



2016/0359(COD)

16.11.2017

AMENDMENTS

86 - 382

Draft report

Angelika Niebler

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

Proposal for a directive

(COM(2016)0723 – C8-0475/2016 – 2016/0359(COD))

Amendment 86

Daniel Buda

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The objective of this Directive is to remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures on preventive restructuring, insolvency and second chance. This Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective national preventive restructuring frameworks which enable them to continue operating; that honest over indebted entrepreneurs have a second chance after a full discharge of debt after a reasonable period of time; and that the effectiveness of restructuring, insolvency and discharge procedures is improved, in particular with a view to shortening their length.

Amendment

(1) The objective of this Directive is to remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures on preventive restructuring, insolvency and second chance. This Directive aims at removing such obstacles by ensuring that viable enterprises **and personally liable entrepreneurs** in financial difficulties have access to effective national preventive **rapid** 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, **during which they have gone through insolvency proceedings**; and that the effectiveness of restructuring, insolvency and discharge procedures is improved, in particular with a view to shortening their length.

Or. ro

Amendment 87

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

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

Amendment

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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.

differences between national laws and procedures on preventive restructuring, insolvency and second chance. ***Without prejudice to workers' fundamental rights and freedoms***, this Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective national preventive restructuring frameworks which enable them to continue operating; that honest over indebted entrepreneurs have a second chance after a full discharge of debt after a reasonable period of time; and that the effectiveness of restructuring, insolvency and discharge procedures is improved, in particular with a view to shortening their length.

Or. en

Amendment 88

António Marinho e Pinto, Jean-Marie Cavada

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;

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. 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;

Amendment 89**Daniel Buda****Proposal for a directive****Recital 2***Text proposed by the Commission*

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

Amendment

(2) Restructuring should enable enterprises ***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. Preventive restructuring frameworks should above all enable the enterprises to restructure ***rapidly*** at an early stage and to avoid their insolvency. Those ***rapid preventive*** 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. ***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 their establishments, assets or creditors are situated.

Amendment 90
Sergio Gaetano Cofferati, Edouard Martin

Proposal for a directive
Recital 2

Text proposed by the Commission

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

Amendment

(2) Restructuring should enable enterprises in financial difficulties to continue business in whole or in part, by changing the composition, conditions or structure of assets and liabilities or of their capital structure, including by sales of assets or parts of the business **or the business itself**. Preventive restructuring frameworks should above all enable the enterprises to restructure at an early stage and to avoid their insolvency. Those frameworks should prevent unnecessary job losses and losses of knowledge and skills **and should maximise the total value to creditors in comparison with what they would receive in the event of the liquidation of assets, to owners and to 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. At the same time, non-viable businesses with no prospect of survival should be liquidated as quickly as possible.

Or. en

Amendment 91
Răzvan Popa

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Restructuring should enable enterprises in financial difficulties to

Amendment

(2) Restructuring should enable enterprises in financial difficulties, **in**

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.

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

Or. en

Amendment 92

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin

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-

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. 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.

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 is praiseworthy and 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.

Or. en

Amendment 93
Daniel Buda

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

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. 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.

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 countries to full participation in others.*

Or. ro

Amendment 94
Răzvan Popa

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

Or. en

Justification

Reformulation connects better with Recital 6.

Amendment 95
António Marinho e Pinto, Jean-Marie Cavada

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

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 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.

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. ***This legal uncertainty acts as a disincentive for cross-border investment, which harms the proper functioning of the internal market.***

Or. pt

Amendment 96
António Marinho e Pinto, Jean-Marie Cavada

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. ***At the same time, a greater level of harmonisation would contribute even more towards common European commercial legislation.***

Or. pt

Amendment 97
Răzvan Popa

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. ***For a working Capital Markets Union and a well-functioning single market, it is imperative to enhance*** harmonisation in the field of restructuring, insolvency and second chance.

Or. en

Amendment 98
Daniel Buda

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) More efficient restructuring, insolvency and debt remission proceedings and in particular the digitisation of all insolvency proceedings will help expedite matters, thereby cutting restructuring costs and improving creditor recovery rates. More specifically, this directive will to help increase investment and job opportunities in the single market, reduce unnecessary liquidations of viable companies, avoid unnecessary job losses, prevent the build-up of non-performing loans, facilitate cross-border restructuring, cut costs and provide more opportunities for honest entrepreneurs to be given a fresh start.

