every case, but made on a case-by-case basis depending on the circumstances of the case or on the debtor's specific needs. Furthermore, there should not necessarily be a court order for the opening of the restructuring process which may be informal as long as the rights of third parties are not affected. Nevertheless, a degree of supervision should be ensured

Furthermore, there should not necessarily be a court order for the opening of the restructuring process which may be informal as long as the rights of third parties are not affected. Nevertheless, a degree of supervision should be ensured when this is necessary to safeguard the legitimate interests of one or more creditors or another interested party. This may be the case, in particular, when a general stay of individual enforcement actions is granted by the judicial or administrative authority or where it appears necessary to impose a restructuring plan on dissenting classes of creditors.

when this is necessary to safeguard the legitimate interests of one or more creditors or another interested party. This may be the case, in particular, when a general stay of individual enforcement actions is granted by the judicial or administrative authority or where it appears necessary to impose a restructuring plan on dissenting classes of creditors.

Or. en

Amendment 93
Hugues Bayet

Proposal for a directive
Recital 18

Text proposed by the Commission

(18) To promote efficiency and reduce delays and costs, national preventive restructuring frameworks should include flexible procedures limiting the involvement of judicial or administrative authorities to where it is necessary and proportionate in order to safeguard the interests of creditors and other interested parties likely to be affected. To avoid unnecessary costs and reflect the early nature of the procedure, debtors should in principle be left in control of their assets and the day-to-day operation of their business. The appointment of a restructuring practitioner, whether a mediator supporting the negotiations of a restructuring plan or an insolvency practitioner supervising the actions of the debtor, should not be mandatory in every case, but made on a case-by-case basis

Amendment

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depending on the circumstances of the case or on the debtor's specific needs. Furthermore, there should not necessarily be a court order for the opening of the restructuring process which may be informal as long as the rights of third parties are not affected. Nevertheless, a degree of supervision should be ensured when this is necessary to safeguard the legitimate interests of one or more creditors or another interested party. This may be the case, in particular, when a general stay of individual enforcement actions is granted by the judicial or administrative authority or where it appears necessary to impose a restructuring plan on dissenting classes of creditors.

depending on the circumstances of the case or on the debtor's specific needs. Furthermore, there should not necessarily be a court order for the opening of the restructuring process which may be informal as long as the rights of third parties are not affected. Nevertheless, a degree of supervision should be ensured when this is necessary to safeguard the legitimate interests of one or more creditors or another interested party. This may be the case, in particular, when a general stay of individual enforcement actions is granted by the judicial or administrative authority or where it appears necessary to impose a restructuring plan on dissenting classes of creditors ***or where all or part of the business is transferred to another undertaking.***

Or. fr

Amendment 94
Tom Vandenkendelaere

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) A debtor should be able to request the judicial or administrative authority for a temporary stay of individual enforcement actions which should also suspend the obligation to file for opening of insolvency procedures where such actions may adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. The stay of enforcement could be general, that is to say affecting all creditors, or targeted towards individual creditors. In order to provide for a fair balance between the rights of the debtor and of creditors, the stay should be granted for a period of no more than **four** months. Complex restructurings may, however,

Amendment

(19) A debtor should be able to request the judicial or administrative authority for a temporary stay of individual enforcement actions which should also suspend the obligation to file for opening of insolvency procedures where such actions may adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. The stay of enforcement could be general, that is to say affecting all creditors, or targeted towards individual creditors. In order to provide for a fair balance between the rights of the debtor and of creditors, the stay should be granted for a period of no more than **six** months. Complex restructurings may, however,

require more time. Member States may decide that in such cases, extensions of this period may be granted by the judicial or administrative authority, providing there is evidence that negotiations on the restructuring plan are progressing and that creditors are not unfairly prejudiced. If further extensions are granted, the judicial or administrative authority should be satisfied that there is a strong likelihood that a restructuring plan will be adopted. Member States should ensure that any request to extend the initial duration of the stay is made within a reasonable deadline so as to allow the judiciary or administrative authorities to deliver a decision within due time. Where a judicial or administrative authority does not take a decision on the extension of a stay of enforcement before it lapses, the stay should cease to have effects on the day the stay period expires. In the interest of legal certainty, the total period of the stay should be limited to twelve months.

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Or. en

Amendment 95 **Markus Ferber**

Proposal for a directive **Recital 19**

Text proposed by the Commission

(19) A debtor should be able to request the judicial or administrative authority for a temporary stay of individual enforcement actions which should also suspend the obligation to file for opening of insolvency procedures where such actions may adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. The stay of enforcement could be general, that is to say affecting all creditors, or targeted towards individual

Amendment

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creditors. In order to provide for a fair balance between the rights of the debtor and of creditors, the stay should be granted for a period of no more than *four* months. Complex restructurings may, however, require more time. Member States may decide that in such cases, extensions of this period may be granted by the judicial or administrative authority, providing there is evidence that negotiations on the restructuring plan are progressing and that creditors are not unfairly prejudiced. If further extensions are granted, the judicial or administrative authority should be satisfied that there is a strong likelihood that a restructuring plan will be adopted. Member States should ensure that any request to extend the initial duration of the stay is made within a reasonable deadline so as to allow the judiciary or administrative authorities to deliver a decision within due time. Where a judicial or administrative authority does not take a decision on the extension of a stay of enforcement before it lapses, the stay should cease to have effects on the day the stay period expires. In the interest of legal certainty, the total period of the stay should be limited to *twelve* months.

creditors. In order to provide for a fair balance between the rights of the debtor and of creditors, the stay should be granted for a period of no more than *three* months. Complex restructurings may, however, require more time. Member States may decide that in such cases, extensions of this period may be granted by the judicial or administrative authority, providing there is evidence that negotiations on the restructuring plan are progressing and that creditors are not unfairly prejudiced. If further extensions are granted, the judicial or administrative authority should be satisfied that there is a strong likelihood that a restructuring plan will be adopted. Member States should ensure that any request to extend the initial duration of the stay is made within a reasonable deadline so as to allow the judiciary or administrative authorities to deliver a decision within due time. Where a judicial or administrative authority does not take a decision on the extension of a stay of enforcement before it lapses, the stay should cease to have effects on the day the stay period expires. In the interest of legal certainty, the total period of the stay should be limited to *six* months.

Or. en

Amendment 96

Hugues Bayet

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) To ensure that the creditors do not suffer detriment, the stay should not be granted or, if granted, should not be prolonged or should be lifted when creditors are unfairly prejudiced by the stay of enforcement. In establishing whether

Amendment

(20) To ensure that the creditors do not suffer detriment, the stay should not be granted or, if granted, should not be prolonged or should be lifted when creditors are unfairly prejudiced by the stay of enforcement. In establishing whether

there is unfair prejudice to creditors, judicial or administrative authorities may take into account whether the stay would preserve the overall value of the estate, whether the debtor acts in bad faith or with the intention of causing prejudice or generally acts against the legitimate expectations of the general body of creditors. A single creditor or a class of creditors would be unfairly prejudiced by the stay if for example their claims would be made substantially worse-off as a result of the stay than if the stay was not granted, or if the creditor is put more at a disadvantage than other creditors in a similar position.

there is unfair prejudice to creditors, judicial or administrative authorities may take into account whether the stay would preserve the overall value of the estate, *as it could be realised by means of liquidation or would preserve the dividend creditors would receive*, whether the debtor acts in bad faith or with the intention of causing prejudice or generally acts against the legitimate expectations of the general body of creditors. A single creditor or a class of creditors would be unfairly prejudiced by the stay if for example their claims would be made substantially worse-off as a result of the stay than if the stay was not granted, or if the creditor is put more at a disadvantage than other creditors in a similar position.

Or. fr

Amendment 97
Tom Vandenkendelaere

Proposal for a directive
Recital 25

Text proposed by the Commission

(25) To ensure that rights which are substantially similar are treated equitably and that restructuring plans can be adopted without unfairly prejudicing the rights of affected parties, affected parties should be treated in separate classes which reflect the class formation criteria under national law. As a minimum, secured and unsecured creditors should always be treated in separate classes. National law may provide that secured claims may be divided into secured and unsecured claims based on collateral valuation. National law *may* also stipulate specific rules supporting class formation where non-diversified or otherwise especially vulnerable creditors, such as workers or small suppliers, would

Amendment

(25) To ensure that rights which are substantially similar are treated equitably and that restructuring plans can be adopted without unfairly prejudicing the rights of affected parties, affected parties should be treated in separate classes which reflect the class formation criteria under national law. As a minimum, secured and unsecured creditors should always be treated in separate classes. National law may provide that secured claims may be divided into secured and unsecured claims based on collateral valuation. National law *should* also stipulate specific rules supporting class formation where non-diversified or otherwise especially vulnerable creditors, such as workers or small suppliers, would

benefit from such class formation. National laws should in any case ensure that adequate treatment is given to matters of particular importance for class formation purposes, such as claims from connected parties, and should contain rules that deal with contingent claims and contested claims. The judicial or administrative authority should examine class formation when a restructuring plan is submitted for confirmation, but Member States could stipulate that such authorities may also examine class formation at an earlier stage should the proposer of the plan seek validation or guidance in advance.

benefit from such class formation. National laws should in any case ensure that adequate treatment is given to matters of particular importance for class formation purposes, such as claims from connected parties, and should contain rules that deal with contingent claims and contested claims. The judicial or administrative authority should examine class formation when a restructuring plan is submitted for confirmation, but Member States could stipulate that such authorities may also examine class formation at an earlier stage should the proposer of the plan seek validation or guidance in advance.

Or. en

Amendment 98
Tom Vandenkendelaere

Proposal for a directive
Recital 28

Text proposed by the Commission

(28) While a restructuring plan should always be deemed adopted if the required majority in each affected class supports the plan, a restructuring plan which is not supported by the required majority in each affected class may still be confirmed by a judicial or administrative authority provided that it is supported by at least one affected class of creditors and that dissenting classes are not unfairly prejudiced under the proposed plan (the cross-class cram-down mechanism). In particular, the plan should abide by the absolute priority rule which ensures that a dissenting class of creditors is paid in full before a more junior class can receive any distribution or keep any interest under the restructuring plan. The absolute priority rule serves as a basis for the value to be allocated among the creditors in

Amendment

(28) While a restructuring plan should always be deemed adopted if the required majority in each affected class supports the plan, a restructuring plan which is not supported by the required majority in each affected class may still be confirmed by a judicial or administrative authority provided that it is supported by at least one affected class of creditors, **representing a majority of the claims**, and that dissenting classes are not unfairly prejudiced under the proposed plan (the cross-class cram-down mechanism). In particular, the plan should abide by the absolute priority rule which ensures that a dissenting class of creditors is paid in full before a more junior class can receive any distribution or keep any interest under the restructuring plan. The absolute priority rule serves as a basis for the value to be allocated among

restructuring. As a corollary to the absolute priority rule, no class of creditors can receive or keep under the restructuring plan economic values or benefits exceeding the full amount of the claims or interests of such class. The absolute priority rule makes it possible to determine, when compared to the capital structure of the enterprise under restructuring, the value allocation that parties are to receive under the restructuring plan on the basis of the value of the enterprise as a going concern.

the creditors in restructuring. As a corollary to the absolute priority rule, no class of creditors can receive or keep under the restructuring plan economic values or benefits exceeding the full amount of the claims or interests of such class. The absolute priority rule makes it possible to determine, when compared to the capital structure of the enterprise under restructuring, the value allocation that parties are to receive under the restructuring plan on the basis of the value of the enterprise as a going concern.

Or. en

Amendment 99
Andrea Cozzolino

Proposal for a directive
Recital 29

Text proposed by the Commission

(29) While shareholders' or other equity holders' legitimate interests should be protected, Member States should ensure that shareholders cannot unreasonably block the adoption of restructuring plans which would bring the debtor back to viability. For example, the adoption of a restructuring plan should not be conditional on the agreement of the out-of-the-money equity holders, namely equity holders who, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied. Member States can deploy different means to achieve this goal, for example by not giving equity holders the right to vote on a restructuring plan. However, where equity holders have the right to vote on a restructuring plan, a judicial or administrative authority should be able to confirm the plan notwithstanding the

Amendment

(29) While shareholders' or other equity holders' legitimate interests should be protected, Member States should ensure that shareholders cannot unreasonably block the adoption of restructuring plans which would bring the debtor back to viability. For example, the adoption of a restructuring plan should not be conditional on the agreement of the out-of-the-money equity holders, namely equity holders who, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied. Member States can deploy different means to achieve this goal, for example by not giving equity holders the right to vote on a restructuring plan. However, where equity holders have the right to vote on a restructuring plan, a judicial or administrative authority should be able to confirm the plan notwithstanding the

dissent of one or more classes of equity holders, through a cross-class cram down mechanism. More classes of equity holders may be needed where different classes of shareholdings with different rights exist.

Equity holders of small and medium enterprises who are not mere investors but are the owners of the firm and contribute to the firm in other ways such as managerial expertise may not have an incentive to restructure under such conditions. For this reason, the cross-class cram-down mechanism should remain optional for the plan proposer.

dissent of one or more classes of equity holders, through a cross-class cram down mechanism. More classes of equity holders may be needed where different classes of shareholdings with different rights exist.

