

AMENDMENTS 001-108

by the Committee on Legal Affairs

Report**Angelika Niebler****A8-0269/2018**

Increasing the efficiency of restructuring, insolvency and discharge procedures

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

Amendment 1**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 and** 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. **Without affecting workers' fundamental rights and freedoms**, this Directive aims at removing such obstacles by ensuring that viable enterprises **and entrepreneurs** in financial difficulties, **including individual entrepreneurs who are economically viable**, 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 **they have been the subject of an insolvency proceeding**; and that the

effectiveness of restructuring, insolvency and discharge procedures is improved, in particular with a view to shortening their length.

Amendment 2

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 ***and personally liable entrepreneurs*** 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 ***or the business itself***. Preventive restructuring frameworks should above all enable the enterprises to restructure ***rapidly*** at an early stage and to avoid their insolvency ***and the liquidation of viable companies***. Those ***rapid preventive*** frameworks should ***prevent job losses and the loss of knowledge and skills, and*** maximise the total value to creditors ***in comparison to what they would have received in the event of the liquidation of the company assets, and 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. ***The availability of preventive rapid restructuring procedures would ensure that action is taken before companies default on their loans, thereby helping to reduce the risk of loans becoming non-performing in cyclical downturns and cushioning the adverse impact on the financial sector. A significant percentage***

of businesses and jobs could be saved if preventive procedures existed in all Member States where businesses' places of establishment, assets or creditors are situated.

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

(3) There are differences between the Member States as regards the range of the procedures available to debtors in financial difficulties in order to restructure their business. Some Member States have a limited range of procedures meaning that businesses are only able to restructure at a relatively late stage, in the context of insolvency procedures. In other Member States, restructuring is possible at an earlier stage but the procedures available are not as effective as they could be or are very formal, in particular limiting the use of out-of-court processes. Similarly, national rules giving entrepreneurs a second chance, in particular by granting them discharge from the debts they have incurred in the course of their business, vary between Member States in respect of the length of the discharge period and the conditions for granting such a discharge.

Amendment

(3) There are differences between the Member States as regards the range of the procedures available to debtors in financial difficulties in order to restructure their business. Some Member States have a limited range of procedures meaning that businesses are only able to restructure at a relatively late stage, in the context of insolvency procedures. In other Member States, restructuring is possible at an earlier stage but the procedures available are not as effective as they could be or are very formal, in particular limiting the use of out-of-court processes. ***Preventive solutions are a growing trend in modern insolvency law. The trend goes towards favouring approaches that, unlike the traditional approach of liquidating a business in crisis, have the aim of restoring it to health or, at least, saving those of its units which are still economically viable. That practice often helps to maintain jobs or reduce avoidable job losses.*** Similarly, national rules giving entrepreneurs a second chance, in particular by granting them discharge from the debts they have incurred in the course of their business, vary between Member States in respect of the length of the discharge period and the conditions for granting such a discharge. ***Also, the degree of involvement of judicial or administrative authorities or their appointees varies from minimal involvement in some Member States to full participation in others.***

Amendment 4

Proposal for a directive Recital 5

Text proposed by the Commission

(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.

Amendment

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

Amendment 5

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 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. **That uncertainty therefore acts as a disincentive which obstructs the freedom of establishment of undertakings and the promotion of entrepreneurship and harms the proper functioning of the internal market. Small and medium-sized enterprises in particular do not, for the**

most part, have the resources needed to assess risks related to cross-border activities.

Amendment 6

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. At the same time, a greater level of harmonisation would contribute even more towards achieving a common Union commercial law.*

Amendment 7

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) It is widely recognised that any restructuring operation, in particular one of 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 as well as alternative options and should ensure there is full and appropriate involvement of workers' representatives at all levels. The explanation and justification should be prepared in good time to enable stakeholders to prepare for consultations,

before the company takes a decision^{1a}.

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

Amendment 8

Proposal for a directive Recital 13

Text proposed by the Commission

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

Amendment

13. ***Enterprises, and*** in particular small and medium sized enterprises, ***which represent 99% of all businesses in the Union***, should benefit from a more coherent approach at Union level, since they ***are disproportionately more likely to be taken into liquidation rather than be subject to restructuring and they have to bear costs that are twice as high as those faced by larger companies for cross-border procedures, compared with domestic procedures***. Small and medium enterprises, especially when facing financial difficulties, ***as well as workers representatives***, often 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***. In order to help such enterprises restructure at low cost, ***check lists for restructuring plans should also be developed nationally and made available electronically. Members States should consider, in particular, the needs and specificities of small-and medium-sized enterprises when establishing such checklists. Taking into account the limited resources of small-and medium-sized enterprises for hiring professional experts, early warning tools should be put in place to warn debtors of the urgent need to act quickly.***

Amendment 9

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Creditors and workers should be allowed to propose an alternative restructuring plan. Member States should define the conditions under which they are able to propose such a plan.

Amendment 10

Proposal for a directive Recital 13 b (new)

Text proposed by the Commission

Amendment

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

Amendment 11

Proposal for a directive Recital 15

Text proposed by the Commission

Amendment

(15) Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, it is often not possible to draw a clear distinction between the consumer and business debts of an entrepreneur. A second chance regime for entrepreneurs would not be effective if the entrepreneur had to go through separate procedures, with different access conditions and discharge periods, to discharge his business

(15) Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, it is often not possible to draw a clear distinction between the consumer and business debts of an entrepreneur. A second chance regime for entrepreneurs would not be effective if the entrepreneur had to go through separate procedures, with different access conditions and discharge periods, to discharge his business

personal debts and his non-business personal debts. For these reasons, although this Directive does not include binding rules on consumer over-indebtedness, Member States *should be able to* also apply the discharge provisions to consumers.

personal debts and his non-business personal debts. For these reasons, although this Directive does not include binding rules on consumer over-indebtedness, Member States *are advised to begin at the earliest opportunity* also *to* apply the discharge provisions to consumers.

Amendment 12

Proposal for a directive

Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to achieve greater clarity, the Member States and the Commission should conduct a study in order to identify the key indicators of personal over-indebtedness. In light of the results of that study, the Member States and the Commission should adopt measures establishing a system of early warning tools for the over-indebtedness of consumers.

Amendment 13

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

(16) The earlier the debtor, ***the entrepreneur or the workers' representative*** 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

debtor's management as well as reporting duties under loan agreements. In addition, third parties with relevant information such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development.

include accounting and monitoring duties for the debtor or the debtor's management as well as reporting duties under loan agreements. In addition, third parties with relevant information such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development. *Workers' representatives should have access to relevant information and be given the right to communicate concerns to other actors involved. Member States should provide the opportunity to use new IT technologies for notifications and online communication and they should make information about the early warning system available on a dedicated website.*

Amendment 14

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The early warning phase, designed to anticipate the emergence of a crisis, is intended to assist by flagging difficulties arising for debtors and offering them the possibility of a rapid analysis of, and solution to, the economic and financial problems facing the company, making available - on a voluntary basis - various resources for that purpose, without dictating given lines of conduct or necessarily revealing the existence of a crisis to third parties. It is therefore important to leave it to the Member States to decide whether to restrict mandatory monitoring provisions to small and medium-sized enterprises, bearing in mind that small and medium-sized enterprises themselves are frequently unable to initiate restructuring processes independently because of a number of factors undermining their competitiveness, such as being undersized, a lack of strong corporate governance, effective operational

procedures and monitoring and planning resources, and their lesser ability to afford to do so.