Or. ro

Amendment 99
Heidi Hautala

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

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

Or. en

Amendment 100
Jean-Marie Cavada

Proposal for a directive
Recital 13

Text proposed by the Commission

Amendment

(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,

(13) Since small enterprises 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, the latter should take into consideration the size of the enterprise in applying this Directive and should show de facto tolerance to small enterprises.

therefore early warning tools should be put in place to alert debtors to the urgency to act. In order to help such enterprises restructure at low cost, model restructuring plans should also be developed nationally and made available online. Debtors should be able to use and adapt them to their own needs and to the specificities of their business.

Or. fr

Amendment 101

António Marinho e Pinto, Jean-Marie Cavada

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. In particular small and medium sized enterprises, ***which represent 99% of all businesses in the EU***, should benefit from a more coherent approach at Union level, since they ***are disproportionately more likely to be taken into liquidation rather than 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, often do not have the ***necessary*** resources to ***cope with high restructuring costs and take advantage of the more efficient restructuring procedures in some Member States***. In order to help such enterprises restructure at low cost, model restructuring plans should also be developed nationally and made available ***electronically***. Debtors should be able to use and adapt them to their own needs and to the specificities of their business. ***Taking into account their limited resources for hiring professional experts, early warning tools should be put***

in place to warn debtors of the urgent need to act quickly.

Or. pt

Amendment 102

Daniel Buda

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) 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 ***that take particular account of the needs and characteristics of small and medium-sized businesses*** should also be developed nationally and made available online. Debtors should be able to use and adapt them ***easily*** to their own needs and to the specificities of their business.

Or. ro

Amendment 103

Heidi Hautala

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) 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, **as well as workers representatives**, often do not have the resources to hire professional advice, therefore early warning tools should be put in place to alert debtors to the urgency to act. In order to help such enterprises restructure at low cost, model restructuring plans should also be developed nationally and made available online. Debtors should be able to use and adapt them to their own needs and to the specificities of their business.

Or. en

Amendment 104
Gilles Lebreton

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

Amendment

(13) ***Since small*** enterprises 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, ***the latter should take into consideration the size of the enterprise in applying this Directive.*** 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

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enterprises restructure at low cost, model restructuring plans should also be developed nationally and made available online. Debtors should be able to use and adapt them to their own needs and to the specificities of their business.

Or. fr

Amendment 105
Gilles Lebreton

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Major creditors should cooperate constructively with SMEs/ VSEs being created or in financial difficulty. For example, they should agree more easily to lend at zero or very low rates.

Or. fr

Amendment 106
Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin

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 may legitimately propose such a plan.

Or. en

Amendment 107

Jean-Marie Cavada

**Proposal for a directive
Recital 13 a (new)**

Text proposed by the Commission

Amendment

(13a) Member States with a robust household debt distress procedure should provide for enterprises in difficulties to be subject to comparable rules.

Or. fr

Amendment 108

Sergio Gaetano Cofferati, Edouard Martin

**Proposal for a directive
Recital 15**

Text proposed by the Commission

Amendment

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

(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 Member States should ***define*** discharge provisions ***applicable*** to consumers.

Or. en

Amendment 109

Emil Radev

Proposal for a directive

Recital 15

Text proposed by the Commission

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

Amendment

(15) Consumer over-indebtedness is a matter of great economic and social concern and is closely related to the reduction of debt overhang. Furthermore, 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 ***are advised to begin at the earliest opportunity*** also ***to*** apply the discharge provisions to consumers.

Or. bg

Amendment 110

Jana Žitňanská, Kosma Złotowski, Angel Dzhambazki

Proposal for a directive

Recital 15

Text proposed by the Commission

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

Amendment

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

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

with different access conditions and discharge periods, to discharge his business personal debts and his non-business personal debts. For these reasons, Member States should be able to also apply the discharge provisions to consumers ***and establish single procedures for both professional and personal debts of the same person.***

Or. en

Amendment 111

Jana Žitňanská, Kosma Zlotowski, Angel Dzhambazki

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 for the identification of key indicators of personal over indebtedness. In light of the results of this study, the Member States and the Commission should adopt measures establishing a system of early warning tools for the over indebtedness of natural persons.