Or. it

Amendment 100

Hugues Bayet

Proposal for a directive

Recital 29

Text proposed by the Commission

(29) While shareholders' or other equity holders' legitimate interests should be protected, Member States should ensure that shareholders cannot unreasonably block the adoption of restructuring plans which would bring the debtor back to viability. For example, the adoption of a restructuring plan should not be conditional on the agreement of the out-of-the-money equity holders, namely equity holders who, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied. Member States can deploy different means to achieve this goal, for example by not giving equity holders the right to vote on a restructuring plan. However, where equity holders have the right to vote on a restructuring plan, a judicial or administrative authority should be able to

Amendment

(29) While shareholders' or other equity holders' legitimate interests should be protected, Member States should ensure that shareholders cannot unreasonably block the adoption of restructuring plans which would bring the debtor back to viability ***or enable the viable parts of its business to be continued by another enterprise after its transfer.*** For example, the adoption of a restructuring plan should not be conditional on the agreement of the out-of-the-money equity holders, namely equity holders who, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied. Member States can deploy different means to achieve this goal, for example by not giving equity holders the right to vote on a restructuring plan. However, where equity holders have the

confirm the plan notwithstanding the dissent of one or more classes of equity holders, through a cross-class cram down mechanism. More classes of equity holders may be needed where different classes of shareholdings with different rights exist. Equity holders of small and medium enterprises who are not mere investors but are the owners of the firm and contribute to the firm in other ways such as managerial expertise may not have an incentive to restructure under such conditions. For this reason, the cross-class cram-down mechanism should remain optional for the plan proposer.

right to vote on a restructuring plan, a judicial or administrative authority should be able to confirm the plan notwithstanding the dissent of one or more classes of equity holders, through a cross-class cram down mechanism. More classes of equity holders may be needed where different classes of shareholdings with different rights exist. Equity holders of small and medium enterprises who are not mere investors but are the owners of the firm and contribute to the firm in other ways such as managerial expertise may not have an incentive to restructure under such conditions. For this reason, the cross-class cram-down mechanism should remain optional for the plan proposer.

Or. fr

Amendment 101
Andrea Cozzolino

Proposal for a directive
Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) For the purposes of implementing the restructuring plan, the latter should make it possible for holders of equity in small and medium-sized enterprises to provide non-monetary restructuring assistance (drawing, for example, on their experience, reputation or business contacts).

Or. it

Amendment 102
Hugues Bayet

Proposal for a directive
Recital 30

(30) Confirmation of a restructuring plan by a judicial or administrative authority is necessary to ensure that the reduction of the rights of creditors or interests of equity holders is proportionate to the benefits of the restructuring and that they have access to an effective remedy. The judicial or administrative authority should therefore reject a plan where it has been established that the attempted restructuring reduces the rights of dissenting creditors or equity holders below what they could reasonably expect to receive in the event of the liquidation of the debtor's business, either by piecemeal liquidation or by a sale as a going concern, depending on the particular circumstances of each debtor. However, where the plan is confirmed through a cross-class cram-down mechanism, the absolute priority rule should be applied by reference to the enterprise valuation which, as opposed to the going-concern liquidation valuation of the enterprise, looks at the value of the debtor's business in the longer term. The enterprise valuation is, as a rule, higher than the going-concern liquidation value because it captures the fact that the business continues its activity and contracts with the minimum disruption, has the confidence of financial creditors, shareholders and clients, continues to generate revenues and limits the impact on workers.

(30) Confirmation of a restructuring plan by a judicial or administrative authority is necessary to ensure that the reduction of the rights of creditors or interests of equity holders is proportionate to the benefits of the restructuring and that they have access to an effective remedy ***or that the transfer of the business is carried out under conditions which ensure that creditors receive at least as much as they would have been allocated after the sale of assets following a liquidation.*** The judicial or administrative authority should therefore reject a plan ***or proposed transfer*** where it has been established that the attempted restructuring reduces the rights of dissenting creditors or equity holders below what they could reasonably expect to receive in the event of the liquidation of the debtor's business, either by piecemeal liquidation or by a sale as a going concern, depending on the particular circumstances of each debtor. However, where the plan is confirmed through a cross-class cram-down mechanism, the absolute priority rule should be applied by reference to the enterprise valuation which, as opposed to the going-concern liquidation valuation of the enterprise, looks at the value of the debtor's business in the longer term. The enterprise valuation is, as a rule, higher than the going-concern liquidation value because it captures the fact that the business continues its activity and contracts with the minimum disruption, has the confidence of financial creditors, shareholders and clients, continues to generate revenues and limits the impact on workers.

Or. fr

Amendment 103

Tom Vandenkendelaere

**Proposal for a directive
Recital 32**

Text proposed by the Commission

(32) Interested affected parties should have the possibility to appeal a decision on the confirmation of a restructuring plan. However, in order to ensure the effectiveness of the plan, to reduce uncertainty and to avoid unjustifiable delays, appeals should not have suspensive effects on the implementation of a restructuring plan. ***Where it is established that minority creditors have suffered unjustifiable detriment under the plan, Member States should consider, as an alternative to setting aside the plan, the provision of monetary compensation to the respective dissenting creditors payable by the debtor or the creditors who voted in favour of the plan.***

Amendment

(32) Interested affected parties should have the possibility to appeal a decision on the confirmation of a restructuring plan. However, in order to ensure the effectiveness of the plan, to reduce uncertainty and to avoid unjustifiable delays, appeals should not have suspensive effects on the implementation of a restructuring plan.

Or. en

**Amendment 104
Andrea Cozzolino**

**Proposal for a directive
Recital 33 a (new)**

Text proposed by the Commission

Amendment

(33a) Workers and their representatives should be provided with all the documents and information regarding the proposed restructuring so as to allow them to undertake an in-depth assessment of the various scenarios and prepare adequately for possible consultations.

Workers and their representatives must also be actively involved during the consultation and approval phases of the plan and given guaranteed access to

expert advice in connection with the restructuring.

Or. it

Amendment 105
Hugues Bayet

Proposal for a directive
Recital 34

Text proposed by the Commission

(34) Throughout the preventive restructuring procedures, workers should enjoy full labour law protection. ***In particular***, this Directive is without prejudice to workers' rights guaranteed by Council Directive 98/59/EC⁶⁸, Council Directive 2001/23/EC⁶⁹, Directive 2002/14/EC of the European Parliament and of the Council⁷⁰, Directive 2008/94/EC of the European Parliament and of the Council⁷¹ and Directive 2009/38/EC of the European Parliament and of the Council⁷². The obligations concerning the information and consultation of workers under national law implementing the above-mentioned Directives remain fully intact. This includes obligations to inform and consult workers' representatives on the decision to have recourse to a preventive restructuring framework in accordance with Directive 2002/14/EC. Given the need to ensure an appropriate level of protection of workers, Member States should in principle exempt workers' outstanding claims, as defined in Directive 2008/94/EC, from any stay of enforcement irrespective of the question whether these claims arise before or after the stay is granted. Such a stay should be permissible only for the amounts and for the period that the payment of such claims is effectively guaranteed by other means under national law. Where Member States extend the cover of the guarantee of

Amendment

(34) Throughout the preventive restructuring procedures, workers should enjoy full labour law protection. ***If*** this Directive is without prejudice to workers' rights guaranteed by Council Directive 98/59/EC⁶⁸, Council Directive 2001/23/EC⁶⁹, Directive 2002/14/EC of the European Parliament and of the Council⁷⁰, Directive 2008/94/EC of the European Parliament and of the Council⁷¹ and Directive 2009/38/EC of the European Parliament and of the Council⁷², ***it shall lay down arrangements for the exercise of these rights which make it possible to safeguard jobs and economic activity, in particular the confidentiality necessary for that purpose, whilst guaranteeing the effective exercise of those rights***. The obligations concerning the information and consultation of workers under national law implementing the above-mentioned Directives remain fully intact. This includes obligations to inform and consult workers' representatives on the decision to have recourse to a preventive restructuring framework in accordance with Directive 2002/14/EC. Given the need to ensure an appropriate level of protection of workers, Member States should in principle exempt workers' outstanding claims, as defined in Directive 2008/94/EC, from any stay of enforcement irrespective of the question whether these claims arise before or after

payment of workers' outstanding claims established by Directive 2008/94/EC to preventive restructuring procedures set up by this Directive, the exemption of workers' claims from the stay of enforcement is no longer justified to the extent covered by that guarantee. Where under national law there are limitations to the liability of guarantee institutions, either in terms of the length of the guarantee or the amount paid to workers, workers should be able to enforce their claims for any shortfall against the employer even during the stay of enforcement period.

the stay is granted. Such a stay should be permissible only for the amounts and for the period that the payment of such claims is effectively guaranteed by other means under national law. Where Member States extend the cover of the guarantee of payment of workers' outstanding claims established by Directive 2008/94/EC to preventive restructuring procedures set up by this Directive, the exemption of workers' claims from the stay of enforcement is no longer justified to the extent covered by that guarantee. Where under national law there are limitations to the liability of guarantee institutions, either in terms of the length of the guarantee or the amount paid to workers, workers should be able to enforce their claims for any shortfall against the employer even during the stay of enforcement period.

⁶⁸ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.08.1998, p. 16.

⁶⁹ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.03.2001, p. 16.

⁷⁰ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29.

⁷¹ Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, OJ L 283, 28.10.2008, p. 36.

⁶⁸ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.08.1998, p. 16.

⁶⁹ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.03.2001, p. 16.

⁷⁰ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29.

⁷¹ Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, OJ L 283, 28.10.2008, p. 36.

⁷² Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works council or a procedure in Community-scale undertakings and community-scale groups of undertakings for the purpose of informing and consulting employees, OJ L 122, 16.5.2009, p.28.

⁷² Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works council or a procedure in Community-scale undertakings and community-scale groups of undertakings for the purpose of informing and consulting employees, OJ L 122, 16.5.2009, p.28.

Or. fr

Amendment 106
Hugues Bayet

Proposal for a directive
Recital 35

Text proposed by the Commission

(35) Where a restructuring plan entails a transfer of part of undertaking or business, workers' rights arising from a contract of employment or from an employment relationship, notably including the right to wages, should be safeguarded in accordance with Articles 3 and 4 of Directive 2001/23/EC, without prejudice to the specific rules applying in the event of insolvency proceedings under Article 5 of that Directive and in particular the possibilities allowed by Article 5(2) of that Directive. Furthermore, in addition and without prejudice to the rights to information and consultation, including on decisions likely to lead to substantial changes in work organisation or in contractual relations with a view to reaching an agreement on such decisions, which are guaranteed by Directive 2002/14/EC, under this Directive workers who are affected by the restructuring plan should have the right to vote on the plan. For the purposes of voting on the restructuring plan, Member States may

Amendment

(35) Where a restructuring plan entails a transfer of part of undertaking or business, workers' rights arising from a contract of employment or from an employment relationship, notably including the right to wages, should be safeguarded in accordance with Articles 3 and 4 of Directive 2001/23/EC, without prejudice to the specific rules applying in the event of insolvency proceedings under Article 5 of that Directive and in particular the possibilities allowed by Article 5(2) of that Directive. Furthermore, in addition and without prejudice to the rights to information and consultation, including on decisions likely to lead to substantial changes in work organisation or in contractual relations with a view to reaching an agreement on such decisions, which are guaranteed by Directive 2002/14/EC, under this Directive workers who are affected by the restructuring plan should have the right to vote on the plan. For the purposes of voting on the restructuring plan, Member States may decide to place workers in a class separate

decide to place workers in a class separate from other classes of creditors.

from other classes of creditors. *Due account should be taken of the rulings handed down by the Court of Justice, as Advocate-General Mengozzi recently pointed out in his conclusions in Case C-126/16.*

Or. fr

Amendment 107
Sander Loones

Proposal for a directive
Recital 37

Text proposed by the Commission

(37) The different second chance possibilities in the Member States may incentivise over-indebted entrepreneurs to relocate to Member States in order to benefit from shorter discharge periods or more attractive conditions for discharge, leading to additional legal uncertainty and costs for the creditors when recovering their claims. Furthermore, the effects of bankruptcy, in particular the social stigma, legal consequences such as disqualifying entrepreneurs from taking up and pursuing entrepreneurial activity and the on-going inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up a business or have a second chance, even if evidence shows that entrepreneurs who have gone bankrupt have more chance to be successful the second time. Steps should therefore be taken to reduce the negative effects of over-indebtedness and bankruptcy on entrepreneurs, in particular by allowing for a full discharge of debts after a certain period of time and by limiting the length of disqualification orders issued in connection with the debtor's over-indebtedness.

Amendment

(37) The different second chance possibilities in the Member States may incentivise over-indebted entrepreneurs to relocate to Member States in order to benefit from shorter discharge periods or more attractive conditions for discharge, leading to additional legal uncertainty and costs for the creditors when recovering their claims. Furthermore, the effects of bankruptcy, in particular the social stigma, legal consequences such as disqualifying entrepreneurs from taking up and pursuing entrepreneurial activity and the on-going inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up a business or have a second chance, even if evidence shows that entrepreneurs who have gone bankrupt have more chance to be successful the second time. Steps should therefore be taken to reduce the negative effects of over-indebtedness and bankruptcy on entrepreneurs, in particular by allowing for a full discharge of debts after a certain period of time and by limiting the length of disqualification orders issued in connection with the debtor's over-indebtedness. *In addition, Member States should ensure that second chance entrepreneurs have*

access to up-to-date information about the availability of administrative, legal, business or financial support tailored to them and any means available to them to facilitate the set-up of a new business.

Or. en

Amendment 108
Hugues Bayet

Proposal for a directive
Recital 37

Text proposed by the Commission

(37) The different second chance possibilities in the Member States may incentivise over-indebted entrepreneurs to relocate to Member States in order to benefit from shorter discharge periods or more attractive conditions for discharge, leading to additional legal uncertainty and costs for the creditors when recovering their claims. Furthermore, the effects of bankruptcy, in particular the social stigma, legal consequences such as disqualifying entrepreneurs from taking up and pursuing entrepreneurial activity and the on-going inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up a business or have a second chance, even if evidence shows that entrepreneurs who have gone bankrupt have more chance to be successful the second time. Steps should therefore be taken to reduce the negative effects of over-indebtedness and bankruptcy on entrepreneurs, in particular by allowing for a full discharge of debts after a certain period of time and by limiting the length of disqualification orders issued in connection with the debtor's over-indebtedness.