Amendment 15

Proposal for a directive

Recital 17

Text proposed by the Commission

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

Amendment

(17) A restructuring framework should be available to debtors to enable them to address their financial difficulties at an early stage, when it appears likely that their insolvency may be prevented and the continuation of their business assured. A restructuring framework should be available before a debtor becomes insolvent according to national law, i.e. before the debtor fulfils the conditions for entering collective insolvency procedure which entail normally a total divestment of the debtor and the appointment of a liquidator. ***Member States should be able to limit access to the restructuring network with regard to enterprises that have been found by a court of a Member State to have infringed accounting or book-keeping obligations. Member States should also be able to grant access to the restructuring frameworks at the request of creditors and workers' representatives.*** A test of viability should not therefore be made a pre-condition for entering negotiations and for granting a stay of enforcement actions. Rather, the viability of an enterprise should most often be an assessment to be made by affected creditors who in their majority agree to some adjustments of their claims. However, in order to avoid the procedures being misused, the financial difficulties of the debtor should reflect a likelihood of insolvency and the restructuring plan should be capable of preventing the insolvency of the debtor and ensuring the viability of the business.

Amendment 16

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) The observation of accounting and book-keeping obligations is considered to be an effective instrument for making enterprises and entrepreneurs aware that they are at risk of being unable to pay their debts at maturity. It is appropriate to provide that Member States are allowed to limit access to restructuring proceedings to those enterprises and entrepreneurs who observe such accounting and book-keeping obligations.

Amendment 17

Proposal for a directive Recital 18

Text proposed by the Commission

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

(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.

case, but made on a case-by-case basis depending on the circumstances of the case or on the debtor's specific needs. ***The conditions for such appointments should be left to the Member States to define. However, a practitioner should be appointed when a stay is granted, when the restructuring plan needs to be confirmed by a judicial or administrative authority by means of a cross-class cram-down, or if requested by the debtor or a majority of the creditors.*** 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. ***Member States should further ensure that clear and transparent information is provided to the workers' representatives.***

Amendment 18

Proposal for a directive Recital 19

Text proposed by the Commission

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

Amendment

(19) A debtor should be able to request the judicial or administrative authority for a temporary stay of individual enforcement actions where such actions may adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. ***Such a request should only be possible if an obligation to file for insolvency has not yet arisen.*** The stay of enforcement could be general, that is to say

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

affecting all creditors, or targeted towards individual creditors, ***but only those creditors involved in the negotiations***. In order to provide for a fair balance between the rights of the debtor and of creditors, the stay should be granted for a period of no more than four months. Complex restructurings may, however, require more time. Member States may decide that in such cases, extensions of this period may be granted by the judicial or administrative authority, providing there is evidence that negotiations on the restructuring plan are progressing and that creditors are not unfairly prejudiced. ***Member States should set the further conditions for extension of the stay***. If further extensions are granted, the judicial or administrative authority should be satisfied that there is a strong likelihood that a restructuring plan will be adopted. Member States should ensure that any request to extend the initial duration of the stay is made within a reasonable deadline so as to allow the judiciary or administrative authorities to deliver a decision within due time. Where a judicial or administrative authority does not take a decision on the extension of a stay of enforcement before it lapses, the stay should cease to have effects on the day the stay period expires. In the interest of legal certainty, the total period of the stay should be limited to *ten* months. ***However, where a company has transferred its registered office to another Member State within the three months prior to making its application for a stay, the total period of the stay should be limited to two months***.

Amendment 19

Proposal for a directive Recital 20

Text proposed by the Commission

(20) To ensure that the creditors do not

Amendment

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

suffer detriment, the stay should not be granted or, if granted, should not be prolonged or should be lifted when creditors are unfairly prejudiced by the stay of enforcement ***or when the legal obligation to file for insolvency has already arisen***. In establishing whether there is unfair prejudice to creditors, judicial or administrative authorities may take into account whether the stay would preserve the overall value of the estate, whether the debtor acts in bad faith or with the intention of causing prejudice or generally acts against the legitimate expectations of the general body of creditors. A single creditor or a class of creditors would be unfairly prejudiced by the stay if for example their claims would be made substantially worse-off as a result of the stay than if the stay was not granted, or if the creditor is put more at a disadvantage than other creditors in a similar position.

Amendment 20

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) Creditors should have the right to challenge the stay once it has been granted by a judicial or administrative authority. When the stay is no longer necessary with a view to facilitating the adoption of a restructuring plan, for example because it is clear that there is a lack of support for the restructuring from a majority of creditors as required by national law, creditors should also be able to ask that stay be lifted.

Amendment

(23) Creditors should have the right to challenge the stay once it has been granted by a judicial or administrative authority. When the stay is no longer necessary with a view to facilitating the adoption of a restructuring plan, for example because it is clear that there is a lack of support for the restructuring from a majority of creditors as required by national law, creditors should also be able to ask that stay be lifted. ***Also, individual creditors, or a class of creditors, should have the same right to challenge the stay if they are unfairly prejudiced by the plan, or are vulnerable creditors that encounter considerable economic difficulties.***

Amendment 21

Proposal for a directive Recital 24

Text proposed by the Commission

(24) Any creditors affected by the restructuring plan and, where allowed under national law, equity-holders should have a right to vote on the adoption of a restructuring plan. Parties unaffected by the restructuring plan should have no voting rights in relation to the plan, nor should their support be required for the approval of any plan. The vote can take the form of a formal voting process or of a consultation and agreement with the required majority of affected parties. However, where the vote takes the form of a consultation and agreement, affected parties whose agreement was not necessary should nevertheless be offered the possibility to join the restructuring plan.

Amendment

(24) Any creditors affected by the restructuring plan, ***including workers***, and, where allowed under national law, equity-holders should have a right to vote on the adoption of a restructuring plan. Parties unaffected by the restructuring plan should have no voting rights in relation to the plan, nor should their support be required for the approval of any plan. The vote can take the form of a formal voting process or of a consultation and agreement with the required majority of affected parties. However, where the vote takes the form of a consultation and agreement, affected parties whose agreement was not necessary should nevertheless be offered the possibility to join the restructuring plan. ***Member States should also ensure, to the extent national law and practices allow, that the plan is confirmed by the workers if it leads to a change in work organisation or contractual arrangements.***

Amendment 22

Proposal for a directive Recital 25

Text proposed by the Commission

(25) To ensure that rights which are substantially similar are treated equitably and that restructuring plans can be adopted without unfairly prejudicing the rights of affected parties, affected parties should be treated in separate classes which reflect the class formation criteria under national law.

Amendment

(25) To ensure that rights which are substantially similar are treated equitably and that restructuring plans can be adopted without unfairly prejudicing the rights of affected parties, affected parties should be treated in separate classes which reflect the class formation criteria under national law.

As a minimum, secured and unsecured creditors should always be treated in separate classes. National law may provide that secured claims may be divided into secured and unsecured claims based on collateral valuation. National law may also stipulate specific rules supporting class formation where non-diversified or otherwise especially vulnerable creditors, such as workers or small suppliers, would benefit from such class formation. National laws should in any case ensure that adequate treatment is given to matters of particular importance for class formation purposes, such as claims from connected parties, and should contain rules that deal with contingent claims and contested claims. The judicial or administrative authority should examine class formation when a restructuring plan is submitted for confirmation, but Member States could stipulate that such authorities may also examine class formation at an earlier stage should the proposer of the plan seek validation or guidance in advance.