Or. en

Amendment 112

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

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

(16) The earlier the debtor can detect its financial difficulties and can take appropriate action, the higher the probability of avoiding an impending

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

insolvency or, in case of a business whose viability is permanently impaired, the more orderly and efficient the winding-up process. ***Access to public, free and user-friendly information on the legal procedures for restructuring and insolvency is a first step for raising awareness among debtors and entrepreneurs and for avoiding cases of insolvency.*** Clear information on the available preventive restructuring procedures as well as early warning tools should therefore be put in place to incentivise debtors who start to experience financial problems to take early action ***and to empower the workers concerned to take an active role in the restructuring process.*** Possible early warning mechanisms should include accounting and monitoring duties for the debtor or the debtor's management as well as reporting duties under loan agreements. In addition, third parties with relevant information such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development.

Or. en

Amendment 113

Heidi Hautala

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) The earlier the debtor can detect ***its*** financial difficulties and can take appropriate action, the higher the probability of avoiding an impending insolvency or, in case of a business whose viability is permanently impaired, the more orderly and efficient the winding-up process. Clear information on the available preventive restructuring procedures as well as early warning tools should therefore be

Amendment

(16) The earlier the debtor ***and the workers concerned*** can detect ***companies'*** 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

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

as early warning tools should therefore be put in place to incentivise debtors who start to experience financial problems to take early action **and to empower the workers concerned to take an active role in the restructuring process**. Possible early warning mechanisms should include accounting and monitoring duties for the debtor or the debtor's management as well as reporting duties under loan agreements. In addition, third parties with relevant information such as accountants, tax and social security authorities could be incentivised or obliged under national law to flag a negative development.

Or. en

Amendment 114
Daniel Buda

Proposal for a directive
Recital 16

Text proposed by the Commission

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

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 **be accompanied by clear and transparent explanations concerning their nature and content and** 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,

under national law to flag a negative development.

tax and social security authorities could be incentivised or obliged under national law to flag a negative development.

Or. ro

Amendment 115

Jana Žitňanská, Kosma Złotowski, Angel Dzhambazki

Proposal for a directive

Recital 16

Text proposed by the Commission

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

Amendment

(16) The earlier the debtor can detect its financial difficulties and can take appropriate action, the higher the probability of avoiding an impending insolvency or, in case of a business whose viability is permanently impaired, the more orderly and efficient the winding-up process. Clear information on the available preventive restructuring procedures as well as early warning tools should therefore be put in place to incentivise debtors who start to experience financial problems to take early action. ***Therefore a system of*** early warning mechanisms should ***be established with indicators*** such as ***repeated delays with ordinary payments, and should be followed and monitored by, for example***, tax and social security authorities, ***banks or energy providers.***

Or. en

Amendment 116

Stefano Maullu

Proposal for a directive

Recital 16

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 117

Jana Žitňanská, Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Member States should support the establishment of financial counselling services that, based on the principle of non-profit and financial product neutrality and in cooperation with banks and other relevant stakeholders, would provide financial advice to debtors or indebted entrepreneurs and help them overcome financial problems at a very early stage.

Or. en

Amendment 118

Daniel Buda

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 and honest entrepreneurs to enable them to address their financial difficulties *effectively* 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 *strike a proper balance between the interests of debtors and those of creditors and 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.

Or. ro

Amendment 119

Jiří Maštálka, Kateřina Konečná

Proposal for a directive
Recital 18

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 120
Emil Radev

Proposal for a directive
Recital 18

Text proposed by the Commission

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

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

Or. bg

Amendment 121

Proposal for a directive

Recital 19

Text proposed by the Commission

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

Amendment

(19) A temporary stay of individual enforcement actions ***should take effect when a judicial decision to open restructuring proceedings is taken and this*** 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. 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.

Or. bg

Amendment 122

Sergio Gaetano Cofferati, Edouard Martin

Proposal for a directive

Recital 19

Text proposed by the Commission

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

Amendment

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

certainty, the total period of the stay should be limited to twelve months.

legal certainty, the total period of the stay should be limited to twelve months.

Or. en

Amendment 123
Stefano Maullu

Proposal for a directive
Recital 19

Text proposed by the Commission

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

Amendment

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

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 *eighteen* months.

Or. it

Amendment 124

Daniel Buda

Proposal for a directive

Recital 19

Text proposed by the Commission

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

Amendment

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

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.