Amendment

(37) The different second chance possibilities in the Member States may incentivise over-indebted entrepreneurs to relocate to Member States in order to benefit from shorter discharge periods or more attractive conditions for discharge, leading to additional legal uncertainty and costs for the creditors when recovering their claims. Furthermore, the effects of bankruptcy, in particular the social stigma, legal consequences such as disqualifying entrepreneurs from taking up and pursuing entrepreneurial activity and the on-going inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up a business or have a second chance, even if evidence shows that entrepreneurs who have gone bankrupt have more chance to be successful the second time. Steps should therefore be taken to reduce the negative effects of over-indebtedness and bankruptcy on entrepreneurs, in particular by allowing for a full discharge of debts after a certain period of time, *by establishing a liability regime which both incentivises early and responsible action and punishes the failure to take such action*, and by limiting the length of disqualification orders issued

in connection with the debtor's over-indebtedness.

Or. fr

Amendment 109
Tom Vandenkendelaere

Proposal for a directive
Recital 37

Text proposed by the Commission

(37) The different second chance possibilities in the Member States may incentivise over-indebted entrepreneurs to relocate to Member States in order to benefit from shorter discharge periods or more attractive conditions for discharge, leading to additional legal uncertainty and costs for the creditors when recovering their claims. Furthermore, the effects of bankruptcy, in particular the social stigma, legal consequences such as disqualifying entrepreneurs from taking up and pursuing entrepreneurial activity and the on-going inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up a business or have a second chance, even if evidence shows that entrepreneurs who have gone bankrupt have more chance to be successful the second time. Steps should therefore be taken to reduce the negative effects of over-indebtedness and bankruptcy on entrepreneurs, in particular by allowing for a full discharge of debts after a certain period of time and by limiting the length of disqualification orders issued in connection with the debtor's over-indebtedness.

Amendment

(37) The different second chance possibilities in the Member States may incentivise over-indebted entrepreneurs to relocate to Member States in order to benefit from shorter discharge periods or more attractive conditions for discharge, leading to additional legal uncertainty and costs for the creditors when recovering their claims. Furthermore, the effects of bankruptcy, in particular the social stigma, legal consequences such as disqualifying entrepreneurs from taking up and pursuing entrepreneurial activity and the on-going inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up a business or have a second chance, even if evidence shows that entrepreneurs who have gone bankrupt have more chance to be successful the second time. Steps should therefore be taken to reduce the negative effects of over-indebtedness and bankruptcy on entrepreneurs, ***and to incentivise entrepreneurs to take up new business activities more quickly***, in particular by allowing for a full discharge of debts after a certain period of time and by limiting the length of disqualification orders issued in connection with the debtor's over-indebtedness.

Or. en

Amendment 110
Hugues Bayet

Proposal for a directive
Recital 39

Text proposed by the Commission

(39) It is necessary to maintain and enhance the transparency and predictability of the procedures in delivering outcomes that are favourable for the preservation of businesses and for giving entrepreneurs a second chance or that permit the efficient liquidation of non-viable enterprises. It is also necessary to reduce the excessive length of insolvency procedures in many Member States, which results in legal uncertainty for creditors and investors and low recovery rates. Finally, given the enhanced cooperation mechanisms between courts and practitioners in cross-border cases set up by Regulation (EU) 2015/848, the professionalism of all actors involved needs to be brought to comparable high levels across the Union. To achieve these objectives, Member States should ensure that members of the judicial and administrative bodies are properly trained and have specialised knowledge and experience in insolvency matters. Such specialisation of members of the judiciary should allow making decisions with potentially significant economic and social impacts within a short period of time and should not mean that members of the judiciary have to deal exclusively with restructuring, insolvency and second chance matters. For example, the creation of specialised courts or chambers in accordance with national law governing the organisation of the judicial system could be an efficient way of achieving these objectives.

Amendment

(39) It is necessary to maintain and enhance the transparency and predictability of the procedures in delivering outcomes that are favourable for the preservation of businesses and for giving entrepreneurs a second chance or that permit the efficient liquidation of non-viable enterprises. It is also necessary to reduce the excessive length of insolvency procedures in many Member States, which results in legal uncertainty for creditors and investors and low recovery rates. ***That reduction may in particular be secured by introducing, as a first step, confidential procedures which make it possible, in part by virtue of that confidentiality, to prepare the plan or the assignment without the loss of value which would occur if that intention were to be made public.*** Finally, given the enhanced cooperation mechanisms between courts and practitioners in cross-border cases set up by Regulation (EU) 2015/848 ***and applicable to public procedures***, the professionalism of all actors involved needs to be brought to comparable high levels across the Union. To achieve these objectives, Member States should ensure that members of the judicial and administrative bodies are properly trained and have specialised knowledge and experience in insolvency matters. Such specialisation of members of the judiciary should allow making decisions with potentially significant economic and social impacts within a short period of time and should not mean that members of the judiciary have to deal exclusively with restructuring, insolvency

and second chance matters. For example, the creation of specialised courts or chambers in accordance with national law governing the organisation of the judicial system could be an efficient way of achieving these objectives.

Or. fr

Amendment 111
Tom Vandenkendelaere

Proposal for a directive
Recital 39

Text proposed by the Commission

(39) It is necessary to maintain and enhance the transparency and predictability of the procedures in delivering outcomes that are favourable for the preservation of businesses and for giving entrepreneurs a second chance or that permit the efficient liquidation of non-viable enterprises. It is also necessary to reduce the excessive length of insolvency procedures in many Member States, which results in legal uncertainty for creditors and investors and low recovery rates. Finally, given the enhanced cooperation mechanisms between courts and practitioners in cross-border cases set up by Regulation (EU) 2015/848, the professionalism of all actors involved needs to be brought to comparable high levels across the Union. To achieve these objectives, Member States should ensure that members of the judicial and administrative bodies are properly trained and have specialised knowledge and experience in insolvency matters. Such specialisation of members of the judiciary should allow making decisions with potentially significant economic and social impacts within a short period of time and should not mean that members of the judiciary have to deal

Amendment

(39) It is necessary to maintain and enhance the transparency and predictability of the procedures in delivering outcomes that are favourable for the preservation of businesses and for giving entrepreneurs a second chance or that permit the efficient liquidation of non-viable enterprises. ***Enhanced transparency and predictability would also ensure greater legal certainty for investors and creditors involved in the restructuring, insolvency and discharge procedures.*** It is also necessary to reduce the excessive length of insolvency procedures in many Member States, which results in legal uncertainty for creditors and investors and low recovery rates. Finally, given the enhanced cooperation mechanisms between courts and practitioners in cross-border cases set up by Regulation (EU) 2015/848, the professionalism of all actors involved needs to be brought to comparable high levels across the Union. To achieve these objectives, Member States should ensure that members of the judicial and administrative bodies are properly trained and have specialised knowledge and experience in insolvency matters. Such specialisation of members of the judiciary

exclusively with restructuring, insolvency and second chance matters. For example, the creation of specialised courts or chambers in accordance with national law governing the organisation of the judicial system could be an efficient way of achieving these objectives.

should allow making decisions with potentially significant economic and social impacts within a short period of time and should not mean that members of the judiciary have to deal exclusively with restructuring, insolvency and second chance matters. For example, the creation of specialised courts or chambers in accordance with national law governing the organisation of the judicial system could be an efficient way of achieving these objectives.

Or. en

Amendment 112
Sander Loones

Proposal for a directive
Recital 40

Text proposed by the Commission

(40) Member States should also ensure that the practitioners in the field of restructuring, insolvency and second chance which are appointed by judicial or administrative authorities are properly trained and supervised in the carrying out of their tasks, that they are appointed in a transparent manner with due regard to the need to ensure efficient procedures and that they perform their tasks with integrity. Practitioners should also adhere to voluntary codes of conduct aiming at ensuring an appropriate level of qualification and training, transparency of the duties of such practitioners and the rules for determining their remuneration, the taking up of professional indemnity insurance cover and the establishment of oversight and regulatory mechanisms which should include an appropriate and effective regime for sanctioning those who have failed in their duties. Such standards may be attained without the need in

Amendment

(40) Member States should also ensure that the practitioners in the field of restructuring, insolvency and second chance which are appointed by judicial or administrative authorities are properly trained and supervised in the carrying out of their tasks, that they are appointed in a transparent manner with due regard to the need to ensure efficient procedures and that they perform their tasks, ***whether these entail restructuring or liquidation***, with integrity. Practitioners should also adhere to voluntary codes of conduct aiming at ensuring an appropriate level of qualification and training, transparency of the duties of such practitioners and the rules for determining their remuneration, the taking up of professional indemnity insurance cover and the establishment of oversight and regulatory mechanisms which should include an appropriate and effective regime for sanctioning those who have failed in their duties. Such standards

principle to create new professions or qualifications.

may be attained without the need in principle to create new professions or qualifications.

Or. en

Amendment 113
Tom Vandenkendelaere

Proposal for a directive
Recital 40

Text proposed by the Commission

(40) Member States should also ensure that the practitioners in the field of restructuring, insolvency and second chance which are appointed by judicial or administrative authorities ***are properly trained and*** supervised in the carrying out of their tasks, that they are appointed in a transparent manner with due regard to the need to ensure efficient procedures and that they perform their tasks with integrity. Practitioners should also adhere to voluntary codes of conduct aiming at ensuring an appropriate level of qualification and training, transparency of the duties of such practitioners and the rules for determining their remuneration, the taking up of professional indemnity insurance cover and the establishment of oversight and regulatory mechanisms which should include an appropriate and effective regime for sanctioning those who have failed in their duties. Such standards may be attained without the need in principle to create new professions or qualifications.

Amendment

(40) Member States should also ensure that the practitioners in the field of restructuring, insolvency and second chance which are appointed by judicial or administrative authorities ***have sufficient expertise and are properly*** supervised in the carrying out of their tasks, that they are appointed in a transparent manner with due regard to the need to ensure efficient procedures and that they perform their tasks with integrity. Practitioners should also adhere to voluntary codes of conduct aiming at ensuring an appropriate level of qualification and training, transparency of the duties of such practitioners and the rules for determining their remuneration, the taking up of professional indemnity insurance cover and the establishment of oversight and regulatory mechanisms which should include an appropriate and effective regime for sanctioning those who have failed in their duties. Such standards may be attained without the need in principle to create new professions or qualifications.

Or. en

Amendment 114
Andrea Cozzolino

Proposal for a directive
Recital 42

Text proposed by the Commission

(42) It is important to gather reliable data on the performance of restructuring, insolvency and discharge procedures in order to monitor the implementation and application of this Directive. Therefore Member States should collect and aggregate data that is sufficiently granular to enable an accurate assessment of how the Directive works in practice.

Amendment

(42) It is important to gather reliable data on the performance of restructuring, insolvency and discharge procedures in order to monitor the implementation and application of this Directive. Therefore Member States should collect and aggregate data that is sufficiently granular to enable an accurate assessment of how the Directive works in practice. ***They should accordingly proceed to collect and analyse data by type of procedure so that reliable and usable comparative statistics can be obtained.***

Or. it

Amendment 115
Jonás Fernández

Proposal for a directive
Recital 43

Text proposed by the Commission

(43) The stability of financial markets relies heavily on financial collateral arrangements, in particular, when security collateral is provided in connection with participation in designated systems or in central bank operations and when margins are provided to central counterparties (CCPs). As the value of financial instruments given as security may be very volatile, it is crucial to realize their value quickly before it goes down. ***Therefore, this Directive should be without prejudice to*** Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998⁷⁴, Directive 2002/47/EC of the

Amendment

(43) The stability of financial markets relies heavily on financial collateral arrangements, in particular, when security collateral is provided in connection with participation in designated systems or in central bank operations and when margins are provided to central counterparties (CCPs). As the value of financial instruments given as security may be very volatile, it is crucial to realize their value quickly before it goes down. ***The provisions of*** Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998⁷⁴, Directive 2002/47/EC of the European Parliament and of the Council⁷⁵ and Regulation (EU) No

European Parliament and of the Council⁷⁵
and Regulation (EU) No 648/2012⁷⁶ .

648/2012⁷⁶ *should prevail over this
Directive.*

⁷⁴ Directive 98/26/EC of the European
Parliament and of the Council of 19 May
1998 on settlement finality in payment and
securities settlement systems (OJ L 166/45,
11.6.1998).

⁷⁴ Directive 98/26/EC of the European
Parliament and of the Council of 19 May
1998 on settlement finality in payment and
securities settlement systems (OJ L 166/45,
11.6.1998).

⁷⁵ Directive 2002/47/EC of the European
Parliament and of the Council of 6 June
2012 on financial collateral arrangements
(OJ L 168/43, 27.6.2002).

⁷⁵ Directive 2002/47/EC of the European
Parliament and of the Council of 6 June
2012 on financial collateral arrangements
(OJ L 168/43, 27.6.2002).

⁷⁶ Regulation (EU) No 648/2012 of the
European Parliament and of the Council of
4 July 2012 on OTC derivatives, central
counterparties and trade repositories, (OJ L
201/1, 27.7.2012, p.1).

⁷⁶ Regulation (EU) No 648/2012 of the
European Parliament and of the Council of
4 July 2012 on OTC derivatives, central
counterparties and trade repositories, (OJ L
201/1, 27.7.2012, p.1).