Workers should be considered to be a separate class if they are affected by the plan. As a minimum, secured and unsecured creditors should always be treated in separate classes. National law may provide that secured claims may be divided into secured and unsecured claims based on collateral valuation. National law may also stipulate specific rules supporting class formation where non-diversified or otherwise especially vulnerable creditors, such as workers or small suppliers, would benefit from such class formation. National laws should in any case ensure that adequate treatment is given to matters of particular importance for class formation purposes, such as claims from connected parties, and should contain rules that deal with contingent claims and contested claims. The judicial or administrative authority should examine class formation when a restructuring plan is submitted for confirmation, but Member States could stipulate that such authorities may also examine class formation at an earlier stage should the proposer of the plan seek validation or guidance in advance.

Amendment 23

Proposal for a directive Recital 26

Text proposed by the Commission

(26) Requisite majorities should be established by national law to ensure that a minority of affected parties in each class cannot obstruct the adoption of restructuring plan which does not unfairly reduce their rights and interests. Without a majority rule binding dissenting secured creditors, early restructuring would not be possible in many cases, for example where a financial restructuring is needed but the business is otherwise viable. To ensure that parties **have a say on** the adoption of

Amendment

(26) Requisite majorities should be established by national law to ensure that a minority of affected parties in each class cannot obstruct the adoption of restructuring plan which does not unfairly reduce their rights and interests. Without a majority rule binding dissenting secured creditors, early restructuring would not be possible in many cases, for example where a financial restructuring is needed but the business is otherwise viable. To ensure that **all parties are fairly treated in** the adoption

restructuring plans *proportionate to the stakes they have in the business*, the required majority should *be based on the amount of* the creditors' claims or equity holders' interests in any given class.

of restructuring plans, the required majority should *represent both a majority as regards the amount of* the creditors' claims or equity holders' interests in any given class *and a majority of creditors in that class*.

Amendment 24

Proposal for a directive Recital 28

Text proposed by the Commission

(28) While a restructuring plan should always be deemed adopted if the required majority in each affected class supports the plan, a restructuring plan which is not supported by the required majority *in each affected class* may still be confirmed by a judicial or administrative authority provided that it is supported by *at least one affected class of* creditors and that dissenting classes are not unfairly prejudiced under the proposed plan (the cross-class cram-down mechanism). In particular, the plan should abide by the absolute priority rule which ensures that a dissenting class of creditors is paid in full before a more junior class can receive any distribution or keep any interest under the restructuring plan. The absolute priority rule serves as a basis for the value to be allocated among the creditors in restructuring. As a corollary to the absolute priority rule, no class of creditors can receive or keep under the restructuring plan economic values or benefits exceeding the full amount of the claims or interests of such class. The absolute priority rule makes it possible to determine, when compared to the capital structure of the enterprise under restructuring, the value allocation that parties are to receive under the restructuring plan on the basis of the value of the enterprise as a going concern.

Amendment

(28) While a restructuring plan should always be deemed adopted if the required majority in each affected class *as well as the majority of creditors* supports the plan, a restructuring plan which is not supported by the required majority may still be confirmed by a judicial or administrative authority provided that it is supported by *the majority of* affected creditors and that dissenting classes are not unfairly prejudiced under the proposed plan (the cross-class cram-down mechanism). *Such confirmation should also be required if the plan involves a loss of more than 25 % of the work force.* In particular, the plan should abide by the absolute priority rule which ensures that a dissenting class of creditors is paid in full before a more junior class can receive any distribution or keep any interest under the restructuring plan. The absolute priority rule serves as a basis for the value to be allocated among the creditors in restructuring. As a corollary to the absolute priority rule, no class of creditors can receive or keep under the restructuring plan economic values or benefits exceeding the full amount of the claims or interests of such class. The absolute priority rule makes it possible to determine, when compared to the capital structure of the enterprise under restructuring, the value allocation that parties are to receive under the

restructuring plan on the basis of the value of the enterprise as a going concern. ***In addition, proper information to workers' representatives should be a condition for confirmation.***

Amendment 25

Proposal for a directive Recital 29

Text proposed by the Commission

(29) While shareholders' or other equity holders' legitimate interests should be protected, Member States should ensure that shareholders cannot unreasonably block the adoption of restructuring plans which would bring the debtor back to viability. For example, the adoption of a restructuring plan should not be conditional on the agreement of the out-of-the-money equity holders, namely equity holders who, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied. Member States can deploy different means to achieve this goal, for example by not giving equity holders the right to vote on a restructuring plan. However, where equity holders have the right to vote on a restructuring plan, a judicial or administrative authority should be able to confirm the plan notwithstanding the dissent of one or more classes of equity holders, through a cross-class cram down mechanism. More classes of equity holders may be needed where different classes of shareholdings with different rights exist. Equity holders of small and medium enterprises who are not mere investors but are the owners of the firm and contribute to the firm in other ways such as managerial expertise may not have an incentive to restructure under such conditions. For this reason, the cross-class cram-down mechanism should remain optional for the

Amendment

(29) While shareholders' or other equity holders' legitimate interests should be protected, Member States should ensure that shareholders cannot unreasonably block the adoption of restructuring plans which would bring the debtor back to viability ***and which is supported by a majority*** of the classes. For example, the adoption of a restructuring plan should not be conditional on the agreement of the out-of-the-money equity holders, namely equity holders who, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied. Member States can deploy different means to achieve this goal, for example by not giving equity holders the right to vote on a restructuring plan. However, where equity holders have the right to vote on a restructuring plan, a judicial or administrative authority should be able to confirm the plan notwithstanding the dissent of one or more classes of equity holders, through a cross-class cram down mechanism. More classes of equity holders may be needed where different classes of shareholdings with different rights exist. Equity holders of small and medium enterprises who are not mere investors but are the owners of the firm and contribute to the firm in other ways such as managerial expertise may not have an incentive to restructure under such conditions. For this reason, the cross-class cram-down mechanism should remain optional for the

plan proposer.

plan proposer.

Amendment 26

Proposal for a directive Recital 29 a (new)

Text proposed by the Commission

Amendment

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

Amendment 27

Proposal for a directive Recital 31

Text proposed by the Commission

Amendment

(31) The success of a restructuring plan may often depend on whether there are financial resources in place to support first the operation of the business during restructuring negotiations and second the implementation of the restructuring plan after its confirmation. New financing or interim financing should therefore be exempt from avoidance actions which seek to declare such financing void, voidable or unenforceable as an act detrimental to the general body of creditors in the context of subsequent insolvency procedures. National insolvency laws providing for avoidance actions if and when the debtor becomes eventually insolvent or stipulating that new lenders may incur civil, administrative or criminal sanctions for extending credit to debtors in financial difficulties are jeopardising the availability of financing necessary for the successful negotiation and implementation of a restructuring plan. As opposed to new

(31) The success of a restructuring plan may often depend on whether there are financial resources in place to support first the operation of the business during restructuring negotiations and second the implementation of the restructuring plan after its confirmation. New financing or interim financing should therefore be exempt from avoidance actions which seek to declare such financing void, voidable or unenforceable as an act detrimental to the general body of creditors in the context of subsequent insolvency procedures. National insolvency laws providing for avoidance actions if and when the debtor becomes eventually insolvent or stipulating that new lenders may incur civil, administrative or criminal sanctions for extending credit to debtors in financial difficulties are jeopardising the availability of financing necessary for the successful negotiation and implementation of a restructuring plan. As opposed to new

financing which should be confirmed by a judicial or administrative authority as part of a restructuring plan, when interim financing is extended the parties do not know whether the plan will be eventually confirmed or not. Limiting the protection of interim finance to cases where the plan is adopted by creditors or confirmed by a judicial or administrative authority would discourage the provision of interim finance. To avoid potential abuses, only financing that is reasonably and immediately necessary for the continued operation or survival of the debtor's business or the preservation or enhancement of the value of that business pending the confirmation of that plan should be protected. Protection from avoidance actions and protection from personal liability are minimum guarantees granted to interim financing and new financing. ***However, encouraging new lenders to take the enhanced risk of investing in a viable debtor in financial difficulties may require further incentives such as for example giving such financing priority at least over unsecured claims in subsequent insolvency procedures.***

Amendment 28

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

financing which should be confirmed by a judicial or administrative authority as part of a restructuring plan, when interim financing is extended the parties do not know whether the plan will be eventually confirmed or not. Limiting the protection of interim finance to cases where the plan is adopted by creditors or confirmed by a judicial or administrative authority would discourage the provision of interim finance. To avoid potential abuses, only financing that is reasonably and immediately necessary for the continued operation or survival of the debtor's business or the preservation or enhancement of the value of that business pending the confirmation of that plan should be protected. Protection from avoidance actions and protection from personal liability are minimum guarantees granted to interim financing and new financing.