Or. ro

Amendment 125
Emil Radev

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) To ensure that the creditors do not suffer detriment, ***the stay should not be granted or, if granted, should not be prolonged or should be lifted when creditors are unfairly prejudiced by*** the stay of enforcement. In establishing whether 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) To ensure that the creditors do not suffer detriment, ***every creditor should have the right to apply for*** the stay of enforcement ***to be withdrawn or lifted if it unfairly prejudices that creditor***. In establishing whether there is unfair prejudice to ***the creditor***, 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.

Or. bg

Amendment 126

Joëlle Bergeron

on behalf of the EFDD Group

Proposal for a directive

Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) Where the financing of a working instrument, such as operating equipment, rolling stock or production tool, is carried out in the form of leasing, in the event of judicial receivership or liquidation and if at least half of the payments to a financial institution have already been carried out, the latter should not be able to resume deployment of this working tool before a reasonable period of at least one year, thus leaving the debtor the possibility of resuming payments.

Or. fr

Amendment 127

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin

Proposal for a directive

Recital 25

Text proposed by the Commission

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

(25) To ensure that rights which are substantially similar are treated equitably and that restructuring plans can be adopted without unfairly prejudicing the rights of affected parties, affected parties should be treated in separate classes which reflect the class formation criteria under national law. As a minimum, secured and unsecured creditors should always be treated in separate classes. National law may provide that secured claims may be divided into secured and unsecured claims based on collateral valuation. National law ***should also provide that workers are part of a separate class, and it should ensure that a***

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.

preferential right is attributed to this class. Member States may also stipulate specific rules supporting class formation where non-diversified or otherwise especially vulnerable creditors, such as 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.

Or. en

Amendment 128
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Recital 25

Text proposed by the Commission

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

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. *If affected by a restructuring plan*, 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

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.

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.

Or. en

Amendment 129

Kosma Zlotowski, Angel Dzhambazki

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 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.

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 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 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.

Amendment 130**Daniel Buda****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 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 **the majority of** affected **classes** 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. ***For creditors, compliance with the absolute priority rule is guaranteed by the involvement of the judicial or administrative authority. Member States may decide to vary the minimum number***

of affected classes necessary for approval of the restructuring plan, as long as the minimum number represents the majority of the classes.

Or. ro

Amendment 131

Sergio Gaetano Cofferati, Edouard Martin

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

Amendment

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

restructure under such conditions. For this reason, the cross-class cram-down mechanism should remain optional for the plan proposer.

the firm in other ways such as managerial expertise may not have an incentive to restructure under such conditions. For this reason, the cross-class cram-down mechanism should remain optional for the plan proposer.

Or. en

Amendment 132

Sergio Gaetano Cofferati, Edouard Martin

Proposal for a directive

Recital 31

Text proposed by the Commission

(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

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 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.***

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.

Or. en

Amendment 133

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin

Proposal for a directive

Recital 32

Text proposed by the Commission

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

Amendment

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

respective dissenting creditors payable by the debtor or the creditors who voted in favour of the plan.

respective dissenting creditors payable by the debtor or the creditors who voted in favour of the plan, *with the exception of the workers' class*.

Or. en

Amendment 134

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

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 the same 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

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

Justification

Since the stay is referred to the restructuring plan and not to the insolvency procedure, the exemption of workers' outstanding claims from any stay of enforcement should be guaranteed in a more comprehensive manner compared to what is foreseen in Directive 2008/94/EC.

Amendment 135

Daniel Buda

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

Amendment

(34) Workers should enjoy full labour law protection throughout preventive restructuring procedures ***and their rights to information should in no way be restricted***. 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

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

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

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

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

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

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

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

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

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

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

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

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

Or. ro

Amendment 136
Daniel Buda

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

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 **a high** level of protection of workers, Member States should in principle exempt workers' outstanding claims, as defined in Directive 2008/94/EC, from any stay of enforcement irrespective of the question whether these claims arise before or after

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

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

⁶⁹ Council Directive 2001/23/EC of 12 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.

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

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

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

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

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

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

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

Or. ro

Amendment 137

Sergio Gaetano Cofferati, Evelyn Regner, Sylvia-Yvonne Kaufmann, Edouard Martin, Jytte Guteland

**Proposal for a directive
Recital 34 a (new)**

Text proposed by the Commission

Amendment

(34a) Workers and their representatives should be provided with all the 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 definition of the plan and should be guaranteed access to expert advice in connection with the restructuring.

