



05.12.2017

OPINION

of the Committee on Employment and Social Affairs

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM(2016)0723 – C8-0475/2016 – 2016/0359(COD))

Rapporteur: Edouard Martin

SHORT JUSTIFICATION

From the point of view of the Committee on Employment and Social Affairs, a matter of concern in this legislative proposal is the fact that workers employed in companies are, as creditors, being placed on the same footing as banks or any other equity holders.

This vision of a company on the one hand confines the proposal to financial aspects, while regarding and describing the recovery of a company solely as a financial reorganisation of its stakeholders with a view to making a 'fresh start', without any real consideration for the workers.

Moreover, this means that creditors are virtually being identified with consumers, as pointed out in the introductory text, which, while being reluctant to take the plunge, envisages the possibility of the directive being applied to consumption-related matters. The proposed amendments pursue several lines of approach:

- to ensure the recognition of the corporate social responsibility of undertakings, which cannot boil down to organised networks of contracts between entrepreneurs, equity holders, capital lenders, suppliers, customers and workers, but are social organisations which produce value through the individual and collective work of their staff members; as such, therefore, workers are not in exactly the same class as the others;
- to enable workers and their representatives, bolstered by their knowledge of the working environment, to exercise whistleblowing rights and be able to warn of an economic situation which they consider to be of concern; in addition, in relation to early restructuring, workers should be placed on an equal footing with other stakeholders or creditors (as the text calls them) and they and their representatives should be entitled to, and given access to, assessment and advice resources which they currently lack;
- to take into account cases in which people who have retired from an undertaking that is threatened with bankruptcy might potentially be affected (company savings plans, pension funds, etc.) and consider them, in these cases, as a 'class' within the meaning of the directive.

In its introductory text, the Commission welcomes the positive impact of the right to information and consultation; however, this can only be the case if those rights are effective, which has not yet been ascertained. It is worth pointing out that the 'Workers' right to information and consultation within the undertaking' is enshrined in Article 27 of the Charter of Fundamental Rights. It is vital that any early restructuring not only should adhere to these principles, but should, all the more, put social dialogue in its rightful place. The measures proposed in this opinion will have a positive impact on this right since they do not affect existing Union legislation in this area and also provide for a right for the workers concerned to vote on restructuring plans.

Lastly, the proposed amendments strengthen four of the eight 'benefits' identified in the impact assessment (Nos 1, 3, 5 and 8): 'efficient possibilities for early restructuring'; 'facilitating continuation of a debtor's business while restructuring'; 'increasing restructuring plans' chances of success' and 'increasing the effectiveness of restructuring, insolvency and second chance'.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) 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.

Amendment 2

Proposal for a directive

Recital 1

Text proposed by the Commission

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; 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.

(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, **thus reducing avoidable job losses while contributing to the same extent as would be the case in the event of liquidation to satisfying 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.

Amendment 3

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 ***and 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 the company assets, to*** 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.

Amendment 4

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) *The Member States should examine the possibility of devising mechanisms to prevent excessive or abusive recourse by employees to experts at the expense of an undertaking, since such recourse would ultimately have a negative impact on the financial situation of the undertaking.*

Amendment 5

Proposal for a directive
Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) *Given that it would reduce legal uncertainty, a common legislative framework would be positive for the interests of businesses and entrepreneurs wishing to extend their activity to other Member States and for transnational investors.*

Amendment 6

Proposal for a directive
Recital 3 c (new)

Text proposed by the Commission

Amendment

(3c) *Special treatment should be accorded to retired workers whose pensions depend, entirely or in part, on company pension plans, and who might be harmed by early restructuring.*

Amendment 7

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) In many Member States it takes more than three years for bankrupt, but honest entrepreneurs to discharge their debts and make a fresh start. Inefficient second chance frameworks result in entrepreneurs having to relocate in other jurisdictions in order to benefit from a fresh start in a reasonable period of time, at considerable additional costs to both their creditors and the debtors themselves. Long disqualification orders which often accompany a procedure leading to discharge create obstacles to the freedom to *take up and* pursue *a self-employed*, entrepreneurial activity.