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

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.

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, **with the exception of the workers' class**.

Amendment 29

Proposal for a directive

Recital 34

Text proposed by the Commission

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

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 **be required to** exempt workers' outstanding claims, , 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 at a similar level by other means under national law. Where under

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,

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,

Amendment 30

Proposal for a directive Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) Workers and their representatives should be provided with all documents and information regarding the proposed restructuring plan in order to allow them to undertake an in-depth assessment of the various scenarios. Furthermore, workers and their representatives should be allowed active involvement in all the consultation and approval phases for the drawing up of the plan and should be guaranteed access to expert advice in connection with the restructuring.

Amendment 31

Proposal for a directive Recital 35

Text proposed by the Commission

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,

(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, ***while it should only be possible to apply Article 5 of that Directive in the event of insolvency but not in the event of a restructuring plan.*** 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

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.

workers who are affected by the restructuring plan should have the right to vote on **it and their approval should be binding for the confirmation of** the plan. For the purposes of voting on the restructuring plan, Member States **should** place workers in a class separate from other classes of creditors **and should ensure that that class is given a preferential right.**

Justification

Art.5 of Directive 2001/23/EC is applied “where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets” and it cannot be applied in case of a restructuring plan.

Amendment 32

Proposal for a directive Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) Any proposed restructuring operation should be fully explained to workers' representatives who should be given such information about the proposed restructuring to enable them to undertake an in-depth assessment and to prepare for consultations, where appropriate.^{1a}

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

Amendment 33

Proposal for a directive Recital 36

Text proposed by the Commission

Amendment

(36) To further promote preventive restructurings, it is important to ensure that

(36) To further promote preventive restructurings, it is important to ensure that

directors are not dissuaded from exercising reasonable business judgment or taking reasonable commercial risks, particularly where to do so would improve the chances for the restructuring of potentially viable businesses. Where the enterprise experiences financial difficulties, directors should take such steps as seeking professional advice, including on restructuring and insolvency, for instance by making use of early warning tools where applicable; protecting the assets of the company so as to maximize value and avoid loss of key assets; considering the structure and functions of the business to examine viability and reduce expenditure; not committing the company to the types of transaction that might be subject to avoidance unless there is an appropriate business justification; continuing to trade in circumstances where it is appropriate to do so to maximize going concern value; holding negotiations with creditors and entering preventive restructuring procedures. Where the debtor is in the vicinity of insolvency, it is also important to protect the legitimate interests of creditors from management decisions that may have an impact on the constitution of the debtor's estate, in particular where those decisions may have the effect of further diminishing the value of the estate available for restructuring efforts or for distribution to creditors. It is therefore necessary that in such circumstances directors avoid any deliberate or grossly negligent actions that result in personal gain at the expense of stakeholders, agreeing to transactions at under value, or taking actions leading to unfair preference of one or more stakeholders over others. Directors for the purposes of this Directive should be persons responsible for taking decisions concerning the management of the company.

directors **and entrepreneurs** are not dissuaded from exercising reasonable business judgment or taking reasonable commercial risks, particularly where to do so would improve the chances for the restructuring of potentially viable businesses. Where the enterprise experiences financial difficulties, directors should take such steps as seeking professional advice, including on restructuring and insolvency, for instance by making use of early warning tools where applicable; protecting the assets of the company so as to maximize value and avoid loss of key assets; considering the structure and functions of the business to examine viability and reduce expenditure; not committing the company to the types of transaction that might be subject to avoidance unless there is an appropriate business justification; continuing to trade in circumstances where it is appropriate to do so to maximize going concern value; holding negotiations with creditors and entering preventive restructuring procedures. ***Directors should also comply with all of their obligations with regard to creditors, workers' representatives and other stakeholders.*** Where the debtor is in the vicinity of insolvency, it is also important to protect the legitimate interests of creditors from management decisions that may have an impact on the constitution of the debtor's estate, in particular where those decisions may have the effect of further diminishing the value of the estate available for restructuring efforts or for distribution to creditors. It is therefore necessary that in such circumstances directors avoid any deliberate or grossly negligent actions that result in personal gain at the expense of stakeholders, agreeing to transactions at under value ***or otherwise intentionally reducing the value of the company***, or taking actions leading to unfair preference of one or more stakeholders over others. Directors for the purposes of this Directive should be persons responsible for taking decisions

concerning the management of the company. ***Failure to comply with this should potentially lead to a longer discharge period or stricter conditions for discharge.***

Amendment 34

Proposal for a directive

Recital 37

Text proposed by the Commission

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

Amendment

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

Amendment 35

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 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 36

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

Amendment

(38) A full discharge or the end of disqualification after a short period of time are not appropriate in all circumstances, **even after carrying out an insolvency procedure**, 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 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

(39) **Specialised insolvency practitioners and judges and the availability of digital tools can greatly help reduce the length of proceedings, lower costs and improve the quality of assistance or supervision.** It is necessary to maintain and enhance the

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.

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

Amendment 37

Proposal for a directive Recital 40

Text proposed by the Commission

40. Member States should also ensure

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. 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.

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, **with a view to achieving the main objective of restoring the viability of the business.** Practitioners should **be rescuers not liquidators and they should** also adhere to **a code of professional conduct with the aim of guaranteeing** an appropriate level of qualification and training, **and ensuring the** 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. **Member States should ensure that information about the administrative authorities exercising supervision or control over practitioners in the field of restructuring, insolvency and second chance is publicly available.**

Amendment 38

Proposal for a directive Recital 42

Text proposed by the Commission

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

Amendment

42. It is important to gather reliable data on the performance of restructuring, insolvency and discharge procedures in order to monitor the implementation and application of this Directive. Therefore Member States should **intensify their efforts to** collect, aggregate **and supply that data to the Commission. Such data**

the Directive works in practice.

should be sufficiently granular to enable an accurate assessment of how the Directive works in practice.

Amendment 39

Proposal for a directive Recital 46 a (new)

Text proposed by the Commission

Amendment

(46a) Workers should not bear the burden of restructuring, insolvency and discharge procedures, and the debts due to them, such as unpaid wages, should always be satisfied first. In order to guarantee the continuity of production and employment and to better fight tactical or fraudulent practices by the management, workers should also be informed and consulted at the initial stage of restructuring, insolvency and discharge procedures.

Amendment 40

Proposal for a directive Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) Further assessment should be carried out in order to evaluate the necessity of submitting legislative proposals to deal with insolvency affecting persons not exercising a trade, business, craft or profession comparable to the activities of an employer, who, as consumers or users of goods or of 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 that they benefit from decent living conditions.