Or. en

Amendment 116

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive Recital 46 a (new)

Text proposed by the Commission

Amendment

***(46a) Under no circumstances should
workers bear the burden of restructuring,
insolvency and discharge procedures, and
the debts owing to them (such as unpaid
wages) should always be recovered first.
In order to guarantee the continuity of
production and employment and to better
fight tactical or fraudulent practices by
management, workers should also be
informed and consulted at the initial stage
of restructuring, insolvency and discharge
procedures.***

Or. en

Amendment 117
Hugues Bayet

Proposal for a directive
Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency;

Amendment

(a) preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency; ***or where the procedures are being used to resolve a short-term problem, to reduce the amount owed to all or some of the creditors or to transfer all or part of the viable business to another enterprise on the basis of arrangements which provide for creditors to receive a dividend at least equal to that which they would have received in the event of liquidation;***

Or. fr

Amendment 118
Jonás Fernández

Proposal for a directive
Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency;

Amendment

(a) preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency. ***By means of delegated acts, the Commission shall further specify what constitutes a "likelihood of insolvency";***

Or. en

Amendment 119
Tom Vandenkendelaere

Proposal for a directive

Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency;

Amendment

(a) preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency, ***and a possibility of survival;***

Or. en

Amendment 120 Andrea Cozzolino

Proposal for a directive Article 1 – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(ga) a public body that does not engage in business activities

Or. it

Amendment 121 Markus Ferber

Proposal for a directive Article 1 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States may extend the application of the procedures referred to in point (b) of paragraph 1 to over indebted natural persons who are not entrepreneurs.

deleted

Or. en

Justification

Recital 37 clearly states that the nature of this Directive is to abet the second chance of entrepreneurs.

Amendment 122
Tom Vandenkendelaere

Proposal for a directive
Article 1 – paragraph 3

Text proposed by the Commission

Amendment

3. *Member States may extend the application of the procedures referred to in point (b) of paragraph 1 to over indebted natural persons who are not entrepreneurs.*

deleted

Or. en

Amendment 123
Hugues Bayet

Proposal for a directive
Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) 'insolvency procedure' means a collective insolvency procedure which entails a partial or total divestment of the debtor and the appointment of a liquidator;

(1) 'insolvency procedure' means a collective insolvency procedure ***opened by means of a public decision*** which entails a partial or total divestment of the debtor and the appointment of a liquidator;

Or. fr

Amendment 124
Tom Vandenkendelaere

Proposal for a directive
Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) 'insolvency procedure' means a collective ***insolvency*** procedure which

(1) 'insolvency procedure' means a collective procedure which entails a partial

entails a partial or total divestment of the debtor and the appointment of a liquidator;

or total divestment of the debtor and the appointment of a liquidator;

Or. en

Amendment 125
Hugues Bayet

Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) 'restructuring' means **changing** the composition, conditions, or structure of a debtor's assets and liabilities or any other part of the debtor's capital structure, including share capital, or a combination of those elements, including sales of assets or **parts** of the business, with the objective of enabling the enterprise to continue in whole or in part;

Amendment

(2) 'restructuring' means **a procedure or measures, whether public or confidential, which make it possible to change** the composition, conditions, or structure of a debtor's assets and liabilities or any other part of the debtor's capital structure, including share capital, or a combination of those elements, including sales of assets or **all or part** of the business, with the objective of enabling the enterprise to continue in whole or in part;

Or. fr

Amendment 126
Andrea Cozzolino

Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) 'restructuring' means changing the composition, conditions, or structure of a debtor's assets and liabilities or any other part of the debtor's capital structure, including share capital, or a combination of those elements, including sales of assets or parts of the business, with the objective of enabling the enterprise to continue in whole or in part;

Amendment

(2) 'restructuring' means changing the composition, conditions, or structure of a debtor's assets and liabilities or any other part of the debtor's capital structure, including share capital, or a combination of those elements, including sales of assets or parts of the business **or the entire business**, with the objective of enabling the enterprise to continue in whole or in part;

Amendment 127
Markus Ferber

Proposal for a directive
Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) 'affected parties' means creditors or classes of creditors and, where applicable under national law, equity holders whose claims or interests are affected under a restructuring plan;

Amendment

(3) 'affected parties' means creditors or classes of creditors, ***including contracting partners of executing contracts*** and, where applicable under national law, equity holders whose claims or interests are affected under a restructuring plan;

Or. en

Amendment 128
Enrique Calvet Chambon

Proposal for a directive
Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) 'affected parties' means creditors or classes of creditors and, where applicable under national law, equity holders whose claims or interests are affected under a restructuring plan;

Amendment

(3) 'affected parties' means creditors or classes of ***creditors, including public*** creditors and, where applicable under national law, equity holders whose claims or interests are affected under a restructuring plan;

Or. en

Amendment 129
Tom Vandenkendelaere

Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) '**executory** contracts' means contracts between the debtor and one or more creditors under which both sides still have obligations to perform at the moment the stay of individual enforcement actions is ordered;

Amendment

(5) '**executor** contracts' means contracts, **excluding financial facilities such as undrawn credit facilities, revolving credit lines and offers for financing**, between the debtor and one or more creditors under which both sides still have obligations to perform at the moment the stay of individual enforcement actions is ordered;

Or. en

Amendment 130
Jonás Fernández

Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) 'executory contracts' means contracts between the debtor and one or more creditors under which **both sides** still **have** obligations to perform at the moment the stay of individual enforcement actions is ordered;

Amendment

(5) 'executory contracts' means contracts between the debtor and one or more creditors under which **at least one party** still **has** obligations to perform at the moment the stay of individual enforcement actions is ordered;

Or. en

Amendment 131
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) 'class formation' means the grouping of affected creditors and equity holders in a restructuring plan in such a way as to reflect the rights and seniority of

Amendment

(6) 'class formation' means the grouping of affected creditors and equity holders in a restructuring plan in such a way as to reflect the rights and seniority of

the affected claims and interests, taking into account possible pre-existing entitlements, liens or inter-creditor agreements, and their treatment under the restructuring plan;

the affected claims and interests, taking into account possible pre-existing entitlements, liens or inter-creditor agreements, and their treatment under the restructuring plan. *For the purpose of adopting a restructuring plan, creditors are divided into different classes of creditors, where as a minimum, secured and unsecured claims are treated in distinct classes, whilst workers constitute a separate class;*

Or. en

Amendment 132 **Hugues Bayet**

Proposal for a directive **Article 2 – paragraph 1 – point 7**

Text proposed by the Commission

(7) 'cram-down of dissenting creditors' means the confirmation by a judicial or administrative authority of a restructuring plan that has the support of a majority in value of creditors or a majority in value in each and every class of creditors over the dissent of a minority of creditors or the dissent of a minority of creditors within each class;

Amendment

(7) 'cram-down of dissenting creditors' means the confirmation by a judicial or administrative authority of a restructuring plan that has the support of a majority in value of creditors or a majority in value in each and every class of creditors, *or whose transfer price is not enough to pay all the creditors in full*, over the dissent of a minority of creditors or the dissent of a minority of creditors within each class *or the dissent of the creditors who do not receive full payment of their claims;*

Or. fr

Amendment 133 **Jonás Fernández**

Proposal for a directive **Article 2 – paragraph 1 – point 11**

Text proposed by the Commission

(11) 'new financing' means any new funds, whether provided by an existing or a new creditor, that are necessary to implement a restructuring plan that are agreed upon in that restructuring plan **and confirmed subsequently by a judicial or administrative authority**;

Amendment

(11) 'new financing' means any new funds, whether provided by an existing or a new creditor, that are necessary to implement a restructuring plan that are agreed upon in that restructuring plan.

Or. en

Amendment 134

Tom Vandenkendelaere

Proposal for a directive

Article 2 – paragraph 1 – point 15 – introductory part

Text proposed by the Commission

(15) 'practitioner in the field of restructuring' means any person or body **appointed by a judicial or administrative authority to carry out one or more of the following tasks**:

Amendment

(15) 'practitioner in the field of restructuring' means any person or body **that carries out one or more of the following tasks**:

Or. en

Amendment 135

Andrea Cozzolino

Proposal for a directive

Article 2 – paragraph 1 – point 15 – point a

Text proposed by the Commission

(a) to assist the debtor or the creditors in drafting or negotiating a restructuring plan;

Amendment

(a) to assist the debtor or the creditors in drafting or negotiating a restructuring **or economically viable business transfer** plan;

Or. it

Amendment 136
Hugues Bayet

Proposal for a directive
Article 2 – paragraph 1 – point 15 – point a

Text proposed by the Commission

(a) to assist the debtor or the creditors in drafting or negotiating a restructuring plan;

Amendment

(a) to assist the debtor or the creditors in drafting or negotiating a restructuring plan ***or a plan to transfer viable parts of the business***;

Or. fr

Amendment 137
Tom Vandenkendelaere

Proposal for a directive
Article 2 – paragraph 1 – point 15 – point b

Text proposed by the Commission

(b) to supervise the activity of the debtor during the negotiations on a restructuring plan and report to ***a*** judicial or administrative authority;

Amendment

(b) to supervise the activity of the debtor during the negotiations on a restructuring plan and, ***when appointed by a judicial or administrative authority, to report to the*** judicial or administrative authority;

Or. en

Amendment 138
Andrea Cozzolino

Proposal for a directive
Article 2 – paragraph 1 – point 15 – point b

Text proposed by the Commission

(b) to supervise the activity of the debtor during the negotiations on a

Amendment

(b) to supervise the activity of the debtor during the negotiations on a

restructuring plan and report to a judicial or administrative authority;

restructuring *or transfer* plan and report to a judicial or administrative authority;

Or. it

Amendment 139
Hugues Bayet

Proposal for a directive
Article 2 – paragraph 1 – point 15 – point b

Text proposed by the Commission

(b) to supervise the activity of the debtor during the negotiations on a restructuring plan and report to a judicial or administrative authority;

Amendment

(b) to supervise the activity of the debtor during the negotiations on a restructuring *or transfer* plan and report to a judicial or administrative authority;

Or. fr

Amendment 140
Tom Vandenkendelaere

Proposal for a directive
Article 2 – paragraph 1 – point 15 – point c

Text proposed by the Commission

(c) to take partial control over the assets or affairs of the debtor during negotiations.

Amendment

(c) to take partial control over the assets or affairs of the debtor during negotiations, *when appointed by a judicial or administrative authority*;

Or. en

Amendment 141
Sander Loones

Proposal for a directive
Article 2 – paragraph 1 – point 15 a (new)

Text proposed by the Commission

Amendment

(15a) 'viable' means able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges.

Or. en

Amendment 142

Tom Vandenkendelaere

Proposal for a directive

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. 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.

1. 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. ***In that regard, the Commission shall promote, as part of its digital single market strategy, the use and development of new IT technologies for notifications and online communications, to ensure more effective early warning procedures.***

Or. en

Amendment 143

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Commission shall:

(a) issue a list of warning indicators, linked to set of actions to be performed by

debtors and entrepreneurs in case these indicators are met;

(b) centralise on their website the information laid down in paragraph 2 in a user-friendly way.

Or. en

Amendment 144
Sander Loones

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall communicate to the Commission on a yearly basis the information to be provided under paragraph 2.

Or. en

Amendment 145
Sander Loones

Proposal for a directive
Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The Commission shall publish the information to be provided under paragraph 2 and received according to paragraph 2a in a user-friendly way on its website.

Or. en

Amendment 146
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

Amendment

3. *Member States may limit the access provided for in paragraphs 1 and 2 to small and medium sized enterprises or to entrepreneurs*

deleted

Or. en

Amendment 147
Tom Vandenkendelaere

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

Amendment

3. *Member States may limit the access provided for in paragraphs 1 and 2 to small and medium sized enterprises or to entrepreneurs*

3. *For small and medium sized enterprises or entrepreneurs, Member States shall provide access to professional advice from a restructuring practitioner on a low cost basis.*

Or. en

Amendment 148
Sander Loones

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States may limit the access provided for in paragraphs 1 and 2 to *small and medium sized enterprises or to* entrepreneurs

3. Member States may limit the access provided for in paragraphs 1 and 2 to entrepreneurs.

Or. en

Amendment 149
Markus Ferber

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

3. Member States *may limit the* access *provided for in paragraphs 1 and 2 to small and medium sized enterprises or to entrepreneurs*

Amendment

3. *For SME debtors*, Member States *shall provide* access to *professional advice on a low cost basis*.

Or. en

Amendment 150
Sander Loones

Proposal for a directive
Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States may ensure that accountants and tax authorities have sufficient legal or non-legal means to be able to flag to entrepreneurs any worrying developments concerning their business debts or the viability of their business as soon as possible.

Or. en

Amendment 151
Hugues Bayet

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that, where there is likelihood of insolvency,

Amendment

1. Member States shall ensure that, where there is likelihood of insolvency,

debtors in financial difficulty have access to an effective preventive restructuring framework that enables them to restructure their debts or business, restore their viability and avoid insolvency.

debtors in financial difficulty have access to an effective preventive restructuring framework that enables them to restructure their debts or business, restore their viability *or arrange for viable operation by another undertaking* and avoid insolvency *or find a solution that is more satisfactory than liquidation of assets to help pay off creditors' claims, protect jobs and sustain business activity*.

Or. fr

Amendment 152
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. *Member States shall incentivise debtors in financial difficulty to take early action by providing clear information on the available preventive restructuring procedures and on the early warning tools.*

Or. en

Amendment 153
Tom Vandenkendelaere

Proposal for a directive
Article 4 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. *Member States shall require that debtors entering a preventive restructuring framework are not illiquid, and are viable.*

Or. en

Amendment 154

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

2. Preventive restructuring frameworks may consist of one or more procedures or measures.

Amendment

2. Preventive restructuring frameworks may consist of one or more procedures or measures, ***duly negotiated and consulted with workers' representatives, who shall retain all rights of collective bargaining and industrial action. Preventive restructuring frameworks shall provide for procedures or measures destined to the recovery of the indebted firm by workers, in accordance with the relevant national law.***

Or. en

Amendment 155

Tom Vandenkendelaere

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

2. Preventive restructuring frameworks may consist of one or more procedures or measures.

Amendment

2. Preventive restructuring frameworks may consist of one or more procedures or measures, ***either out-of-court or ordered by an administrative or judicial authority.***

Or. en

Amendment 156

Markus Ferber

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. *Member States may predicate the access to the restructuring framework upon evidence of anticipated solvency for at least six months from the commencement of proceedings.*

Or. en

Amendment 157

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States **shall** put in place provisions limiting the involvement of a judicial or administrative authority to where it is necessary and proportionate **so** that rights of any affected parties are safeguarded.