Amendment

(4) In many Member States it takes more than three years for bankrupt, but honest entrepreneurs to discharge their debts and make a fresh start. Inefficient second chance frameworks result in entrepreneurs having to relocate in other jurisdictions in order to benefit from a fresh start in a reasonable period of time, at considerable additional costs to both their creditors and the debtors themselves. Long disqualification orders which often accompany a procedure leading to discharge create obstacles to the freedom to pursue entrepreneurial activity.

Amendment 8

Proposal for a directive

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) A second chance should be seen as a step towards success and not a synonym for failure. Second-chance mechanisms that allow the exoneration of unpaid debt for debtors who are considered to be acting in good faith represent a disincentive for the black economy, and foster a business culture, thereby resulting in a positive effect on employment. Member States should be allowed to extend second-chance mechanisms to natural persons.

Amendment 9

Proposal for a directive

Recital 5

Text proposed by the Commission

Amendment

(5) Excessive length of restructuring,

(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*.

insolvency and discharge procedures in several Member States, *or the virtual inexistence of such procedures in some cases*, is an important factor triggering *long-lasting adverse consequences for the workers concerned*, low *business* recovery rates, deterring investors from *doing* business in *the countries concerned and dramatically contributing to the increase in the number of citizens at risk of poverty or social and labour exclusion, and thereby undermining the social and economic resilience of society as a whole*.

Amendment 10

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. *Such uncertainty therefore acts as a disincentive to investment, obstructs the freedom of establishment of undertakings, and harms the proper functioning of the internal market.*

Amendment 11

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 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, *as well as for the viability of economic activity, and therefore for the preservation and creation of jobs.*

Amendment 12

Proposal for a directive Recital 8

Text proposed by the Commission

(8) The additional risk-assessment and cross-border enforcement costs for creditors of over-indebted entrepreneurs who relocate to another Member State in order to obtain a second chance in a much shorter period of time should also be removed. The additional costs for entrepreneurs stemming from the need to relocate to another Member State in order to benefit from a second chance should also be reduced. Furthermore, the obstacles stemming from long disqualification orders linked to an entrepreneur's over-indebtedness *suppresses* entrepreneurship.

Amendment

(8) The additional risk-assessment and cross-border enforcement costs for creditors of over-indebted entrepreneurs who relocate to another Member State in order to obtain a second chance in a much shorter period of time should also be removed. The additional costs for entrepreneurs stemming from the need to relocate to another Member State in order to benefit from a second chance should also be reduced. Furthermore, the obstacles stemming from long disqualification orders linked to an entrepreneur's over-indebtedness *stifles* entrepreneurship.

Amendment 13

Proposal for a directive Recital 8 a (new)

(8a) It is widely recognised that any restructuring operation, in particular one of a major size and which generates a significant impact, should be accompanied by an explanation and justification to the stakeholders, covering the choice of the measures envisaged in relation to the objectives and to alternative options and respecting the full and appropriate involvement of workers' representatives at all levels, prepared in good time to enable stakeholders to prepare for consultations, before the company takes a decision^{1 a}.

^{1a} (P7_TA(2013)0005 *Information and consultation of workers, anticipation and management of restructuring*)

Amendment 14

Proposal for a directive Recital 13

(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

(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 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

be able to use and adapt them to their own needs and to the specificities of their business.

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 15

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In order to secure a more coherent approach, the Commission should consider setting up a registry of insolvencies in the European Union, which would provide greater transparency for all creditors and simplify access to information, in particular for small and medium-sized enterprises and for employees.

Amendment 16

Proposal for a directive Recital 16

Text proposed by the Commission

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,

(16) The earlier the debtors ***or the workers' representatives can communicate concerns about an 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 so that they are able to take an active role in the restructuring process.***

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.

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, *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.*

Amendment 17

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

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 if all or part of the business is transferred to another undertaking*.

