



**2016/0359(COD)**

09.10.2017

# **COMPROMISE AMENDMENTS**

## **1 - 20**

**Draft opinion**

**Edouard Martin**

(PE601.220v02-00)

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 1**

**EPP, S&D, Greens/EFA**

Compromise amendment replacing Amendments 21, 22, 23 and 25

### **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 **contribute to the proper functioning of the internal market by removing** 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. **Without prejudice to workers' fundamental rights and freedoms 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 **and thereby reducing avoidable job losses 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.

Or. en

## **Amendment 2**

**EPP, S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 29, 30, 31 and 32

### **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, **the result of appropriate and viable expert reports**, 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 **and the liquidation of viable companies**. Those frameworks should **prevent job losses and loss of knowledge and skills and** 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. 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. en

**Amendment 3**

**EPP, S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 68 and 71

**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

*Amendment*

(13) In particular small and medium sized enterprises should benefit from a coherent approach at Union level, since they do not have the necessary resources to cope with high restructuring costs and to

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.

take advantage of the restructuring procedures in some Member States, *which have proved to be efficient*. Small and medium enterprises, especially when facing financial difficulties, *as well as workers representatives*, 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.

Or. en

#### **Amendment 4**

**EPP, S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 75 and 76

#### **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*

##### *Amendment*

(16) The earlier the debtors *or the workers' representatives* can *communicate concerns about the undertaking's worrying situation or* 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 *and to empower the workers concerned in order that they are able to take an active role in the restructuring process*. Possible early warning

*such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development.*

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, *social security, competition and audit authorities would have sufficient means under domestic law to draw attention to any dangerous development at the earliest possible stage.*

Or. en

### **Amendment 5**

**S&D, Greens/EFA**

Compromise amendment replacing Amendments 20, 28, 34, 42, 51, 54, 62, 65, 69, 74, 80, 84, 90, 92, 120, 123 and 124

**Proposal for a directive  
recital 47 a (new)**

*Text proposed by the Commission*

*Amendment*

*(47a) Further assessment should be done in order to evaluate the necessity and consequently put forward legislative initiatives for consumer insolvency affecting those persons not exercising a trade, business, craft or profession comparable to the activities of an employer, who, as consumers or users of goods or public or private services, are, in good faith, temporarily or permanently, unable to pay debts as they fall due. Such initiatives should provide that access to basic goods and services (including housing) is safeguarded to ensure decent living conditions.*

Or. en

### **Amendment 6**

**EPP, S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 133 and 134

**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 reduce the amount owed to all or some of the creditors or to transfer all or part of the viable business to another enterprise within a long-term strategy;***

Or. en

**Amendment 7**

**EPP, S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 6, 143, 145 and 150

**Proposal for a directive**

**Article 2 – paragraph 1, paragraph 3, paragraph 6, paragraph 7 and paragraph 15 a**

*Text proposed by the Commission*

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

(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;

(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;

*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;

(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;

(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 Member States shall be responsible for delineating these***

*categories while taking into account that workers are a class of preferential creditors; any legal change on the delineation of these categories must not affect a restructuring plan in progress in order to ensure legal certainty;*

(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;

(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;**

(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:

(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:

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

(a) to assist the debtor or the creditors in drafting or negotiating a **viable** restructuring **or business wind-up** plan;

Or. en

## **Amendment 8**

**S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 8, 9, 160 and 161

### **Proposal for a directive**

#### **Article 3 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Member States shall ensure that workers' representatives may communicate concerns to debtors and entrepreneurs about the worrying situation the undertaking is in and the urgent nature of that situation;**



*Member States shall ensure that workers' representatives are in a position to have recourse to an independent expert provided by the undertaking depending on its size, giving access to relevant, up-to-date, clear, concise and user-friendly information regarding the situation of the business and the different restructuring strategies being envisaged, including transfer to worker ownership;*

*At the same time, Member States shall ensure that the tax, social security, competition and audit authorities have sufficient means under national law to be able to flag any worrying developments as soon as possible.*

Or. en

## **Amendment 9**

**EPP, S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 162, 163, 164 and 166

### **Proposal for a directive**

#### **Article 4**

##### *Text proposed by the Commission*

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.