Amendment 41

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) **rapid** preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency **and a genuine possibility of preventing the company from undergoing insolvency proceedings**;

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point b

Text proposed by the Commission

(b) procedures leading to a discharge of debts incurred by over-indebted entrepreneurs **and** allowing them to take up a new activity;

Amendment

(b) procedures leading to a discharge of debts incurred by over-indebted entrepreneurs **after they have undergone insolvency proceedings**, allowing them to take up a new activity;

Amendment 43

Proposal for a directive

Article 2 – paragraph 1 – point 1

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**;

Amendment

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

Amendment 44

Proposal for a directive

Article 2 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) 'likelihood of insolvency' means a situation in which the debtor is not insolvent under national law but in which there is a real and serious threat to the debtor's future ability to pay its debts as they fall due;

Amendment 45

Proposal for a directive

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

Amendment

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

(5) '**essential** executory contracts' means contracts between the debtor and one or more creditors under which both sides still have obligations to perform at the moment the stay of individual enforcement actions is ordered **and are necessary for the continuation of the day-to-day operation of the business, including any supplies where a suspension of deliveries would lead to the company coming to a standstill;**

Amendment 46

Proposal for a directive

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

Amendment

(6) 'class formation' means the grouping of affected creditors and equity holders in a restructuring plan in such a way as to reflect the rights and seniority of the affected claims and interests, taking into account possible pre-existing entitlements,

(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;

liens or inter-creditor agreements, and their treatment under the restructuring plan; ***for the purposes of adopting a restructuring plan, creditors are divided into different classes of creditors as regulated by Member States, where as a minimum, secured and unsecured claims are treated in separate classes;***

Amendment 47

Proposal for a directive

Article 2 – paragraph 1 – point 8

Text proposed by the Commission

(8) 'a cross-class cram-down' means the confirmation by a judicial or administrative authority of a restructuring plan over the dissent of ***one or*** several affected classes of creditors;

Amendment

(8) 'a cross-class cram-down' means the confirmation by a judicial or administrative authority of a restructuring plan over the dissent of several affected classes of creditors;

Amendment 48

Proposal for a directive

Article 2 – paragraph 1 – point 11

Text proposed by the Commission

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

Amendment

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

Amendment 49

Proposal for a directive

Article 2 – paragraph 1 – point 12

Text proposed by the Commission

(12) 'interim financing' means any funds, whether provided by an existing or new

Amendment

(12) 'interim financing' means any funds, ***including the provision of credit,*** whether

creditor, that is reasonably and immediately necessary for the debtor's business to continue operating or to survive, or to preserve or enhance the value of that business pending the confirmation of a restructuring plan;

provided by an existing or new creditor, that is reasonably and immediately necessary for the debtor's business to continue operating or to survive, or to preserve or enhance the value of that business pending the confirmation of a restructuring plan;

Amendment 50

Proposal for a directive

Article 2 – paragraph 1 – point 13

Text proposed by the Commission

(13) 'over-indebted entrepreneur' means a natural person exercising a trade, business, craft or profession, who is otherwise than temporarily unable to pay debts as they fall due;

Amendment

(13) 'over-indebted entrepreneur' means a natural person exercising a trade, business, craft or profession, who is otherwise than temporarily unable to pay debts as they fall due, ***and also means an entrepreneur who is unable to pay debts incurred as a natural person but that are linked to the financing of the start of the entrepreneur's business activity, as well as a person whose business activity is exclusively a side activity and whose professional debts and personal debts cannot be reasonably separated.***

Amendment 51

Proposal for a directive

Article 2 – paragraph 1 – point 14

Text proposed by the Commission

(14) 'full discharge of debt' means cancellation of outstanding debt subsequent to ***a procedure comprising a realisation of assets and/or a repayment/settlement plan;***

Amendment

(14) 'full discharge of debt' means cancellation of outstanding debt subsequent to ***an insolvency*** procedure;

Amendment 52

Proposal for a directive

Article 2 – paragraph 1 – point 15 – introductory part

Text proposed by the Commission

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

Amendment

(15) 'practitioner in the field of restructuring' means any person or body ***qualified under national law*** to carry out one or more of the following tasks:

Amendment 53

Proposal for a directive

Article 2 – paragraph 1 – point 15 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 54

Proposal for a directive

Article 2 – paragraph 1 – point 15 a (new)

Text proposed by the Commission

Amendment

(15a) 'repayment plan' means a programme of payments of specified amounts on specified dates by a debtor to creditors made as part of a restructuring plan;

Amendment 55

Proposal for a directive

Article 2 – paragraph 1 – point 15 b (new)

Text proposed by the Commission

Amendment

(15b) 'viable' means the ability to provide an appropriate projected return on capital after having covered all costs, including depreciation and financial charges.

Amendment 56

Proposal for a directive Article 3

Text proposed by the Commission

Article 3

Early warning

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.

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

Article 3

Early warning **and access to information**

1. Member States shall **develop and ensure access to clear and transparent** early warning tools which can detect a deteriorating business development and signal to the debtor, the entrepreneur **or the workers' representative** the need to act as a matter of urgency. **In that regard, Member States may make use of new IT technologies for notifications and online communication.**

1a. Early warning tools may include the following:

(a) accounting and monitoring duties for the debtor or the debtor's management;

(b) reporting duties under loan agreements; and

(c) regular reporting or information obligations for third parties, such as accountants, tax and social security authorities or certain types of creditors such as banks.

2. Member States shall ensure that debtors, entrepreneurs **and workers' 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.

2a. Member States shall make publicly available on a dedicated website and in a

user-friendly manner the way in which debtors and entrepreneurs can access early warning tools in their Member State. Member States shall ensure that small and medium sized enterprises especially have access to that information.

2b. Member States shall ensure that workers' representatives are given access to relevant and up-to-date information regarding the situation of the business and that they can communicate concerns to debtors and entrepreneurs about the situation of the business and about the need to consider making use of restructuring mechanisms.

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

Amendment 57

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.

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 and avoid insolvency *or find other solutions to avoid insolvency, thereby protecting jobs and maintaining business activity.*

1a. Member States may provide that access to restructuring proceedings is limited to enterprises that have not been finally sentenced for serious breaches of accounting and bookkeeping obligations under national law.

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*.

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

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

4. Preventive restructuring frameworks shall be available on the application by debtors.

4a. Member States may also provide for restructuring frameworks to be available at the request of creditors and workers' representatives, with the agreement of the debtor.

Amendment 58

Proposal for a directive Article 5

Text proposed by the Commission

Article 5

Debtor in possession

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

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

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

(a) where the debtor is granted a *general*

Amendment

Article 5

Debtor in possession

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

2. *Whether or not the supervision of a restructuring procedure by a practitioner in the field of restructuring is mandatory, it shall in all cases be subject to national law in order to safeguard the rights of affected parties.*

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

(a) where the debtor is granted a stay of

stay of *individual* enforcement actions in accordance with Article 6;

(b) where the restructuring plan needs to be confirmed by a judicial or administrative authority by means of a cross-class cram-down, in accordance with Article 11

enforcement actions in accordance with Article 6;

(b) where the restructuring plan needs to be confirmed by a judicial or administrative authority by means of a cross-class cram-down, in accordance with Article 11

(ba) where it is requested by the debtor or by a majority of creditors.

3a. Member States shall ensure that representatives of the debtor's workers receive clear and transparent information on the restructuring procedure and are regularly informed of any developments thereto.

Amendment 59

Proposal for a directive Article 6

Text proposed by the Commission

Article 6

Stay of individual enforcement actions

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.