Amendment 18

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 *restructuring* 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 *restructuring* 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 19

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

Amendment

(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 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

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 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 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.

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.

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.

Amendment 20

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

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 from other classes of creditors.

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 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.***

Amendment 21

Proposal for a directive Recital 38

Text proposed by the Commission

(38) A full discharge or the end of disqualification after a short period of time are not appropriate in all circumstances, for instance in cases where the debtor is dishonest or has acted in bad faith. Member States should provide clear guidance to judicial or administrative authorities on ***how to assess*** the honesty of the entrepreneur. For example, in establishing whether the debtor was dishonest, judicial or administrative authorities may take into account circumstances such as the nature and extent of the debts, the time when these were incurred, the efforts of the debtor to meet the debts and comply with legal obligations including public licensing requirements and proper bookkeeping, and actions on his or her part to frustrate recourse by

Amendment

(38) A full discharge or the end of disqualification after a short period of time are not appropriate in all circumstances, for instance in cases where the debtor is dishonest or has acted in bad faith. Member States should provide clear guidance ***and criteria*** to judicial or administrative authorities on ***the method for assessing*** the honesty of the entrepreneur. For example, in establishing whether the debtor was dishonest, judicial or administrative authorities may take into account circumstances such as the nature and extent of the debts, the time when these were incurred, the efforts of the debtor to meet the debts and comply with legal obligations including public licensing requirements and proper bookkeeping, and actions on his or her part to frustrate

creditors. Disqualification orders may last longer or indefinitely in situations where the entrepreneur exercises certain professions which are considered sensitive in the Member States or where he or she was convicted for criminal activities. In such cases it would be possible for entrepreneurs to benefit from a discharge of debt, but still be disqualified for a longer period of time or indefinitely from exercising a particular profession.

recourse by creditors. Disqualification orders may last longer or indefinitely in situations where the entrepreneur exercises certain professions which are considered sensitive in the Member States or where he or she was convicted for criminal activities. In such cases it would be possible for entrepreneurs to benefit from a discharge of debt, but still be disqualified for a longer period of time or indefinitely from exercising a particular profession.

Amendment 22

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. 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.

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

Amendment 23

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 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 *and bear in mind the objective of restoring the viability of the company*. Practitioners should *be rescuers not liquidators and they should* adhere to *a code* 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 24

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 proposals to deal with 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 legislative proposals should provide that access to basic goods and services is safeguarded for those persons to ensure them decent living conditions.

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

(a) preventive restructuring procedures available for debtors in financial difficulty, when there is a likelihood of insolvency; ***or procedures that are 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;***

Amendment 26

Proposal for a directive

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

Amendment

(6) 'class formation' means the

(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;

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

Amendment 27

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 a restructuring plan the transfer price of which 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 creditors who do not receive full payment of their claims;***

Amendment 28

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

Amendment

(a) to assist the debtor or the creditors

in drafting or negotiating a restructuring plan;

in drafting or negotiating a *viable* restructuring *or sale* plan;

Amendment 29

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 sale* plan and report to a judicial or administrative authority;

Amendment 30

Proposal for a directive

Article 3 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall ensure that debtors, *entrepreneurs as well as workers and their representatives* 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.

Amendment 31

Proposal for a directive

Article 3 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that debtors *and entrepreneurs* have access to relevant up-to-date, clear, concise and user-friendly information about the availability of early warning tools and any means available to them to restructure at an early stage or to obtain a discharge of personal debt.

Amendment

2. Member States shall ensure that debtors, *entrepreneurs as well as workers and their representatives* have access to relevant up-to-date, clear, concise and user-friendly information about the availability of early warning tools and any means available to them to restructure at an early stage or to obtain a discharge of personal

debt.