Or. en

Amendment 138

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin

**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, 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.

(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 case of insolvency but not in case 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 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 this class is given a preferential right.***

Or. en

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 139 **Heidi Hautala**

Proposal for a directive **Recital 35**

Text proposed by the Commission

(35) Where a restructuring plan entails a transfer of part of undertaking or business,

Amendment

(35) Where a restructuring plan entails a transfer of part of undertaking or business,

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

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

Or. en

Amendment 140
Heidi Hautala

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 as to enable them to undertake an in-depth assessment and to prepare for consultations, where appropriate.^{1a}

Amendment 141
Daniel Buda

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 **during which they have undergone an insolvency procedure** and by limiting the length of disqualification orders issued in connection with the debtor's over-indebtedness.

Amendment 142
Sylvia-Yvonne Kaufmann

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

(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 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.

Or. de

Amendment 143
Daniel Buda

Proposal for a directive
Recital 39

Text proposed by the Commission

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

Amendment

(39) ***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 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.

Or. ro

Amendment 144

Emil Radev

Proposal for a directive

Recital 40

Text proposed by the Commission

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

Amendment

(40) Member States should also ensure that the practitioners in the field of restructuring, insolvency and second chance which are appointed by judicial or administrative authorities are properly trained and supervised in the carrying out of their tasks, that they are appointed in a transparent manner with due regard to the need to ensure efficient procedures and that they perform their tasks with integrity. 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. ***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.***

Or. bg

Amendment 145

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Recital 40

Text proposed by the Commission

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

Amendment

40. Member States should also ensure that the practitioners in the field of restructuring, insolvency and second chance which are appointed by judicial or administrative authorities are properly trained and supervised in the carrying out of their tasks, that they are appointed in a transparent manner with due regard to the need to ensure efficient procedures and that they perform their tasks with integrity, **with a view to 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.

Or. pt

Amendment 146

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Recital 42

Text proposed by the Commission

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

Amendment

42. It is important to gather reliable data on the performance of restructuring, insolvency and discharge procedures in order to monitor the implementation and application of this Directive. Therefore Member States should **intensify their efforts to** collect, aggregate **and supply this data to the Commission, whereby it should be** sufficiently granular to enable an accurate assessment of how the Directive works in practice.

Or. pt

Amendment 147

António Marinho e Pinto, Jean-Marie Cavada

**Proposal for a directive
Recital 44 a (new)**

Text proposed by the Commission

Amendment

44a. The Commission shall review the application of this Directive and shall present a report to the European Parliament and the Council, possibly accompanied by a proposal for new legislative acts to strengthen the legal framework on restructuring, insolvency, discharge and second chance procedures. The assessment should not focus solely on the material recovery rate but also on solvency and restoring viability. Particular attention should be paid to the impact on SMEs.

Or. pt

Amendment 148

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

**Proposal for a directive
Recital 46 a (new)**

Text proposed by the Commission

Amendment

(46a) Under no circumstances should workers bear the burden of restructuring, insolvency and discharge procedures, and the debts 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.

Or. en

Amendment 149

Daniel Buda

Proposal for a directive

Article 1 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

(a) ***rapid*** preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency ***and a genuine possibility of saving the company from an insolvency procedure;***

Or. ro

Amendment 150

Heidi Hautala

Proposal for a directive

Article 1 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

Preventive restructuring should also be available beyond the risk of insolvency.

Amendment 151

Kosma Złotowski, Angel Dzhambazki

Proposal for a directive

Article 1 – paragraph 1 – point c

Text proposed by the Commission

(c) measures to increase the efficiency of the procedures referred to in point (a) and (b) **as well as of insolvency procedures.**

Amendment

(c) measures to increase the efficiency of the procedures referred to in point (a) and (b).

Or. en

Amendment 152

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ca) the obligations of over-indebted entrepreneurs and directors to creditors, workers, shareholders, other stakeholders and the relevant Member State(s)

Or. en

Amendment 153

Jana Žitňanská, Kosma Złotowski, Angel Dzhambazki

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

Text proposed by the Commission

Amendment

(g) natural persons who are not entrepreneurs. *deleted*

Or. en

Amendment 154
Jana Žitňanská, Angel Dzhambazki

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

Text proposed by the Commission

Amendment

(g) natural persons who are not entrepreneurs. *deleted*

Or. en

Amendment 155
Jean-Marie Cavada

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

Text proposed by the Commission

Amendment

2a. This Directive does not apply to procedures which give rise to agreements binding only the signatory creditors or to those intended to implement them.