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

Article 6

Stay of individual enforcement actions

1. *Where the obligation of the debtor to file for insolvency has not yet arisen*, 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 *and provided there is a likelihood of preventing the company from undergoing insolvency proceedings.*

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 *provided that the debtor includes those creditors in the negotiations for a restructuring plan.* The stay may be general, covering all creditors, or limited, covering one or more individual

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.

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

5. Member States may nevertheless enable judicial or administrative authorities to extend the initial duration of the stay of individual enforcement actions or to grant a new stay of individual enforcement actions, upon request of the debtor or of creditors. Such extension or new period of stay of individual enforcement actions shall be granted only if there is evidence that:

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

(b) the continuation of the stay of individual enforcement actions does not unfairly prejudice the rights or interests of any affected parties.

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

7. The total duration of the stay of individual enforcement actions, including

creditors, in accordance with national law.

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 **similar** level of protection.

4. The duration of the stay of individual enforcement actions **is limited** to a maximum period of no more than four four months.

5. Member States may nevertheless enable judicial or administrative authorities to extend the initial duration of the stay of individual enforcement actions or to grant a new stay of individual enforcement actions, upon request of the debtor or of **the** creditors. **Member States shall set the conditions for an extension or a new period of stay.** Such extension or new period of stay of individual enforcement actions shall be granted only if there is evidence that:

(-a) secured creditors who are affected by the plan have agreed to such an extension or new period; and

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

(b) the continuation of the stay of individual enforcement actions does not unfairly prejudice the rights or interests of any affected parties; **and**

(ba) the obligation of the debtor to file for insolvency under national law has not yet arisen.

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

7. The total duration of the stay of individual enforcement actions, including

extensions and renewals, shall not exceed *twelve* months.

8. Member States shall ensure that judicial or administrative authorities may lift the stay of individual enforcement actions, in whole or in part:

- (a) if it becomes apparent that a proportion of creditors who under national law could block the adoption of the restructuring plan does not support the continuation of the negotiations; or
- (b) at the request of the debtor or the practitioner in the field of restructuring.

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

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

8. Member States shall ensure that judicial or administrative authorities ***may decide not to grant the stay of individual enforcement actions*** or may lift the stay of individual enforcement actions, in whole or in part:

- (a) if it becomes apparent that a proportion of creditors who under national law could block the adoption of the restructuring plan does not support the continuation of the negotiations; or
- (b) at the request of the debtor or the practitioner in the field of restructuring ***or the majority of creditors concerned; or***

(ba) if an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions;

(bb) if a vulnerable creditor would encounter considerable economic difficulties;

Amendment 60

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

deleted

Amendment 61

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Member States may derogate from paragraph 1 where the debtor becomes illiquid and therefore unable to pay his debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan *or economically viable business transfer* 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 62

Proposal for a directive Article 7 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that, during the stay period, creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify executory contracts

Amendment

4. Member States shall ensure that, during the stay period, creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify *essential* executory

to the detriment of the debtor **for** debts that came into existence prior to the stay. **Member States may limit the application of this provision to essential contracts which are** necessary for the continuation of the day-to-day operation of the business.

contracts to the detriment of the debtor **in respect of** debts that came into existence prior to the stay **on condition that no severe financial difficulties for creditors are caused. For the purposes of this paragraph, an executory contract is essential when it is** necessary for the continuation of the day-to-day operation of the business, **including any supplies where a suspension of deliveries would lead to the company's activities coming to a standstill.**

Amendment 63

Proposal for a directive Article 7 – paragraph 5

Text proposed by the Commission

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

Amendment

(5) Member States **may require** that creditors **are prohibited from** withholding performance or **terminating, accelerating** or in any other way **modifying** executory contracts to the detriment of the debtor by virtue of a contractual clause providing for such measures, solely by reason of the debtor's entry into restructuring negotiations, a requested for a stay of individual enforcement actions, the ordering of the stay as such or any similar event connected to the stay, **unless they are affected by the stay and they can prove that they would suffer significant disadvantages from such an event.**

Amendment 64

Proposal for a directive Article 7 – paragraph 6

Text proposed by the Commission

6. **Member States shall ensure that nothing prevents the debtor from paying in the ordinary course of business claims**

Amendment

deleted

of or owed to unaffected creditors and the claims of affected creditors that arise after the stay is granted and which continue to arise throughout the period of the stay.

Amendment 65

Proposal for a directive

Article 8

Text proposed by the Commission

Article 8

Content of restructuring plans

1. Member States shall require restructuring plans ***submitted for confirmation*** by a judicial or administrative authority ***to*** contain at least the following information:

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

- (c) the identity of the affected parties, whether named individually or described by reference to one or more categories of debt, as well as their claims or interests covered by the restructuring plan;

- (d) the classes into which the affected parties have been grouped for the purposes

Amendment

Article 8

Content of restructuring plans

1. Member States shall require restructuring plans ***to be confirmed*** by a judicial or administrative authority ***and shall ensure that the restructuring plans are submitted to workers' representatives for information and consultation.*** ***Restructuring plans shall*** contain at least the following information:

- (a) the identity of the debtor or the debtor's business for which the restructuring plan is proposed;
- (b) a valuation of the ***market*** value of the debtor or the debtor's business, ***including an evaluation of the financial obligations and the financial flows during the duration of the restructuring plan, at the time of the submission of the plan for confirmation*** as well as ***an expected liquidation value of the debtor or the debtor's business, all prepared by a judicial expert, and*** a reasoned statement on the causes ***for*** and the extent of the financial difficulties of the debtor, ***including a description of assets and debts;***

- (c) the identity of the affected parties, whether named individually or described by reference to one or more categories of debt, as well as their claims or interests covered by the restructuring plan;

- (d) the classes into which the affected parties have been grouped, ***on the basis of***

of adopting the plan, together with a rationale for doing so and information about the respective values of creditors and members in each class;

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

(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;

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

objective criteria, for the purposes of adopting the plan, together with a rationale for doing so and information about the respective values of creditors and members in each class;

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

(ea) the identity of the practitioner in the field of restructuring, where applicable;

(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;

(iia) any proposal for a stay of individual enforcement actions as part of the restructuring plan;

(iib) the modalities of information and consultation of the workers' representatives in accordance with Union and national law;

(iic) organisational aspects that touch upon consequences as regards employment such as dismissals, short-time work or similar;

(g) an opinion or reasoned statement by the person responsible for proposing the restructuring plan which explains why the business is viable, how implementing the proposed plan is likely to result in the debtor avoiding insolvency and/or restore its long-term viability, and states any anticipated necessary pre-conditions for its success. **Member States may provide for the opinion or reasoned statement to be validated by an external expert, such as a practitioner in the field of restructuring.**

1a. Member States may determine whether creditors are able to propose an alternative restructuring plan. Where a

Member State so decides, the Member State shall define the conditions under which creditors are able to propose an alternative restructuring plan.

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

3. ***The parties may choose whether or not to use the model restructuring plan.***

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

3a. Member States shall ensure that workers' rights, entitlements and claims are not affected by the restructuring plan subject to Article 6(3) of this Directive. Member States shall also ensure that restructuring plans have no impact on occupational pension funds or schemes.

Amendment 66

Proposal for a directive Article 9

Text proposed by the Commission

Article 9

Adoption of restructuring plans

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

Article 9

Adoption of restructuring plans

1. Member States shall ensure that any affected creditors, ***including workers*** have a right to vote on the adoption of a restructuring plan ***after having been duly informed about the procedure and its potential consequences***. Member States may grant such voting rights ***also*** to

affected equity holders, in accordance with Article 12(2). ***Creditors that are not affected by the restructuring plan shall not have a voting right concerning the adoption of that plan.***

1a. Member States shall ensure that, where the plan includes measures leading to changes in the work organisation or in contractual relations, those shall be confirmed by workers in cases where national law and practices provide for such confirmation.