3. Member States **may** put in place provisions limiting the involvement of a judicial or administrative authority to where it is necessary and proportionate **while ensuring** that rights of any affected parties are safeguarded.

Or. en

Amendment 158

Markus Ferber

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall **put in place provisions limiting** the involvement of a judicial or administrative authority to where it is necessary and proportionate so that rights of any affected parties are safeguarded.

3. Member States shall **ensure** the involvement of a judicial or administrative authority to where it is necessary and proportionate so that rights of any affected parties are safeguarded.

Amendment 159

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 4 – paragraph 4

Text proposed by the Commission

4. Preventive restructuring frameworks shall be available on the application by debtors, or by creditors with the agreement of debtors.

Amendment

4. Preventive restructuring frameworks shall be available on the application by debtors, **by workers** or by **other** creditors with the agreement of debtors.

Amendment 160

Tom Vandenkendelaere

Proposal for a directive

Article 5 – paragraph 2

Text proposed by the Commission

2. The appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall not be mandatory in every case.

Amendment

2. The appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall not be mandatory in every case. **Nevertheless, small and medium sized businesses and entrepreneurs shall have easy access to the professional advice of a practitioner in the field of restructuring on a low cost basis.**

Amendment 161

Markus Ferber

Proposal for a directive

Article 5 – paragraph 2

Text proposed by the Commission

2. The appointment by a judicial or administrative authority of a practitioner in the field of restructuring ***shall not be mandatory in every case.***

Amendment

2. ***Member States may require*** the appointment by a judicial or administrative authority of a practitioner in the field of restructuring, ***if necessary and appropriate to safeguard the rights of affected parties.***

Or. en

Amendment 162

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

**Proposal for a directive
Article 5 – paragraph 2**

Text proposed by the Commission

2. The appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall ***not*** be mandatory in every case.

Amendment

2. The appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall be mandatory in every case.

Or. en

Amendment 163

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

**Proposal for a directive
Article 5 – paragraph 3**

Text proposed by the Commission

3. ***Member States may require the appointment of a practitioner in the field of restructuring in the following cases:***

(a) ***where the debtor is granted a general stay of individual enforcement actions in accordance with Article 6;***

(b) ***where the restructuring plan needs to be confirmed by a judicial or administrative authority by means of a***

Amendment

deleted

cross-class cram-down, in accordance with Article 11.

Or. en

Amendment 164

Sander Loones

Proposal for a directive

Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States may require the appointment of a practitioner in the field of restructuring in the following cases:

Amendment

3. Member States may require the appointment *by a judicial or administrative authority* of a practitioner in the field of restructuring in the following cases:

Or. en

Amendment 165

Markus Ferber

Proposal for a directive

Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States *may require* the appointment of a practitioner in the field of restructuring in the following cases:

Amendment

3. Member States *shall ensure* the appointment of a practitioner in the field of restructuring *at least* in the following cases:

Or. en

Amendment 166

Tom Vandenkendelaere

Proposal for a directive

Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States **may require** the appointment of a practitioner in the field of restructuring in the following cases:

Amendment

3. Member States **shall ensure** the appointment of a practitioner in the field of restructuring in the following cases:

Or. en

Amendment 167
Hugues Bayet

Proposal for a directive
Article 5 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) where the plan provides for the transfer of all or part of an undertaking to another undertaking without the creditors being paid in full or, indeed, the entire workforce being kept on.

Or. fr

Amendment 168
Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that a creditors' committee is established. The committee shall include representatives of the main creditors and other stakeholders, including workers. The members of the creditors' committee shall support and monitor the insolvency administrator's execution of his office. They shall demand information on the progress of business affairs, have the books and business documents inspected and the monetary

transactions and the available cash verified.

Or. en

Amendment 169

Neena Gill

Proposal for a directive

Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Member States shall ensure that a creditors' committee shall be established. The committee shall include representatives of the main creditors and other stakeholders; it shall include a representative of the debtor's employees, especially the representation by a responsible trade union. The members of the creditors' committee shall support and monitor the insolvency administrator's execution of his office. They shall demand information on the progress of business affairs, have the books and business documents inspected and the monetary transactions and the available cash verified.

Or. en

Amendment 170

Markus Ferber

Proposal for a directive

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that debtors who are negotiating a restructuring plan with their creditors may benefit from a

1. Member States shall ensure that debtors who are negotiating a restructuring plan with their creditors may benefit from a

stay of individual enforcement actions if and to the extent such a stay is necessary to support the negotiations of a restructuring plan.

stay of individual enforcement actions if and to the extent such a stay is necessary to support the negotiations of a restructuring plan ***and if the debtor can demonstrate the ability to restructure, in order to justify that such a stay is necessary to allow the negotiation of a restructuring plan.***

Or. en

Amendment 171
Hugues Bayet

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that debtors who are negotiating a restructuring plan with their creditors may benefit from a stay of individual enforcement actions if and to the extent such a stay is necessary to support the negotiations of a restructuring plan.

Amendment

1. Member States shall ensure that debtors who are negotiating a restructuring plan with their creditors ***or drawing up a sale plan*** may benefit from a stay of individual enforcement actions if and to the extent such a stay is necessary to support the negotiations of a restructuring plan.

Or. fr

Amendment 172
Tom Vandenkendelaere

Proposal for a directive
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall require that debtors benefiting from a stay of individual enforcement actions are not illiquid, and are viable.

Or. en

Amendment 173
Markus Ferber

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that a stay of individual enforcement actions may be ordered in respect of *all types of* creditors, including secured and preferential creditors. The stay may be general, covering all creditors, or limited, covering one or more individual creditors, in accordance with national law.

Amendment

2. Member States shall ensure that a stay of individual enforcement actions may be ordered in respect of *the* creditors, including secured and preferential creditors, *involved in the negotiation of the restructuring plan*. The stay may be general, covering all creditors, or limited, covering one or more individual creditors, in accordance with national law.

Or. en

Amendment 174
Andrea Cozzolino

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. Paragraph 2 shall not apply to workers' outstanding claims except if and to the extent that Member States ensure by other means that the payment of such claims is guaranteed at a level of protection at least equivalent to that provided for under the relevant national law transposing Directive 2008/94/EC.

Amendment

3. Paragraph 2 shall not apply to workers' outstanding claims.

Or. it

Amendment 175
Sven Giegold
on behalf of the Verts/ALE Group

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

3. Paragraph 2 shall not apply to workers' outstanding claims *except if and to the extent that Member States ensure by other means that the payment of such claims is guaranteed at a level of protection at least equivalent to that provided for under the relevant national law transposing Directive 2008/94/EC.*

Amendment

3. Paragraph 2 shall not apply to workers' outstanding claims.

Or. en

Amendment 176

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

3. Paragraph 2 shall not apply to workers' outstanding claims *except if and to the extent that Member States ensure by other means that the payment of such claims is guaranteed at a level of protection at least equivalent to that provided for under the relevant national law transposing Directive 2008/94/EC.*

Amendment

3. Paragraph 2 shall not apply to workers' outstanding claims.

Or. en

Amendment 177

Neena Gill

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

3. Paragraph 2 shall not apply to workers' outstanding claims *except if and to the extent that Member States ensure*

Amendment

3. Paragraph 2 shall not apply to workers' outstanding claims.

by other means that the payment of such claims is guaranteed at a level of protection at least equivalent to that provided for under the relevant national law transposing Directive 2008/94/EC.

Or. en

Amendment 178
Tom Vandenkendelaere

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. Paragraph 2 shall not apply to workers' outstanding claims except if and to the extent that Member States ensure by other means that the payment of such claims is guaranteed at a level of protection at least equivalent to that provided for under the relevant national law transposing Directive 2008/94/EC.

Amendment

3. Paragraph 2 shall not apply to ***micro and small enterprise claims and*** workers' outstanding claims except if and to the extent that Member States ensure by other means that the payment of such claims is guaranteed at a level of protection at least equivalent to that provided for under the relevant national law transposing Directive 2008/94/EC.

Or. en

Amendment 179
Markus Ferber

Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. Member States shall limit the duration of the stay of individual enforcement actions to a maximum period of no more than ***four*** months.

Amendment

4. Member States shall limit the duration of the stay of individual enforcement actions to a maximum period of no more than ***three*** months.

Or. en

Amendment 180
Tom Vandenkendelaere

Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. Member States shall limit the duration of the stay of individual enforcement actions to a maximum period of no more than *four* months.

Amendment

4. Member States shall limit the duration of the stay of individual enforcement actions to a maximum period of no more than *six* months.

Or. en

Amendment 181
Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. Member States shall limit the duration of the stay of individual enforcement actions to a maximum period of no more than *four months*.

Amendment

4. Member States shall limit the duration of the stay of individual enforcement actions to a maximum period of no more than *70 days*.

Or. en

Amendment 182
Markus Ferber

Proposal for a directive
Article 6 – paragraph 5 – introductory part

Text proposed by the Commission

5. Member States may nevertheless enable judicial or administrative authorities to extend the initial duration of the stay of individual enforcement actions or to grant a new stay of individual enforcement actions, upon request of the debtor or of creditors. Such extension or new period of

Amendment

5. Member States may nevertheless enable judicial or administrative authorities to extend the initial duration of the stay of individual enforcement actions or to grant a new stay of individual enforcement actions, upon request of the debtor or of creditors *involved in the negotiation of the*

stay of individual enforcement actions shall be granted only if there is evidence that:

restructuring plan. Such extension or new period of stay of individual enforcement actions shall be granted only if there is evidence that:

Or. en

Amendment 183
Markus Ferber

Proposal for a directive
Article 6 – paragraph 5 – point -a (new)

Text proposed by the Commission

Amendment

-a a majority of creditors involved in the negotiation of a restructuring plan favours the prolonging of a stay;

Or. en

Amendment 184
Hugues Bayet

Proposal for a directive
Article 6 – paragraph 5 – point a

Text proposed by the Commission

Amendment

(a) relevant progress has been made in the negotiations on the restructuring plan; and

(a) relevant progress has been made in the negotiations on the restructuring plan **or the negotiations on transfer of a going concern to another undertaking under the conditions laid down in this Directive;** and

Or. fr

Amendment 185
Tom Vandenkendelaere

Proposal for a directive
Article 6 – paragraph 6

Text proposed by the Commission

6. Any further extensions shall be given only if the conditions referred to in points (a) and (b) of paragraph 5 are met and the circumstances of the case show a strong likelihood that a restructuring plan will be adopted.

Amendment

6. Any further extensions shall be given only if the conditions referred to in points (a) and (b) of paragraph 5 are met and the circumstances of the case show a strong likelihood that a restructuring plan will be adopted, ***and there is a possibility of survival of the debtor's business.***

Or. en

Amendment 186
Markus Ferber

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

7. The total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed ***twelve*** months.

Amendment

7. The total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed ***six*** months.

Or. en

Amendment 187
Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

7. The total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed ***twelve months.***

Amendment

7. The total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed ***100 days.***

Or. en

Amendment 188
Markus Ferber

Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

9. Member States shall ensure that, where an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions, the judicial or administrative authority may decide not grant the stay of individual enforcement actions or may lift a stay of individual enforcement actions already granted in respect of that creditor or class of creditors, at the request of the creditors concerned.

Amendment

9. Member States shall ensure that, where an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions, the judicial or administrative authority may decide not grant the stay of individual enforcement actions or may lift a stay of individual enforcement actions already granted in respect of that creditor or class of creditors, at the request of the creditors concerned. ***An unfair prejudice exists at least where if a creditor or class of creditor is facing considerable economic difficulties.***

Or. en

Amendment 189
Tom Vandenkendelaere

Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

9. Member States shall ensure that, where an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions, the judicial or administrative authority may decide not grant the stay of individual enforcement actions or may lift a stay of individual enforcement actions already granted in respect of that creditor or class of creditors, at the request of the creditors concerned.

Amendment

9. Member States shall ensure that, where an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions, ***or a vulnerable creditor would encounter financial difficulties***, the judicial or administrative authority may decide not grant the stay of individual enforcement actions or may lift a stay of individual enforcement actions already granted in respect of that creditor or class of creditors, at the request of the creditors concerned.

Amendment 190

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

**Proposal for a directive
Article 7 – paragraph 2**

Text proposed by the Commission

2. A general stay covering all creditors shall prevent the opening of insolvency procedures at the request of one or more creditors.

Amendment

2. A general stay covering all creditors shall prevent the opening of insolvency procedures at the request of one or more creditors, ***with the exception of workers, in accordance with Article 6(3).***

Or. en

**Amendment 191
Markus Ferber**

**Proposal for a directive
Article 7 – paragraph 2**

Text proposed by the Commission

2. A general stay covering all creditors shall prevent the opening of insolvency procedures at the request of one or more creditors.

Amendment

2. A general stay covering all creditors ***involved in the negotiation of the restructuring plan*** shall prevent the opening of insolvency procedures at the request of one or more creditors.

Or. en

**Amendment 192
Markus Ferber**

**Proposal for a directive
Article 7 – paragraph 3**

Text proposed by the Commission

Amendment

3. Member States *may derogate* from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions.

3. Member States *shall ensure that a derogation* from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period *will be put in place*. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions, *upon the condition of not financially troubling the creditors severely*.

Or. en

Justification

Harmonization of Union law. Hence, in case of illiquidity the stay is revoked.