Or. fr

Amendment 156
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 1 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 157

Emil Radev

Proposal for a directive

Article 1 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Or. bg

Amendment 158

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

Proposal for a directive

Article 1 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Member States **shall define** procedures referred to in point (b) of paragraph 1 **applicable** to over indebted natural persons who are not entrepreneurs.

Or. en

Amendment 159
Kosma Zlotowski, Angel Dzhambazki

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 160
António Marinho e Pinto, Jean-Marie Cavada

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

Text proposed by the Commission

Amendment

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

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

Or. pt

Amendment 161
Jiří Maštálka, Kateřina Konečná

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

Text proposed by the Commission

Amendment

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

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

Amendment 162

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) 'stay of individual enforcement actions' means a temporary suspension of the right to enforce a claim by a creditor against a debtor, ordered by a judicial or administrative authority;

Amendment

(4) 'stay of individual enforcement actions' means a temporary suspension of the right to enforce a claim by a creditor **or a group of creditors** against a debtor **or a group of debtors**, ordered by a judicial or administrative authority;

Or. en

Amendment 163

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) 'stay of individual enforcement actions' means a temporary suspension of the right to enforce a claim by a creditor against a debtor, ordered by a judicial or administrative authority;

Amendment

(4) 'stay of individual enforcement actions' means a temporary suspension of the right to enforce a claim by a creditor **or group of creditors** against a debtor **or group of debtors**, ordered by a judicial or administrative authority;

Or. pt

Amendment 164

Rosa Estaràs Ferragut

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) 'stay of individual enforcement actions' means a temporary suspension of the right to enforce a claim by a creditor against a debtor, ***ordered by a judicial or administrative authority***;

(4) 'stay of individual enforcement actions' means a temporary suspension of the right to enforce a claim by a creditor against a debtor;

Or. en

Amendment 165

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 166

Sergio Gaetano Cofferati, Evelyn Regner, Sylvia-Yvonne Kaufmann, Edouard Martin, Jytte Guteland

Proposal for a directive

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

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

Amendment

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

agreements, and their treatment under the restructuring plan;

restructuring plan. *For the purpose of adopting a restructuring plan, creditors should be divided into different classes of creditors, where, as a minimum, secured and unsecured claims should be treated in distinct classes, whilst workers should constitute a separate privileged class;*

Or. en

Amendment 167

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

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

Amendment

(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; *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;*

Or. en

Amendment 168

Heidi Hautala

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, liens or inter-creditor agreements, and their treatment under the restructuring plan;

(6) 'class formation' means the grouping of affected creditors and equity holders in a restructuring plan in such a way as to reflect the rights and seniority of the affected claims and interests, taking into account possible pre-existing entitlements, liens or inter-creditor agreements, and their treatment under the restructuring plan, ***dividing creditors into different classes where at least the secured and unsecured claims are treated in distinct classes and where workers constitute a separate class***;

Or. en

Amendment 169
Daniel Buda

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;

Or. ro

Amendment 170
Kosma Złotowski, Angel Dzhambazki

Proposal for a directive
Article 2 – paragraph 1 – point 9

Text proposed by the Commission

(9) 'best interest of creditors test' means that no dissenting creditor would be worse off under the restructuring plan than they would be in the event of liquidation,

Amendment

(9) 'best interest of creditors test' means that no dissenting creditor would be worse off under the restructuring plan than they would be in the event of liquidation, ***or, in cases where a continuation of the debtor***

whether piecemeal or sale as a going concern;

as a going concern *is likely, a sale on the basis of a going concern value;*

Or. en

Amendment 171

Kosma Złotowski, Angel Dzhambazki

Proposal for a directive

Article 2 – paragraph 1 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) ‘Alternative value’ means, for secured creditors, the expected proceeds from a hypothetic enforcement of the collateral at the earliest point in time where the legal conditions for an enforcement are fulfilled;