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.

3. Class formation shall be examined by the judicial or administrative authority when a request is filed for confirmation of the restructuring plan.

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***

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

3. ***Voting rights and*** class formation shall be examined by the judicial or administrative authority when a request is filed for confirmation of the restructuring plan. ***Member States may provide for an examination of voting rights and class formation by a judicial or administrative authority at an earlier stage.***

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 a majority of creditors*** is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan.

of claims or interests in each class.

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.

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

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.

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

Amendment 67

Proposal for a directive Article 10

Text proposed by the Commission

Article 10

Confirmation of restructuring plans

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

- (a) restructuring plans which affect the interests of dissenting affected parties;
- (b) restructuring plans which provide for new financing.

2. Member States shall ensure that the conditions under which a restructuring plan can be confirmed by a judicial or administrative authority are clearly specified and include at least the following:

- (a) the restructuring plan has been adopted **in accordance with** Article 9 and has been notified to all known creditors likely to be affected by it;

Amendment

Article 10

Confirmation of restructuring plans

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

- (a) restructuring plans which affect the interests of dissenting affected parties;
- (b) restructuring plans which provide for new financing.

(ba) restructuring plans which involve the loss of more than 25% of the workforce;

2. Member States shall ensure that the conditions under which a restructuring plan can be confirmed by a judicial or administrative authority are clearly specified **in their law** and include at least the following:

- (a) the restructuring plan has been adopted **respecting the requirements laid down by** Article 9 and has been notified to all known creditors likely to be affected by

- (b) the restructuring plan complies with the best interest of creditors test;
- (c) any new financing is necessary to implement the restructuring plan **and does not unfairly prejudice the interests of creditors.**

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.

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 68

Proposal for a directive Article 11

Text proposed by the Commission

Article 11

Cross-class cram-down

1. Member States shall ensure that a restructuring plan which is not approved by each and every class of affected parties may be confirmed by a judicial or administrative authority upon the proposal of a debtor or of a creditor with the debtor's agreement and become binding upon one or more dissenting classes where the restructuring plan:

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

it;

- (b) the restructuring plan complies with the best interest of creditors test;
- (c) any new financing is necessary **and proportionate** to implement the restructuring plan.

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

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

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 **within a reasonable time and without undue delay** after the request for confirmation has been filed .

Amendment

Article 11

Cross-class cram-down

1. Member States shall ensure that a restructuring plan which is not approved by each and every class of affected parties may be confirmed by a judicial or administrative authority upon the proposal of a debtor or, **when so provided by national law**, of a creditor with the debtor's agreement and become binding upon one or more dissenting classes where the restructuring plan:

- (a) fulfils the conditions in Article 10(2),

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

(c) complies with the absolute priority rule.

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

while ensuring compliance with all requirements laid down in national law;

(b) has been approved by **the majority of classes** of affected creditors **amongst which there is no** equity-holder class **or** any other class which, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied;

(c) complies with the absolute priority rule.

2. Member States may **increase** the minimum number of affected classes required to approve the plan laid down in point (b) of paragraph (1) **as long as that minimum number still represents the majority of classes.**

Amendment 69

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 70

Proposal for a directive Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Workers

Members States shall ensure that

workers' rights, including the rights set out in this Directive, are not undermined by the restructuring process and that there is independent supervision of compliance with relevant Union and national law. Those rights shall include, in particular:

(1) the right to collective bargaining and industrial action; and

(2) the right to information and consultation, including in particular the right to access information concerning any procedure which could have an impact on employment or on the ability of workers to recover their wages and any future payments, including occupational pensions.

Member States shall also ensure that workers are always treated as a preferential and secured class of creditors.

Amendment 71

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 72

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that restructuring plans which are confirmed by

Amendment

1. Member States shall ensure that restructuring plans which are confirmed by

a judicial or administrative authority are binding upon each *party* identified in the plan.

a judicial or administrative authority are binding upon each *and all parties* identified in the plan.

Amendment 73

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

Text proposed by the Commission

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

Amendment

(b) confirm the plan and **assess the possibility for** dissenting creditors **that suffer unjustifiable damage under the plan to be granted monetary compensation, and where appropriate order that such compensation is to be** payable by the debtor.

Amendment 74

Proposal for a directive Article 17 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 75

Proposal for a directive Article 18

Text proposed by the Commission

Article 18

Duties of directors

Member States shall lay down rules to ensure that, where there is a likelihood of insolvency, directors have the following

Amendment

Article 18

Duties **and obligations** of directors

1. Member States shall lay down rules to ensure that, where there is a likelihood of insolvency, directors **and entrepreneurs**

obligations:

- (a) to take immediate steps to minimise the loss for creditors, workers, shareholders and other stakeholders;
- (b) to have due regard to the interests of creditors and other stakeholders;

- (c) to take reasonable steps to avoid insolvency;
- (d) to avoid deliberate or grossly negligent conduct that threatens the viability of the business.

have the following obligations:

- (a) to take immediate steps to minimise the loss for creditors, workers, shareholders and other stakeholders;
- (b) to have due regard to the interests of creditors, *workers* and other stakeholders;
(ba) to comply with all their obligations to creditors, workers, other stakeholders, the state and its emanations;
- (c) to take reasonable steps to avoid insolvency;
- (d) to avoid deliberate or grossly negligent conduct that threatens the viability of the business.

(da) not to reduce intentionally the value of the company's net assets;

2. Failure to comply with the duties set out in the paragraph 1 shall be taken into account in determining the period and conditions of discharge in accordance with Article 22.

Amendment 76

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that over-indebted entrepreneurs may be fully discharged of their debts in accordance with this Directive.

Amendment

1. Member States shall ensure that ***bona fide*** over-indebted entrepreneurs may be fully discharged of their debts in accordance with this Directive.

Amendment 77

Proposal for a directive Article 19 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A full discharge shall apply only where the indebted entrepreneur has complied with the requirements of Article 18 of this Directive. Entrepreneurs who

violate employment or competition law shall be excluded from a full discharge.

Amendment 78

Proposal for a directive

Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall provide entrepreneurs affected by the second chance with business support and regeneration actions which help to relaunch their entrepreneurial capacity.

Amendment 79

Proposal for a directive

Article 20

Text proposed by the Commission

Amendment

Article 20

Article 20

Discharge period

Discharge period

1. The period of time after which over-indebted entrepreneurs may be fully discharged from their debts shall be no longer than **three** years starting from:

1. The period of time after which over-indebted entrepreneurs may **for the first time** be fully discharged from their debts shall be no longer than **five** years starting from:

(a) the date on which the judicial or administrative authority decided on the application to open such a procedure, in the case of a procedure ending with the liquidation of an over-indebted entrepreneur's assets; or

(a) the date on which the judicial or administrative authority decided on the application to open such a procedure, in the case of a procedure ending with the liquidation of an over-indebted entrepreneur's assets; or

(b) the date on which implementation of the repayment plan started, in the case of a procedure which includes a repayment plan.

(b) the date on which implementation of the repayment plan started, in the case of a procedure which includes a repayment plan.

2. Member States shall ensure that on expiry of the discharge period, over-indebted entrepreneurs are discharged of their debts **without the need to re-apply to a judicial or administrative authority.**

2. Member States shall ensure that on expiry of the discharge period, over-indebted entrepreneurs are discharged of their debts.