Amendment 193 **Andrea Cozzolino**

Proposal for a directive **Article 7 – paragraph 3**

Text proposed by the Commission

3. Member States may derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions.

Amendment

3. Member States may derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring *or economically viable business transfer* plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of

individual enforcement actions.

Or. it

Amendment 194

Hugues Bayet

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

3. Member States may derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions.

Amendment

3. Member States may derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring *or going-concern transfer* plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions.

Or. fr

Amendment 195

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

3. Member States *may* derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay

Amendment

3. Member States *shall* derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay

period. In that case, Member States shall *ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions.*

period. In that case, Member States shall *authorise a judicial or administrative authority to defer the opening of insolvency procedure and to keep in place the benefit of the stay of individual enforcement actions in order to examine the prospects for achieving an agreement on a successful restructuring plan within the period of the stay.*

Or. en

Amendment 196
Tom Vandenkendelaere

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

3. Member States *may* derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions.

Amendment

3. Member States *shall* derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions.

Or. en

Amendment 197
Markus Ferber

Proposal for a directive
Article 7 – paragraph 4

Text proposed by the Commission

4. Member States ***shall ensure*** that, during the stay period, creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify executory contracts to the detriment of the debtor for debts that came into existence prior to the stay. Member States may limit the application of this provision to essential contracts which are necessary for the continuation of the day-to-day operation of the business.

Amendment

4. Member States ***may require*** that, during the stay period, creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify ***essential*** executory contracts to the detriment of the debtor for debts that came into existence prior to the stay. Member States may limit the application of this provision to essential contracts which are necessary for the continuation of the day-to-day operation of the business, ***upon the condition of not financially troubling the creditors severely***.

Or. en

Amendment 198
Andrea Cozzolino

Proposal for a directive
Article 7 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that, during the stay period, creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify executory contracts to the detriment of the debtor for debts that came into existence prior to the stay. Member States may limit the application of this provision to ***essential*** contracts which are necessary for the continuation of the day-to-day operation of the business.

Amendment

4. Member States shall ensure that, during the stay period, creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify executory contracts to the detriment of the debtor for debts that came into existence prior to the stay. Member States may limit the application of this provision to contracts which are necessary for the continuation of the day-to-day operation of the business.

Or. it

Amendment 199
Markus Ferber

Proposal for a directive
Article 7 – paragraph 5

Text proposed by the Commission

5. Member States ***shall ensure*** that creditors may not withhold performance or terminate, accelerate or in any other way modify executory contracts to the detriment of the debtor by virtue of a contractual clause providing for such measures, solely by reason of the debtor's entry into restructuring negotiations, a requested for a stay of individual enforcement actions, the ordering of the stay as such or any similar event connected to the stay.

Amendment

5. Member States ***may require*** that creditors may not withhold performance or terminate, accelerate or in any other way modify executory contracts to the detriment of the debtor by virtue of a contractual clause providing for such measures, solely by reason of the debtor's entry into restructuring negotiations, a requested for a stay of individual enforcement actions, the ordering of the stay as such or any similar event connected to the stay.

Or. en

Amendment 200
Tom Vandenkendelaere

Proposal for a directive
Article 7 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that nothing prevents the debtor from paying in the ordinary course of business claims of or owed to unaffected creditors and the claims of affected creditors that arise after the stay is granted and which continue to arise throughout the period of the stay.

Amendment

6. Member States shall ensure that nothing prevents the debtor from paying in the ordinary course of business claims of or owed to unaffected creditors and the claims of affected creditors that arise after the stay is granted and which continue to arise throughout the period of the stay. ***During that period, debtors shall be able to execute transactions that are in the interest of the continuity of the business.***

Or. en

Amendment 201
Tom Vandenkendelaere

Proposal for a directive
Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) the identity of ***the debtor or*** the debtor's business for which the restructuring plan is proposed;

Amendment

(a) the identity of the debtor's business for which the restructuring plan is proposed;

Or. en

Amendment 202
Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(b) a valuation of the present value of the debtor or the debtor's business as well as a reasoned statement on the causes and the extent of the financial difficulties of the debtor;

Amendment

(b) a valuation of the present value of the debtor or the debtor's business as well as a reasoned statement on the causes and the extent of the financial difficulties of the debtor, ***including a description of any assets, debts and their location; this shall include a relation of the financial obligations and flows with the business' parent companies and subsidiaries in order to estimate the financial capacity of the debtor's economic group when joint responsibility may arise;***

Or. en

Amendment 203
Hugues Bayet

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(b) a valuation of the present value of the debtor or the debtor's business as well

Amendment

(b) a valuation of the present value of the debtor or the debtor's business,

as a reasoned statement on the causes and the extent of the financial difficulties of the debtor;

following problem solving or business divestiture procedures, as well as a reasoned statement on the causes and the extent of the financial difficulties of the debtor;

Or. fr

Amendment 204
Tom Vandenkendelaere

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(b) a valuation of the present value of *the debtor or* the debtor's business as well as a reasoned statement on the causes and the extent of the financial difficulties of the debtor;

Amendment

(b) a valuation of the present value of the debtor's business as well as a reasoned statement on the causes and the extent of the financial difficulties of the debtor;

Or. en

Amendment 205
Tom Vandenkendelaere

Proposal for a directive
Article 8 – paragraph 1 – point e

Text proposed by the Commission

(e) the identity of non-affected *parties*, whether named individually or described by reference to one or more categories of debt, together with a statement of the reasons why it is not proposed to affect them;

Amendment

(e) the identity of non-affected *creditors and equity holders*, whether named individually or described by reference to one or more categories of debt, together with a statement of the reasons why it is not proposed to affect them;

Or. en

Amendment 206

Hugues Bayet

Proposal for a directive

Article 8 – paragraph 1 – point f – point iii a (new)

Text proposed by the Commission

Amendment

(iii a) the possibilities for selling businesses as going concerns, selling prices or possible sale terms, the implications of those prices or terms for the dividends that creditors would receive compared with the dividend that a creditor would probably have received had the business in question been liquidated or the priority of creditors determined, and the consequences for workers, employment and activity, or for each stakeholder.

Or. fr

Amendment 207

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 8 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) an opinion or reasoned statement by the person responsible for proposing the restructuring plan which explains why the business is viable, how implementing the proposed plan is likely to result in the debtor avoiding insolvency and restore its long-term viability, and states any anticipated necessary pre-conditions for its success.

(g) an opinion or reasoned statement by the person responsible for proposing the restructuring plan which explains why the business is viable, how implementing the proposed plan is likely to result in the debtor avoiding insolvency and restore its long-term viability, and states any anticipated necessary pre-conditions for its success. ***Such an opinion or reasoned statement shall be the subject of validation by an external expert.***

Or. en

Amendment 208
Hugues Bayet

Proposal for a directive
Article 8 – paragraph 1 – point g

Text proposed by the Commission

(g) an opinion or reasoned statement by the person responsible for proposing the restructuring plan which explains why the business is viable, how implementing the proposed plan is likely to result in the debtor avoiding insolvency and restore its long-term viability, and states any anticipated necessary pre-conditions for its success.

Amendment

(g) an opinion or reasoned statement by the person responsible for proposing the restructuring plan which explains why the business is viable, how implementing the proposed plan is likely to result in the debtor avoiding insolvency, and/or to restore its long-term viability, and states any anticipated necessary pre-conditions for its success.

Or. fr

Amendment 209

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 8 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) Workers' claims or other rights shall be treated taking into account that any financial claims by workers shall have full priority.

Or. en

Amendment 210
Tom Vandenkendelaere

Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall make a model for restructuring plans available online.

2. Member States shall make a model for restructuring plans available online.

That model shall contain at least the information required under national law and shall provide general but practical information on how the model is to be used. The model shall be made available in the official language or languages of the Member State. Member States shall endeavour to make the model available in other languages, in particular in languages used in international business. It shall be designed in such a way that it can be adapted to the needs and circumstances of every case.

That model shall contain at least the information required under national law and shall provide general but practical information on how the model is to be used. The model shall be made available in the official language or languages of the Member State. Member States shall endeavour to make the model available in other languages, in particular in languages used in international business. It shall be designed in such a way that it can be adapted to the needs and circumstances of every case. ***In addition, Member States shall provide access to professional advice for small and medium sized enterprises and entrepreneurs on a low cost basis.***

Or. en

Amendment 211

Markus Ferber

Proposal for a directive

Article 8 – paragraph 2

Text proposed by the Commission

2. Member States shall make a model for restructuring plans available online. That model shall contain at least the information required under national law and shall provide general but practical information on how the model is to be used. The model shall be made available in the official language or languages of the Member State. Member States shall endeavour to make the model available in other languages, in particular in languages used in international business. It shall be designed in such a way that it can be adapted to the needs and circumstances of every case.

Amendment

2. Member States shall ***provide access to professional advice for micro and small enterprises on a low cost basis and*** make a model for restructuring plans available online. That model shall contain at least the information required under national law and shall provide general but practical information on how the model is to be used. The model shall be made available in the official language or languages of the Member State. Member States shall endeavour to make the model available in other languages, in particular in languages used in international business. It shall be designed in such a way that it can be adapted to the needs and circumstances of every case.

Or. en

Amendment 212
Hugues Bayet

Proposal for a directive
Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that their national legislation effectively guarantees the confidentiality of discussions, conversations, negotiations, or information sessions with persons who have entered into a confidentiality undertaking.

Or. fr

Amendment 213
Andrea Cozzolino

Proposal for a directive
Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States may introduce provisions allowing one or more creditors to propose an alternative plan to that proposed by the debtor or by a creditor with the debtor's agreement.

Or. it

Amendment 214
Hugues Bayet

Proposal for a directive
Article 8 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The obligations of employers to inform and consult workers shall not be put into effect until a plan has been finalised.

Or. fr

Amendment 215
Hugues Bayet

Proposal for a directive
Article 8 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3c. Procedures for implementing restructuring plans that provide for creditors to receive a dividend at least equal to that which they would have received had the assets been sold and the priority of creditors determined following insolvency proceedings shall constitute a bankruptcy procedure within the meaning of the abovementioned directives.

Or. fr

Amendment 216
Neena Gill

Proposal for a directive
Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Workers' claims or other rights shall not be affected by restructuring plans.

Or. en

Amendment 217

Hugues Bayet

**Proposal for a directive
Article 9 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that **any affected creditors** have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Amendment

1. Member States shall ensure that **the procedures provided for in national law are such that any creditors affected by a waiver plan** have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Member States shall ensure that the procedures provided for in national law are such that any creditors affected by a plan to sell a business as a going concern to another business, and who would not be repaid in full, would have the right to raise objections in the jurisdiction called upon to authorise the sale. Member States shall ensure that debtors, having embarked on a confidential procedure, may at any time thereafter initiate a further procedure publicly, if they consider the latter to be necessary before the plan has been adopted or the sale has been authorised by the jurisdiction concerned.

Or. fr

**Amendment 218
Tom Vandenkendelaere**

**Proposal for a directive
Article 9 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that any affected creditors have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting

Amendment

1. Member States shall **determine which types of creditors might be affected by a restructuring plan and** ensure that any affected creditors have a right to vote

rights to affected equity holders, in accordance with Article 12(2).

on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Or. en

Amendment 219

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that any affected creditors have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Amendment

1. Member States shall ensure that any affected creditors have a right to vote on the adoption of a restructuring plan ***in full knowledge of the consequences it entails for each of them***. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Or. en

Amendment 220

Enrique Calvet Chambon

Proposal for a directive

Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that any affected creditors have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Amendment

1. Member States shall ensure that any affected creditors ***including public ones*** have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Or. en

Amendment 221

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that any affected creditors have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Amendment

1. Member States shall ensure that any affected creditors, ***including workers***, have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Or. en

Amendment 222

Tom Vandenkendelaere

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States *may* also provide ***that workers are treated in a separate class of their own.***

Amendment

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States ***shall*** also provide ***specific rules supporting separate class formation for otherwise especially vulnerable creditors, such as workers or small suppliers.***

Or. en

Amendment 223
Markus Ferber

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States may also provide that workers *are* treated in a separate class of their own.

Amendment

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States may also provide that workers, *and micro and small enterprises, are each* treated in a separate class of their own.

Or. en

Amendment 224
Hugues Bayet

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that *affected* parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member

Amendment

2. Member States shall ensure that parties *affected by a waiver plan* are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of

States may also provide that workers are treated in a separate class of their own.

adopting a restructuring plan. Member States may also provide that workers are treated in a separate class of their own.

Or. fr

Amendment 225

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States *may* also provide that workers are treated in a separate class of their own.

Amendment

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States *shall* also provide that workers are treated in a separate class of their own.

Or. en

Amendment 226

Andrea Cozzolino

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a

Amendment

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a

way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogeneous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States *may* also provide that workers are treated in a separate class of their own.

way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogeneous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States *must* also provide that workers are treated in a separate class of their own.

Or. it

Amendment 227

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States *may also* provide that workers are treated in a separate class of their own.

Amendment

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with commonality of interest. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States *shall* provide that workers are treated in a separate class of their own.

Or. en

Amendment 228

Hugues Bayet

Proposal for a directive Article 9 – paragraph 4

Text proposed by the Commission

4. A restructuring plan shall be deemed to be adopted by affected parties, provided that a majority in the amount of their claims or interests is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan, which shall be in any case not higher than 75% in the amount of claims or interests in each class.

Amendment

4. A restructuring plan shall be deemed to be adopted by affected parties, provided that a majority in the amount of their claims or interests is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan, which shall be in any case not higher than 75% in the amount of claims or interests in each class. ***A sale plan shall be authorised by the competent jurisdiction under the national procedure allowing the sale to be authorised and effected.***

Or. fr

Amendment 229

Tom Vandenkendelaere

**Proposal for a directive
Article 9 – paragraph 4**

Text proposed by the Commission

4. A restructuring plan shall be deemed to be adopted by affected ***parties***, provided that a majority in the amount of their claims or interests is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan, which shall be in any case not higher than 75% in the amount of claims or interests in each class.