Or. en

Amendment 172

Rosa Estaràs Ferragut

Proposal for a directive

Article 2 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

(10) ‘absolute priority rule’ means that a dissenting class of creditors must be satisfied in full before a more junior class may receive any distribution or keep any interest under the restructuring plan;

deleted

Or. en

Amendment 173

Kosma Złotowski, Angel Dzhambazki

Proposal for a directive

Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) 'absolute priority rule' means that **a** dissenting class of creditors must be satisfied in full before a more junior class may receive any distribution or keep any interest under the restructuring plan;

Amendment

(10) 'absolute priority rule' means that:
1. a dissenting class of secured creditors must receive under the plan the value of the collateral, valued on the basis of the enterprise as a going concern; and
2. any other dissenting class of creditors must be satisfied in full before a more junior class may receive any distribution or keep any interest under the restructuring plan.
Member States may impose other requirements with respect to preferential claims.

Or. en

Amendment 174
Rosa Estaràs Ferragut

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 175
António Marinho e Pinto, Jean-Marie Cavada

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

Text proposed by the Commission

Amendment

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

(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;

Or. pt

Amendment 176

António Marinho e Pinto, Jean-Marie Cavada

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 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

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

Or. pt

Amendment 177

Kosma Złotowski, Angel Dzhambazki

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

deleted

Amendment 178

Jana Žitňanská, Angel Dzhambazki

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. ***It also means an entrepreneur who is unable to pay debts he has incurred into as a natural person but that are linked to the financing of the start of his business activity and a person whose business activity is exclusively a side activity and his professional debts and personal debts cannot be reasonably separated.***

Amendment 179

Daniel Buda

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 180

Sergio Gaetano Cofferati, Edouard Martin, Jytte Guteland

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 ***independent and neutral*** person or body appointed by a judicial or administrative authority to carry out one or more of the following tasks:

Or. en

Amendment 181

Sergio Gaetano Cofferati, Edouard Martin, Jytte Guteland

Proposal for a directive

Article 2 – paragraph 1 – point 15 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 182

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. pt

Amendment 183

Sergio Gaetano Cofferati, Edouard Martin, Jytte Guteland

Proposal for a directive

Article 2 – paragraph 1 – point 15 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 184

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. pt

Amendment 185

Daniel Buda

Proposal for a directive

Article 3 – paragraph 1

Text proposed by the Commission

(1) Member States shall **ensure that debtors and entrepreneurs have access to** early warning tools which can detect a deteriorating business development and signal to the debtor or the entrepreneur the need to act as a matter of urgency.

Amendment

(1) Member States shall **develop** early warning tools which can detect a deteriorating business development and signal to the debtor or the entrepreneur or the workers' representative the need to act as a matter of urgency. **Member States shall ensure that the nature and content**

of early warning instruments are clearly and transparently indicated and that borrowers and entrepreneurs have access to these instruments. Member States may require debtors to consider the need to use a restructuring instrument if, over a two-year period, financial indicators reflect the risk of the business being affected. Member States may decide to restrict access to pre-insolvency restructuring mechanisms for debtors who have failed to make use of early warning instruments despite these being made available to them.

Or. ro

Amendment 186

Jana Žitňanská, Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that debtors and entrepreneurs have access to early warning tools which can detect a deteriorating business development and signal to the debtor or the entrepreneur the need to act as a matter of urgency.

Amendment

1. Member States shall ensure that debtors 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. ***Member states shall also include banks and non-banking companies in the early warning system scheme, which should provide clear information about the possibilities according to this directive and also possibilities of the financial counselling to the debtor or indebted entrepreneur when they recognize the first signs of their deteriorating financial development. Member states shall also ensure that banks and non-banking companies regularly, and at least once a year, inform the debtor about the exact state of his debts, including all charges and interests.***

Or. en

Amendment 187

Heidi Hautala

Proposal for a directive

Article 3 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that debtors **and** entrepreneurs have access to early warning tools which can detect a deteriorating business development and signal to the debtor or the entrepreneur the need to act as a matter of urgency.

Amendment

1. Member States shall ensure that debtors, entrepreneurs **as well as workers and their representatives** have access to early warning tools which can detect a deteriorating business development and signal to the debtor or the entrepreneur the need to act as a matter of urgency.