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

##### *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 ***or arrange for sustainable management 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.***

2. Preventive restructuring frameworks may consist of one or more procedures or measures, ***duly negotiated and consulted with workers' representatives if any, who shall retain all***

*rights of collective bargaining and industrial action. It shall also provide for procedures or measures destined to the recovery of the indebted firm by workers, according to the relevant national law.*

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.

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

3. Member States shall 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.

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

Or. en

#### **Amendment 10**

**S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 183 and 184

#### **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 11**

**S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 196 and 197

**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 procedures requested by the workers under Article 6(3).***

Or. en

**Amendment 12**  
**S&D, GUE/NGL, Greens/EFA**  
Compromise amendment replacing Amendments 201 and 202

**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, ***following problem solving or business divestiture procedures*** or the debtor's business as well as a reasoned statement on the causes and the extent of the financial difficulties of the debtor; ***without prejudice to European and national confidentiality rules, it shall include a detailed description of any assets, debts and their location and a relation of the financial obligations and flows with the business' parent companies and subsidiaries.***

Or. en

**Amendment 13**  
**EPP, S&D, GUE/NGL, Greens/EFA**  
Compromise amendment replacing Amendments 10, 11, 205, 206, 208 and 210

**Proposal for a directive**

**Article 8 – paragraph 1 – point f – point iii a (new), iii b (new), iii c (new) and point g a (new)**

*Text proposed by the Commission*

*Amendment*

*(iiia) the impact on all types of pensions of retired and current workers.*

*(iiib) its impact on the working conditions and remuneration of workers.*

*(iiic) its impact on subsidiaries and subcontractors.*

*(ga) an assessment of the employability and the individual and collective skills of the employees who are affected by the plan.*

Or. en

**Amendment 14**

**S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 211 and 212

**Proposal for a directive**

**Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. Workers' claims or other rights shall not be affected by restructuring plans, which shall take into account that any financial claims by workers shall take priority.*

Or. en

**Amendment 15**

**EPP, S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 13, 218, 219 and 220

**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, **including workers affected by a waiver plan**, have a right to vote **after having been duly informed about the procedure and its potential consequences for the company** on the adoption of **the** restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Or. en

**Amendment 16**  
**S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 14, 226, 227, 228, 229 and 230

**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 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 adopting a restructuring plan. **Taking into account that workers are a class of preferential creditors, except in duly justified circumstances**, Member States **shall** also **ensure** that **outstanding wage**

*claims for active workers and pension for retired workers are treated in a separate preferential class of their own and guarantee the priority of their claims.*

Or. en

#### **Amendment 17**

**EPP, S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 232, 233 and 234

#### **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 ***and in terms of the number of members with voting rights*** is obtained in each and every class ***including the workers' 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. en

#### **Amendment 18**

**S&D, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 16, 18, 245, 247 and 248

#### **Proposal for a directive**

#### **Article 10 – paragraph 1 – point b a (new) and b b (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) restructuring plans which cut more than 10 jobs within one month in the undertaking;*

*(bb) restructuring plans which are subject to counter-proposals from the workers' class, in particular to further those which include a change of shareholder supported by the workers' class, or restructuring plans making workers the future buyers, which have been approved by the class of workers after an information and consultation procedure.*

Or. en

**Amendment 19**

**EPP, S&D, ALDE, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 295 and 296

**Proposal for a directive**

**Article 29 – point g a (new) and g b (new)**

*Text proposed by the Commission*

*Amendment*

*(ga) the number of job losses, transfer of part or whole of the business, part redundancy and impact of restructuring agreements on the employment and the level of public finance;*

*(gb) an evaluation of the work carried by the practitioners and its results;*

Or. en

**Amendment 20**

**S&D, ALDE, GUE/NGL, Greens/EFA**

Compromise amendment replacing Amendments 135, 136, 137, 140, 148, 154, 172, 179, 181, 185, 189, 190, 191, 192, 194, 273, 275, 277, 279, 282, 283, 284, 287 and 288

**Proposal for a directive**  
**Article 23 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States may extend the scope of the second chance for entrepreneurs to include physical persons, affecting those persons not exercising a trade, business, craft or profession comparable to activities of an employer. The enlargement of the scope should aim at avoiding physical persons' over-indebtedness in good faith, by a discharge procedure to keep carrying debts once a partial repayment has been done and to allow them to renew their access to credit. The Commission provides an impact assessment about how it would help Member States to reduce poverty and social exclusion and to foster economic activities in this regard.***

Or. en