Amendment

4. A restructuring plan shall be deemed to be adopted by affected ***creditors and equity holders***, provided that a majority in the amount of their claims or interests is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan, which shall be in any case not higher than 75% in the amount of claims or interests in each class.

Or. en

Amendment 230

Markus Ferber

**Proposal for a directive
Article 9 – paragraph 4**

Text proposed by the Commission

4. A restructuring plan shall be deemed to be adopted by affected parties, provided that a majority in the amount of their claims or interests is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan, which shall be in any case not **higher** than 75% in the amount of claims or interests in each class.

Amendment

4. A restructuring plan shall be deemed to be adopted by affected parties, provided that a majority in the amount of their claims or interests is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan, which shall be in any case not **lower** than 75% in the amount of claims or interests in each class.

Or. en

Amendment 231
Jonás Fernández

Proposal for a directive
Article 9 – paragraph 6

Text proposed by the Commission

6. Where the necessary majority is not reached in one or more dissenting voting classes, the plan may still be confirmed if it complies with the cross-class cram-down requirements set out in Article 11.

Amendment

6. Where the necessary majority is not reached in one or more dissenting voting classes, the plan may still be confirmed **by a judicial or administrative authority** if it complies with the cross-class cram-down requirements set out in Article 11.

Or. en

Amendment 232

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 9 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States shall guarantee that in the case of lack of collaboration of other creditors, the workers' restructuring plan may be presented to the competent

administration or court and adopted without the consent of non-cooperative creditors.

Or. en

Amendment 233
Jonás Fernández

Proposal for a directive
Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that the **following** restructuring plans can become binding on the parties only if they are confirmed by a judicial or administrative authority:

Amendment

1. Member States shall ensure that the restructuring plans **which affect the interests of dissenting affected parties** can become binding on the parties only if they are confirmed by a judicial or administrative authority.

Or. en

Amendment 234
Markus Ferber

Proposal for a directive
Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that the following restructuring plans can become binding on the parties only if they are confirmed by a judicial or administrative authority:

Amendment

1. Member States shall ensure that **at least** the following restructuring plans can become binding on the parties only if they are confirmed by a judicial or administrative authority:

Or. en

Amendment 235
Jonás Fernández

Proposal for a directive
Article 10 – paragraph 1 – point a

Text proposed by the Commission

Amendment

*(a) restructuring plans which affect
the interests of dissenting affected parties;*

deleted

Or. en

Amendment 236
Jonás Fernández

Proposal for a directive
Article 10 – paragraph 1 – point b

Text proposed by the Commission

Amendment

*(b) restructuring plans which provide
for new financing.*

deleted

Or. en

Amendment 237
Hugues Bayet

Proposal for a directive
Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

*1a. Member States shall ensure that
plans to sell a business as a going concern
cannot become binding on the parties
unless they are confirmed by a judicial or
administrative authority under national
law.*

*In each of the cases referred to in this
paragraph, Member States shall ensure
that the procedures provided for in
national law are such that workers have
the right to submit comments to, or raise
objections before, the judicial or*

administrative authority called upon to rule on the confirmation of the plan.

Or. fr

Amendment 238
Jonás Fernández

Proposal for a directive
Article 10 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) any new financing is necessary to implement the restructuring plan and does not unfairly prejudice the interests of creditors.

deleted

Or. en

Amendment 239
Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 10 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) workers' representatives have been informed and consulted.

Or. en

Amendment 240
Hugues Bayet

Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that judicial or administrative authorities may refuse to confirm a restructuring plan where that plan does not have a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business.

3. Member States shall ensure that judicial or administrative authorities may refuse to confirm a restructuring plan ***involving the waiver of claims*** where that plan does not have a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business ***or where the debtor's obligations to workers under existing Directives have not been fulfilled. Member States shall ensure that judicial or administrative authorities may refuse to authorise a sale plan where that plan is such that creditors have no reasonable prospect of being paid a dividend at least equivalent to the amount which they would have received if assets had been sold following a bankruptcy procedure or where the business continuing as a going concern does not offer guarantees as to the viability of the operations transferred.***

Or. fr

Amendment 241
Markus Ferber

Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that judicial or administrative authorities ***may*** refuse to confirm a restructuring plan where that plan does not have a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business.

Amendment

3. Member States shall ensure that judicial or administrative authorities ***shall*** refuse to confirm a restructuring plan where that plan does not have a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business.

Or. en

Amendment 242
Hugues Bayet

Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that where a judicial or administrative authority is required to confirm a restructuring plan in order for it to become binding, a decision is taken without undue delay after the request for confirmation has been filed and in any case no later than 30 days after the request is filed.

Amendment

4. Member States shall ensure that where a judicial or administrative authority is required to confirm a restructuring plan **or authorise a sale plan** in order for it to become binding, a decision is taken without undue delay after the request for confirmation has been filed and in any case no later than 30 days after the request is filed.

Or. fr

Amendment 243
Jonás Fernández

Proposal for a directive
Article 11 – paragraph 1 – point a

Text proposed by the Commission

(a) fulfils the conditions in Article 10(2);

Amendment

(a) fulfils the conditions in Article 10(2) **and does not run counter to Article 10(3)**;

Or. en

Amendment 244
Tom Vandenkendelaere

Proposal for a directive
Article 11 – paragraph 1 – point b

Text proposed by the Commission

(b) has been approved by at least one class of affected creditors other than an equity-holder class and any other class which, upon a valuation of the enterprise, would not receive any payment or other

Amendment

(b) has been approved by at least one class of affected creditors other than an equity-holder class and any other class which, upon a valuation of the enterprise, would not receive any payment or other

consideration if the normal ranking of liquidation priorities were applied;

consideration if the normal ranking of liquidation priorities were applied, *and where that class or those classes of affected creditors represent a majority of the claims*;

Or. en

Amendment 245

Markus Ferber

Proposal for a directive

Article 11 – paragraph 1 – point b

Text proposed by the Commission

(b) has been approved by at least one class of affected creditors other than an equity-holder class and any other class which, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied;

Amendment

(b) has been approved by at least one class of affected creditors, *representing at least a majority in the amount of claims*, and other than an equity-holder class and any other class which, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied;

Or. en

Amendment 246

Markus Ferber

Proposal for a directive

Article 11 – paragraph 2

Text proposed by the Commission

2. Member States may vary the minimum number of affected classes required to approve the plan laid down in point (b) of paragraph (1).

Amendment

2. Member States may vary the minimum number of affected classes required to approve the plan laid down in point (b) of paragraph (1), *unless this number falls below the majority of classes and disregards the class of micro and small enterprises*.

Amendment 247
Markus Ferber

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

1. Member States **shall** ensure that, where there is a likelihood of insolvency, shareholders and other equity holders with interests in a debtor may not unreasonably prevent the adoption or implementation of a restructuring plan which would restore the viability of the business.

Amendment

1. Member States **may** ensure that, where there is a likelihood of insolvency, shareholders and other equity holders with interests in a debtor may not unreasonably prevent the adoption or implementation of a restructuring plan which would restore the viability of the business.

Or. en

Amendment 248
Andrea Cozzolino

Proposal for a directive
Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may introduce provisions authorising holders of equity in small and medium-sized undertakings to provide non-monetary assistance under the plan.

Or. it

Amendment 249
Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Workers

Member States shall ensure the rights of workers are not undermined by the restructuring process and that there is independent supervision of compliance with relevant national and Union legislation, including those set out in the present directive. Those rights shall include, in particular:

- (i) the right to collective bargaining and industrial action;***
- (ii) the right to information and consultation of workers and workers' representatives, including notably access to information on any procedure which could have an impact on employment and/or the ability of workers to recover their wages and any future payments, including occupational pensions.***

Members States shall also ensure that workers are everywhere treated as a preferential and secure class of creditors.

Or. en

Amendment 250
Hugues Bayet

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

1. A liquidation value shall be determined by the judicial or administrative authority where a restructuring plan is challenged on the grounds of an alleged breach of the best interest of creditors test.

Amendment

1. A liquidation value shall be determined by the judicial or administrative authority where a restructuring plan ***or a sale plan*** is challenged on the grounds of an alleged breach of the best interest of creditors test.

Or. fr

Amendment 251
Andrea Cozzolino

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

Amendment

1. A liquidation value shall be determined by the judicial or administrative authority where a restructuring plan is challenged on the grounds of an alleged breach of the best interest of creditors test.

1. A liquidation value shall be determined by the judicial or administrative authority where a restructuring *or transfer* plan is challenged on the grounds of an alleged breach of the best interest of creditors test.

Or. it

Amendment 252
Hugues Bayet

Proposal for a directive
Article 13 – paragraph 2 – introductory part

Text proposed by the Commission

2. An enterprise value shall be determined by the judicial or administrative authority on the basis of the value of the enterprise as a going concern in the following cases:

Amendment

2. An enterprise value shall be determined by the judicial or administrative authority on the basis of the value of the enterprise as a going concern *and the value of the proceeds from the sale of its assets by the insolvency practitioner in an insolvency procedure* in the following cases:

Or. fr

Amendment 253
Hugues Bayet

Proposal for a directive
Article 13 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) where a plan involves the transfer of all or part of a business

Or. fr

Amendment 254
Jonás Fernández

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

2. Creditors who are not *involved* in the *adoption of a* restructuring plan shall not be affected by the plan.

Amendment

2. Creditors who are not *identified* in the restructuring plan *confirmed by a judicial or administrative authority* shall not be affected by the plan.

Or. en

Amendment 255
Tom Vandenkendelaere

Proposal for a directive
Article 15 – paragraph 4

Text proposed by the Commission

4. *Member States shall ensure that, where an appeal pursuant to paragraph 3 is upheld, the judicial authority may either:*

- (a) set aside the restructuring plan; or*
- (b) confirm the plan and grant monetary compensation to the dissenting creditors, payable by the debtor or by the creditors who voted in favour of the plan.*

Amendment

deleted

Or. en

Amendment 256
Enrique Calvet Chambon

Proposal for a directive
Article 15 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) confirm the plan and **grant monetary compensation to the** dissenting creditors, payable by the debtor or by the creditors who voted in favour of the plan.

(b) confirm the plan and **assess the possibility for** dissenting creditors **that suffer unjustifiable damage under the plan to be granted monetary compensation**, payable by the debtor or by the creditors who voted in favour of the plan.

Or. en

Justification

Amends and replaces AM40 of the draft opinion.

Amendment 257
Jonás Fernández

Proposal for a directive
Article 15 – paragraph 4 – point b

Text proposed by the Commission

(b) confirm the plan and grant monetary compensation to the dissenting creditors, payable by the debtor **or by the creditors who voted in favour of the plan.**

Amendment

(b) confirm the plan and grant monetary compensation to the dissenting creditors, payable by the debtor.

Or. en

Amendment 258
Andrea Cozzolino

Proposal for a directive
Article 16 – paragraph 2

Text proposed by the Commission

2. **Member States may afford granters of new or interim financing the right to receive payment with priority in the context of subsequent liquidation procedures in relation to other creditors that would otherwise have superior or equal claims to money or assets.** In such cases, Member States shall rank new

Amendment

2. In such cases, Member States shall rank new financing and interim financing senior to the claims of ordinary unsecured creditors.

financing and interim financing *at least* senior to the claims of ordinary unsecured creditors.

Or. it

Amendment 259

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 16 – paragraph 2

Text proposed by the Commission

2. Member States may afford grantors of new or interim financing the right to receive payment with priority in the context of subsequent liquidation procedures in relation to other creditors that would otherwise have superior or equal claims to money or assets. In such cases, Member States shall rank new financing and interim financing *at least* senior to the claims of ordinary unsecured creditors.

Amendment

2. Member States may afford grantors of new or interim financing the right to receive payment with priority in the context of subsequent liquidation procedures in relation to other creditors that would otherwise have superior or equal claims to money or assets. In such cases, Member States shall rank new financing and interim financing senior to the claims of ordinary unsecured creditors *without affecting the ranking of secured creditors*.

Or. en

Amendment 260

Andrea Cozzolino

Proposal for a directive

Article 16 – paragraph 3

Text proposed by the Commission

3. *The grantors of new financing and interim financing in a restructuring process shall be exempted from civil, administrative and criminal liability in the context of the subsequent insolvency of*

Amendment

deleted

the debtor, unless such financing has been granted fraudulently or in bad faith.

Or. it

Amendment 261
Markus Ferber

Proposal for a directive
Article 17 – paragraph 3

Text proposed by the Commission

3. Member States *may* require the transactions referred to in point (e) of paragraph 2 to be approved by a practitioner in the field of restructuring or by a judicial or administrative authority in order to benefit from the protection referred to in paragraph 1.

Amendment

3. Member States *shall* require the transactions referred to in point (e) of paragraph 2 to be approved by a practitioner in the field of restructuring or by a judicial or administrative authority in order to benefit from the protection referred to in paragraph 1.

Or. en

Amendment 262
Hugues Bayet

Proposal for a directive
Article 18 – paragraph 1 – point b

Text proposed by the Commission

(b) to have due regard to the interests of creditors and other stakeholders;

Amendment

(b) to have due regard to the interests of creditors and other stakeholders, *including in relation to employment;*

Or. fr

Amendment 263
Hugues Bayet

Proposal for a directive
Article 18 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) to fulfil, in the manner most compatible with confidentiality, the obligations arising from the directives granting rights to workers.