Amendment 32

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

Text proposed by the Commission

Amendment

2a. Member States shall ensure that employees' representatives have full access to information and are consulted if action needs to be taken;

Amendment 33

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

Text proposed by the Commission

Amendment

3a. Member States shall ensure that workers' representatives are able to communicate concerns to debtors and entrepreneurs about the difficulties the undertaking is in and the urgent nature of those difficulties;

Member States shall ensure that workers' representatives are in a position to have recourse to an independent expert of their choice in accordance with national law and practices, giving an access to relevant, up-to-date, clear, concise and user-friendly information regarding the financial situation of the business and the different restructuring strategies being envisaged, including transfer to worker ownership;

Member States shall also ensure that the tax, social security, competition and audit authorities are able under national law to be able to flag any worrying financial developments as soon as possible.

Amendment 34

Proposal for a directive Article 4

Text proposed by the Commission

Article 4

Availability of preventive restructuring frameworks

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.
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.

Amendment

Article 4

Availability of preventive restructuring frameworks

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. Such frameworks shall also provide for procedures or measures aimed at the rescue of the indebted firm by workers, in accordance with 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, ***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.

Amendment 35

Proposal for a directive Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 36

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 keeping on the entire workforce.

Amendment 37

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 **or sale** 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 38

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 all types of creditors, including secured and preferential creditors **but excluding workers**. The stay may be general, covering all creditors, or limited, covering one or more individual creditors, in accordance with national law.

Justification

While the safeguard of Art: 6.3 is a good one, it needs to be stated in the general text of 6.1 that the workers class has a special status

Amendment 39

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

Text proposed by the Commission

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

Amendment

(a) relevant progress has been made in the negotiations on the restructuring plan **or transfer of the viable part of the business to another undertaking in accordance with the conditions laid down in this Directive**; and

Amendment 40

**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

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.

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.

Amendment 41

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 assets liquidation 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 Union and national confidentiality rules, it shall include a detailed description of any assets, debts and their location and of the relationship between the financial obligations and cashflows with the business's parent companies and subsidiaries.*

Amendment 42

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

Text proposed by the Commission

(f) the terms of the plan, including, but not limited to:
(i) its proposed duration;
(ii) any proposal by which debts are rescheduled or waived or converted into other forms of obligation;
(iii) any new financing anticipated as

Amendment

(f) the terms of the plan, including, but not limited to:
(i) its proposed duration;
(ii) any proposal by which debts are rescheduled or waived or converted into other forms of obligation;
(iii) any new financing anticipated as

part of the restructuring plan;

part of the restructuring plan;

(iiia) its 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.

Amendment 43

Proposal for a directive

Article 8 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

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

Amendment 44

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 and the workers class shall take priority.

Exceptionally, contractual conditions may be renegotiated in early restructuring processes at company level between the management and the workers' representatives if this serves the normal continuation of business activity and maintenance of jobs.

Amendment 45

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

Amendment 46

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

Amendment 47

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 in accordance with the national law allowing the sale to be authorised and effected.***

Amendment 48

Proposal for a directive Article 9 – paragraph 5

Text proposed by the Commission

5. Member States may stipulate that a vote on the adoption of a restructuring plan takes the form of a consultation and agreement of a requisite majority of affected parties in each class.

Amendment

5. Member States may stipulate that a vote on the adoption of a restructuring plan takes the form of a consultation and agreement of a requisite majority of affected parties in each class. ***In the workers' class this vote shall be held in compliance with national laws.***

Amendment 49

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

Text proposed by the Commission

Amendment

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

Amendment 50

Proposal for a directive

Article 10 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

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

Amendment 51

Proposal for a directive

Article 10 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

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.

Amendment 52

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 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.***

Amendment 53

**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.

Amendment 54

**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.

Amendment 55

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:

Amendment 56

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.

Amendment 57

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***

Amendment

deleted

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.

Justification

This provision constitutes a super-privilege for actors providing new and interim financing. It can lead to downgrading of other creditors including workers and can reduce the remaining substance of the concerned enterprise, thereby further endangering workers

Amendment 58

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

Text proposed by the Commission

(a) to take immediate steps to minimise the loss for creditors, workers, shareholders and other stakeholders;

Amendment

(a) to take immediate steps to minimise the loss for creditors, workers, shareholders and other stakeholders, ***including employment and the interests and rights of workers;***

Amendment 59

**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 mechanism for entrepreneurs to include natural persons, covering persons who do not exercise a trade, business, craft or profession comparable to activities of an employer. The enlargement of the scope shall aim at avoiding natural 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 shall provide an impact assessment on how enlargement of the scope of the second chance mechanism would help Member States to reduce poverty and social exclusion and to foster economic activities.