2a. Member States may provide for longer discharge periods in cases where an entrepreneur applies for a second or any subsequent discharge procedure.

Amendment 80

Proposal for a directive

Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 81

Proposal for a directive

Article 22 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) the over-indebted entrepreneur acted dishonestly or in bad faith towards the creditors when becoming indebted or during the collection of the debts. **The Commission shall provide guidelines for Member States to establish a set of criteria for what constitutes dishonest action or bad faith;**

Amendment 82

Proposal for a directive

Article 22 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the over-indebted entrepreneur does not **substantially** adhere to a repayment plan or to any other legal obligation aimed

safeguarding the interests of creditors;

at safeguarding the interests of creditors, *taking into consideration the difficulties in terms of adherence to insolvency and restructuring procedures, which micro and small enterprises encounter.*

Amendment 83

Proposal for a directive

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

Text proposed by the Commission

Amendment

(da) where entrepreneurs or their directors have acted in breach of their obligations under Article 18 of this Directive or where entrepreneurs or their directors have violated employment or competition law.

Amendment 84

Proposal for a directive

Article 22 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may provide for longer discharge periods in *cases* where *the* main residence *of an over-indebted entrepreneur* is exempt from the possibility of realisation of assets, *in order to safeguard the livelihood of the over-indebted entrepreneur and his or her family.*

2. Member States may provide for longer discharge periods in *order to safeguard the livelihood of an over-indebted entrepreneur and his or her family* where *his or her* main residence is exempt from the possibility of realisation of assets.

Amendment 85

Proposal for a directive

Article 22 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States may exclude specific

3. Member States may exclude *from*

categories of debt, such as secured debts or debts arising out of criminal penalties or tortious liability, **from discharge or lay down a longer discharge period** where such exclusions or longer periods are justified by a general interest.

discharge, or lay down a longer discharge period for, specific categories of debt, such as secured debts or debts arising out of criminal penalties or tortious liability, where such exclusions or longer periods are justified by a general interest.

Amendment 86

Proposal for a directive Article 22 – paragraph 4

Text proposed by the Commission

4. By way of derogation from Article 21, Member States may provide for longer or indefinite disqualification periods where the over-indebted entrepreneur is a member of a profession to which specific ethical rules apply or where disqualifications were ordered by a court in criminal proceedings.

Amendment

4. By way of derogation from Article 21, Member States may provide for longer or indefinite disqualification periods where the over-indebted entrepreneur is a member of a profession to which specific ethical rules apply **and the entrepreneur has infringed those rules** or where disqualifications were ordered by a court in criminal proceedings.

Amendment 87

Proposal for a directive Article 22 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. With regard to point (a) of paragraph 1, the Commission shall provide guidelines for Member States to establish a set of criteria in order to define what constitutes dishonest action or bad faith in this context.

Amendment 88

Proposal for a directive Article 23 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that,

Amendment

1. Member States shall ensure that,

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

where an over-indebted entrepreneur has professional debts incurred in the course of his or her trade, business, craft or profession as well as personal debts incurred outside those activities, **professional** debts are **to be** treated, for the purposes of obtaining a discharge, **separately from personal debts**. **Where there are procedures for obtaining a discharge for both professional and personal debts, those procedures may be coordinated for the purposes of obtaining a discharge in accordance with this Directive.**

Amendment 89

Proposal for a directive Article 23 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Amendment 90

Proposal for a directive Article 25 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 91

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

Text proposed by the Commission

Amendment

1a. The Commission shall facilitate the sharing of best practices between Member States with a view to improving the quality of training across the Union, including by means of networking and the exchange of experiences and capacity building tools, and if necessary shall organise training for members of judiciary and administrative authorities dealing with restructuring, insolvency and second chance matters.

Amendment 92

Proposal for a directive Article 25 – paragraph 2

Text proposed by the Commission

Amendment

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.

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

Amendment 93

Proposal for a directive Article 25 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall establish effective sanctions for failure to comply

with the practitioners' obligations under this Article and other relevant Union or national law.

Amendment 94

Proposal for a directive Article 27 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that information about the authorities exercising supervision or control over practitioners in the field of restructuring is publicly available.

Amendment 95

Proposal for a directive Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27a

Information available to second chance entrepreneurs

- 1. Member States shall ensure that second chance entrepreneurs have access to relevant, up-to-date, clear, concise and user-friendly information about the availability of administrative, legal, business or financial support tailored to them and any means available to them to facilitate the setting-up of a new business.***
- 2. Member States shall communicate to the Commission on a yearly basis the information to be provided under paragraph 1.***
- 3. The Commission shall publish the information to be provided under paragraph 1 and received in accordance with paragraph 2 in a user-friendly way on its website.***

Amendment 96

Proposal for a directive Article 28 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Any shift of the debtor’s centre of main interest as defined in Regulation (EU) 2015/848 shall not be permissible during restructuring proceedings.

Amendment 97

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

Text proposed by the Commission

Amendment

(c) notifications to creditors;

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

Amendment 98

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

Text proposed by the Commission

Amendment

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

Amendment 99

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

Text proposed by the Commission

Amendment

(gb) the number of debtors who, after having undergone a procedure referred to in point (a)(iii), launched a new business;

Amendment 100

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 101

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 102

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ge) the number of job losses, transfer of part or whole of the business, and impact of restructuring agreements on the employment situation;

Amendment 103

Proposal for a directive

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

Text proposed by the Commission

Amendment

(gf) the number of fraudulent

restructuring and insolvency procedures and the functioning of enforcement mechanisms in place.

Amendment 104

Proposal for a directive Article 29 – paragraph 3

Text proposed by the Commission

3. Member States shall compile statistics from the aggregate data referred to in paragraphs 1 and 2 for full calendar years ending on 31 December of each year, starting with data collected for the first full calendar year following [the date of start of application of implementing measures]. These statistics shall be communicated to the Commission on the basis of a standard data communication form annually, by 31 March of the calendar year following the year for which data is collected.

Amendment

3. Member States shall compile statistics from the aggregate data referred to in paragraphs 1 and 2 for full calendar years ending on 31 December of each year, starting with data collected for the first full calendar year following [the date of start of application of implementing measures]. These statistics shall be communicated to the Commission on the basis of a standard data communication form annually, by 31 March of the calendar year following the year for which data is collected. ***Member States shall present those statistics by means of a user-friendly website.***

Amendment 105

Proposal for a directive Article 29 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall centralise on its website the information laid down in paragraphs 1 to 3 of this Article in a publicly accessible, free and user-friendly manner.

Amendment 106

Proposal for a directive Article 30 a (new)

Text proposed by the Commission

Amendment

Article 30a

Obligation to report

1. Any debtor involved in a restructuring, insolvency or discharge procedure in a Member State and that also operates in another Member State shall report to the competent authority, administration or court of both Member States at the beginning of any of those procedures.

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

Amendment 107

Proposal for a directive

Article 31 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(aa) Directive 2008/94/EC.

Amendment 108

Proposal for a directive

Article 33 – paragraph 1

Text proposed by the Commission

Amendment

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

No later than [3 years from the date of start of application of implementing measures] and every ***five*** years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application ***and impact of this Directive. On the basis of that assessment, the Commission shall submit, if appropriate, a legislative proposal following the review*** of this Directive, ***considering*** additional measures to consolidate and ***harmonise*** the legal

framework on restructuring, insolvency and second chance, *in particular in areas such as the conditions for opening insolvency proceedings, a common definition of insolvency, the ranking of insolvency claims, and avoidance actions.*