Or. fr

Amendment 264

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 18 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) not to reduce intentionally the value of the company's net assets below the level necessary to discharge accrued liabilities to workers;

Or. en

Amendment 265

Hugues Bayet

Proposal for a directive

Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

National law shall provide for a diminished liability regime for managers who comply with subparagraph 1 and an aggravated sanction regime for managers who have not done so, either with intent to defraud or with obvious bad faith, or for managers who, despite being alerted by workers or their representatives to a risk of insolvency, did not take the immediate steps referred to above or who misused the restructuring procedures by not

minimising the loss for creditors, workers and other stakeholders.

Or. fr

Amendment 266

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Failure to comply with the above obligations shall be taken into account in determining the period and conditions of discharge, as provided for in Article 22, and can lead to disqualification orders for directors, which, if issued in one Member State, shall prevent the same person from undertaking managerial duties in undertakings based in other Member States.

Or. en

Amendment 267

Sander Loones

Proposal for a directive

Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. By way of derogation from Articles 19, 20 and 21, Member States may maintain or introduce provisions restricting access to discharge or laying down longer periods for obtaining a full discharge or longer disqualification periods in *certain* well-defined circumstances and where such limitations are justified by a general interest, in particular where:

1. By way of derogation from Articles 19, 20 and 21, Member States *shall maintain or introduce provisions restricting access to discharge or laying down longer periods for obtaining a full discharge or longer disqualification periods where the over-indebted entrepreneur acted dishonestly or in bad faith towards the creditors when becoming indebted or during the collection of the debts, and* may maintain

or introduce provisions restricting access to discharge or laying down longer periods for obtaining a full discharge or longer disqualification periods in *other* well-defined circumstances and where such limitations are justified by a general interest, in particular where:

Or. en

Amendment 268
Sander Loones

Proposal for a directive
Article 22 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) *the over-indebted entrepreneur acted dishonestly or in bad faith towards the creditors when becoming indebted or during the collection of the debts;*

deleted

Or. en

Amendment 269
Markus Ferber

Proposal for a directive
Article 22 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the over-indebted entrepreneur does not adhere to a repayment plan or to any other legal obligation aimed at safeguarding the interests of creditors;

(b) the over-indebted entrepreneur does not *substantially* adhere to a repayment plan or to any other legal obligation aimed at safeguarding the interests of creditors, *taking into consideration the difficulties in terms of adherence to insolvency and restructuring procedures, which micro and small enterprises encounter.*

Or. en

Amendment 270

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 22 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) directors have systematically failed to comply with their obligations, laid down in Article 18.

Or. en

Amendment 271

Tom Vandenkendelaere

Proposal for a directive

Article 23 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that, where an over-indebted entrepreneur has professional debts incurred in the course of his or her trade, business, craft or profession as well as personal debts incurred outside those activities, ***all*** debts are treated in ***a single procedure*** for the purposes of obtaining a discharge.

1. Member States shall ensure that, where an over-indebted entrepreneur has professional debts incurred in the course of his or her trade, business, craft or profession as well as personal debts incurred outside those activities, ***professional and personal*** debts are ***to be*** treated in ***separate procedures*** for the purposes of obtaining a discharge.

Or. en

Amendment 272

Sander Loones

Proposal for a directive

Article 23 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States **shall** ensure that, where an over-indebted entrepreneur has professional debts incurred in the course of his or her trade, business, craft or profession as well as personal debts incurred outside those activities, all debts are treated in a single procedure for the purposes of obtaining a discharge.

1. Member States **may** ensure that, where an over-indebted entrepreneur has professional debts incurred in the course of his or her trade, business, craft or profession as well as personal debts incurred outside those activities, all debts are treated in a single procedure for the purposes of obtaining a discharge.

Or. en

Amendment 273
Tom Vandenkendelaere

Proposal for a directive
Article 23 – paragraph 2

Text proposed by the Commission

2. ***Member States may derogate from paragraph 1 and stipulate that professional and personal debts are to be treated in separate procedures, provided that these procedures can be coordinated for the purposes of obtaining a discharge in accordance with this Directive.***

Amendment

deleted

Or. en

Amendment 274
Tom Vandenkendelaere

Proposal for a directive
Article 24 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the members of the judiciary and administrative authorities dealing with restructuring, insolvency and second chance matters ***receive initial and further training to*** a level appropriate to their responsibilities.

Amendment

1. Member States shall ensure that the members of the judiciary and administrative authorities dealing with restructuring, insolvency and second chance matters ***have the expertise and experience at*** a level appropriate to their responsibilities.

Amendment 275
Tom Vandenkendelaere

Proposal for a directive
Article 25 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that mediators, insolvency practitioners and other practitioners appointed in restructuring, insolvency and second chance matters ***receive the necessary initial and further training*** in order to ensure that their services are provided in an effective, impartial, independent and competent way in relation to the parties.

Amendment

1. Member States shall ensure that mediators, insolvency practitioners and other practitioners appointed in restructuring, insolvency and second chance matters ***have the expertise and experience*** in order to ensure that their services are provided in an effective, impartial, independent and competent way in relation to the parties.

Amendment 276
Sander Loones

Proposal for a directive
Article 25 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall facilitate the sharing of best practices between Member States in view of improving the quality of training across the Union, including by means of networking and the exchange of experiences and capacity building tools.

Amendment 277
Sander Loones

Proposal for a directive
Article 25 – paragraph 2

Text proposed by the Commission

2. Member States shall encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct by practitioners in the field of restructuring, insolvency and second chance, as well as other effective oversight mechanisms concerning the provisions of such services.

Amendment

2. Member States shall encourage, by any means which they consider appropriate, the development of, and adherence to ***minimum professional standards pertaining to training, professional qualifications and*** voluntary codes of conduct by practitioners in the field of restructuring, insolvency and second chance, as well as other effective oversight mechanisms concerning the provisions of such services.

Or. en

Amendment 278

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive
Article 25 – paragraph 2

Text proposed by the Commission

2. Member States shall ***encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct*** by practitioners in the field of restructuring, insolvency and second chance, as well as other effective oversight mechanisms concerning the provisions of such services.

Amendment

2. Member States shall ***ensure that*** practitioners in the field of restructuring, insolvency and second chance, as well as other effective oversight mechanisms concerning the provisions of such services, ***comply with statutory codes of conduct, which shall include at least relevant provisions on: training, qualification, licensing, registration, personal liability, insurance and good repute.***

Or. en

Amendment 279

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive
Article 25 – paragraph 2

Text proposed by the Commission

2. Member States shall *encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct by practitioners in the field of restructuring, insolvency and second chance, as well as other effective oversight mechanisms concerning the provisions of such services.*

Amendment

2. Member States shall *set minimum binding standards for practitioners, such as training and professional qualifications, a registered status as a practitioner, liability provisions and a professional code of ethics.*

Or. en

Amendment 280
Tom Vandenkendelaere

Proposal for a directive
Article 26 – paragraph 3

Text proposed by the Commission

3. Where practitioners in the field of restructuring, insolvency and second chance are appointed by the judicial or administrative authority, Member States shall ensure that the criteria concerning the manner in which the judicial or administrative authority selects such a practitioner are clear and transparent. In selecting a practitioner in the field of restructuring, insolvency and second chance for a particular case, due consideration shall be given to the practitioner's experience and expertise. *Where appropriate, the debtors and creditors shall be consulted in the selection of the practitioner.*

Amendment

3. Where practitioners in the field of restructuring, insolvency and second chance are appointed by the judicial or administrative authority, Member States shall ensure that the criteria concerning the manner in which the judicial or administrative authority selects such a practitioner are clear and transparent. In selecting a practitioner in the field of restructuring, insolvency and second chance for a particular case, due consideration shall be given to the practitioner's experience and expertise.

Or. en

Amendment 281
Tom Vandenkendelaere

Proposal for a directive
Article 27 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that the fees charged by practitioners in the field of restructuring, insolvency and second chance are governed by rules which incentivise a timely and efficient resolution of procedures with due regard to the complexity of the case. Member States shall ensure that appropriate procedures with built-in safeguards are available to ensure that any disputes over remuneration can be resolved in a timely manner.

Amendment

2. Member States shall ensure that the fees charged by practitioners in the field of restructuring, insolvency and second chance are governed by rules which incentivise a timely and efficient resolution of procedures with due regard to the complexity of the case, ***and to the responsibilities of an administrative or judicial authority***. Member States shall ensure that appropriate procedures with built-in safeguards are available to ensure that any disputes over remuneration can be resolved in a timely manner.

Or. en

Amendment 282
Sander Loones

Proposal for a directive
Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27a

Information available to second chance entrepreneurs

1. ***Member States shall 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 set-up of a new business.***

2. ***Member States shall communicate to the Commission on a yearly basis the***

information to be provided under paragraph 1.

3. *The Commission shall publish the information to be provided under paragraph 1 and received according to paragraph 2 in a user-friendly way on its website.*

Or. en

Amendment 283

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 28 – paragraph 1 – point c

Text proposed by the Commission

(c) notifications to creditors;

Amendment

(c) notifications to creditors **and workers' representatives**;

Or. en

Amendment 284

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 29 – paragraph 1 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) the number of job losses, transfer of part or whole of the business, part redundancy, impact of restructuring agreements on employment, breaches of directors' obligations and the level of public finance.

Or. en

Amendment 285

Sander Loones

Proposal for a directive

Article 29 – paragraph 1 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) the number of debtors who, after having undergone a procedure referred to in points (a) (ii) and (iii), launched a new business;

Or. en

Amendment 286

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 29 – paragraph 1 – subparagraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) the number of job losses and the impact on workers' conditions of restructuring agreements and insolvency procedures;

Or. en

Amendment 287

Sander Loones

Proposal for a directive

Article 29 – paragraph 1 – subparagraph 1 – point g b (new)

Text proposed by the Commission

Amendment

(gb) for debtors who launched a new business after having undergone a procedure referred to in points (a) (ii) and (iii), the average time between the end of the procedure and the launch of the new business;

Amendment 288

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 29 – paragraph 1 – subparagraph 1 – point g b (new)

Text proposed by the Commission

Amendment

(gb) the number of fraudulent restructuring and insolvency procedures and the functioning of enforcement mechanisms in place;

Or. en

Amendment 289

Sander Loones

Proposal for a directive

Article 29 – paragraph 1 – subparagraph 1 – point g c (new)

Text proposed by the Commission

Amendment

(gc) the work carried out by each practitioner, including with respect to data referred to in points (a), (b), (c), (d) and (e) of this paragraph;

Or. en

Amendment 290

Sander Loones

Proposal for a directive

Article 29 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall compile statistics from the aggregate data referred to in paragraphs 1 and 2 for full calendar

3. Member States shall compile statistics from the aggregate data referred to in paragraphs 1 and 2 for full calendar

years ending on 31 December of each year, starting with data collected for the first full calendar year following [the date of start of application of implementing measures]. These statistics shall be communicated to the Commission on the basis of a standard data communication form annually, by 31 March of the calendar year following the year for which data is collected.

years ending on 31 December of each year, starting with data collected for the first full calendar year following [the date of start of application of implementing measures]. These statistics shall be communicated to the Commission on the basis of a standard data communication form annually, by 31 March of the calendar year following the year for which data is collected. **Member States shall make these statistics publicly available and present them by means of a user-friendly website.**

Or. en

Amendment 291

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 29 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall centralise on their website the information laid down in paragraphs 1, 2 and 3 in a public, free and user-friendly way.

Or. en

Amendment 292

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 30 a (new)

Text proposed by the Commission

Amendment

Article 30a

Obligation to report

1. Any debtor involved in a restructuring, insolvency or discharge

procedure in a Member State that also operates in another Member State shall report to the competent authority, administration or court of both countries the beginning of any of these procedures.

2. The debtor is obliged to report the activity, volume and structure of its business in other Member States or third countries, segregated country by country, to the administration of court involved in the restructuring, insolvency or discharge procedure.

Or. en

Amendment 293

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 31 – paragraph 1 – introductory part

Text proposed by the Commission

1. *This Directive shall be without prejudice to the following acts:*

Amendment

1. *The provisions of the following acts shall prevail over this Directive:*

Or. en

Amendment 294

Jonás Fernández

Proposal for a directive

Article 31 – paragraph 1 – introductory part

Text proposed by the Commission

1. *This Directive shall be without prejudice to the following acts:*

Amendment

1. *The provisions of the following acts shall prevail over this Directive:*

Or. en

Amendment 295

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 31 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) Directive 2008/94/EC concerning the protection of employees in the event of insolvency of an employer

Or. en

Amendment 296

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 31 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) Directives 98/59/EC, 2001/23/EC, 2002/14EC, 2008/94/EC and 2009/38/EC and in particular the provisions on collective redundancies, workers' rights to constant information and consultation and in the case of transfers of undertakings.

Or. en

Amendment 297

Paloma López Bermejo, Fabio De Masi, Marisa Matias, Matt Carthy, Miguel Viegas

Proposal for a directive

Article 31 – paragraph 2

Text proposed by the Commission

Amendment

2. This Directive shall be without prejudice to workers' rights guaranteed by

2. This Directive shall be without prejudice to workers' rights guaranteed by Directives 98/59/EC, 2001/23/EC, 2002/14EC, 2008/94/EC and 2009/38/EC

Directives 98/59/EC, 2001/23/EC,
2002/14EC, 2008/94/EC and 2009/38/EC.

*and the European Charter of
Fundamental Rights.*

Or. en

Amendment 298

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 33 – paragraph 1

Text proposed by the Commission

No later than [5 years from the date of start of application of implementing measures] and every 7 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive, including on whether additional measures to consolidate and strengthen the legal framework on restructuring, insolvency and second chance should be considered.

Amendment

No later than[3 years from the date of start of application of implementing measures] and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive, including on whether additional measures to consolidate and strengthen the legal framework on restructuring, insolvency and second chance should be considered *including the availability of resources and of specialised courts.*

Or. en