Amendment 60

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 ***a code*** 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, ***such as licensing and registration.***

Amendment 61

Proposal for a directive Article 28 – paragraph 1 – point c

Text proposed by the Commission

(c) notifications to creditors;

Amendment

(c) notifications to creditors, ***including workers' representatives;***

Amendment 62

Proposal for a directive Article 29 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) the number of job losses, transfers of part or whole of a business, part

redundancy and the impact of restructuring agreements on employment and the public finances;

Amendment 63

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 64

Proposal for a directive

Article 29 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall establish the communication form referred to in paragraph 3 by way of *implementing* acts. *Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 30(2).*

4. The Commission shall establish the communication form referred to in paragraph 3 by way of *delegated* acts.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures
References	COM(2016)0723 – C8-0475/2016 – 2016/0359(COD)
Committee responsible Date announced in plenary	JURI 16.1.2017
Opinion by Date announced in plenary	EMPL 16.1.2017
Rapporteur Date appointed	Edouard Martin 17.1.2017
Discussed in committee	3.5.2017
Date adopted	10.10.2017
Result of final vote	+: 39 –: 1 0: 5
Members present for the final vote	Laura Agea, Guillaume Balas, Brando Benifei, Vilija Blinkevičiūtė, Enrique Calvet Chambon, David Casa, Ole Christensen, Martina Dlabajová, Lampros Fountoulis, Arne Gericke, Agnes Jongerius, Rina Ronja Kari, Jan Keller, Adam Kósa, Agnieszka Kozłowska-Rajewicz, Jérôme Lavrilleux, Jeroen Lenaers, Thomas Mann, Dominique Martin, Emilian Pavel, João Pimenta Lopes, Georgi Pirinski, Marek Plura, Dennis Radtke, Terry Reintke, Maria João Rodrigues, Claude Rolin, Siôn Simon, Ulrike Trebesius, Marita Ulvskog, Renate Weber, Tatjana Ždanoka, Jana Žitňanská
Substitutes present for the final vote	Georges Bach, Amjad Bashir, Heinz K. Becker, Dieter-Lebrecht Koch, Paloma López Bermejo, Edouard Martin, Anne Sander, Sven Schulze, Jasenko Selimovic, Theodoros Zagorakis, Flavio Zanonato, Kosma Złotowski

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

39	+
ALDE	Enrique Calvet Chambon, Martina Dlabajová, Jasenko Selimovic, Renate Weber
EFDD	Laura Agea
GUE/NGL	Rina Ronja Kari, Paloma López Bermejo, João Pimenta Lopes
NI	Lampros Fountoulis
PPE	Georges Bach, Heinz K. Becker, David Casa, Dieter-Lebrecht Koch, Agnieszka Kozłowska-Rajewicz, Ádám Kósa, Jérôme Lavrilleux, Jeroen Lenaers, Thomas Mann, Marek Plura, Dennis Radtke, Claude Rolin, Anne Sander, Sven Schulze, Theodoros Zagorakis
S&D	Guillaume Balas, Brando Benifei, Vilija Blinkevičiūtė, Ole Christensen, Agnes Jongerius, Jan Keller, Edouard Martin, Emilian Pavel, Georgi Pirinski, Maria João Rodrigues, Siôn Simon, Marita Ulvskog, Flavio Zanonato
VERTS/ALE	Terry Reintke, Tatjana Ždanoka

1	-
ENF	Dominique Martin

5	0
ECR	Amjad Bashir, Arne Gericke, Ulrike Trebesius, Jana Žitňanská, Kosma Złotowski

Key to symbols:

+ : in favour

- : against

0 : abstention