Or. en

Amendment 188

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Article 3 – paragraph 1

Text proposed by the Commission

1. Member States shall **ensure that debtors and entrepreneurs have access to** early warning tools which can detect a deteriorating business development and signal to the debtor **or** the entrepreneur the need to act as a matter of urgency.

Amendment

1. Member States shall **develop** early warning tools which can detect a deteriorating business development and signal to the debtor, the entrepreneur **and the employees' representative or the employees themselves, where they have no representative**, the need to act as a matter of urgency.

Or. pt

Amendment 189

Heidi Hautala

Proposal for a directive

Article 3 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 190
Heidi Hautala

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

Text proposed by the Commission

Amendment

- 2a. The Commission shall:**
- (a) issue a list of warning indicators, linked to a set of actions to be performed by debtors and entrepreneurs in case these indicators are met;**
 - (b) centralise on its website the information laid down in paragraph 2 in a user-friendly manner.**

Or. en

Amendment 191
Daniel Buda

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

Amendment

(3) Member States may limit the access provided for in paragraphs 1 and 2

deleted

*to small and medium sized enterprises or
to entrepreneurs*

Or. ro

Amendment 192

Jana Žitňanská, Kosma Zlotowski, Angel Dzhambazki

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 193

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 194

Jana Žitňanská, Angel Dzhambazki

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

**Amendment 195
Heidi Hautala**

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

**Amendment 196
Sergio Gaetano Cofferati, Evelyn Regner, Sylvia-Yvonne Kaufmann, Edouard Martin, Jytte Guteland**

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

Text proposed by the Commission

Amendment

3a. Member States shall ensure that workers' representatives can communicate concerns to debtors and entrepreneurs about the situation of the business. Member States shall also ensure that workers' representatives are in a position to have recourse to an independent expert of their choice and are given access to relevant, up-to-date, clear and user-friendly information regarding the situation of the business and the different restructuring strategies being envisaged, including a transfer to worker ownership;

Amendment 197

Sergio Gaetano Cofferati, Edouard Martin, Jytte Guteland

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

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

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 solutions that are more satisfactory than liquidation of assets to help pay off creditors claims, protect jobs and maintain business activity.***

Or. en

Amendment 198

Kosma Złotowski, Angel Dzhambazki

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

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

1. Member States shall ensure that, where there is ***a preponderance of probability*** 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. ***Member States shall ensure that the viability of the debtor is proven.***

Or. en

Amendment 199

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Preventive restructuring frameworks may consist of one or more procedures or measures, ***duly negotiated and consulted with workers ‘representatives, who shall retain all rights of collective bargaining and industrial action. They shall also provide for procedures or measures aimed at the acquisition of the indebted enterprise by its workers, in accordance with the law of the relevant Member State.***

Or. en

Amendment 200

Jean-Marie Cavada

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Preventive restructuring frameworks may consist of one or more procedures or measures. ***They do not affect in any way other existing procedures in the Member States which are based on a contractual agreement between creditors and the procedures to implement such an agreement.***

Or. fr

Amendment 201

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Preventive restructuring frameworks may consist of one or more procedures or measures. ***These are without prejudice to other existing procedures based on a creditors' contractual agreement that may exist in the Member States.***

Or. en

Amendment 202
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Member States shall put in place provisions limiting the involvement of a judicial or administrative authority to where it is necessary and proportionate so that rights of any affected parties are safeguarded. ***As soon as the debtor lodges an application for the intervention of a judicial authority, the proceedings should be treated as court proceedings.***

Or. en

Amendment 203
Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. Member States ***shall*** put in place provisions limiting the involvement of a

Amendment

3. Member States ***may*** 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.

judicial or administrative authority to where it is necessary and proportionate *while ensuring* that rights of any affected parties are safeguarded.

Or. en

Amendment 204
Daniel Buda

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

(4) Preventive restructuring frameworks shall be available on the application by debtors. *Member States may provide for restructuring frameworks to be made available* at the request of creditors with the agreement of the debtor.

Or. ro

Amendment 205
Jean-Marie Cavada

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Preventive restructuring frameworks shall be available on the application by debtors, or, *if a Member State so decides*, by creditors with the agreement of debtors.

Or. fr

Amendment 206
Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 207

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 208

Kosma Złotowski, Angel Dzhambazki

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 209

Emil Radev

Proposal for a directive

Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Or. bg

Amendment 210

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

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.

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, ***without prejudice to specific legislation, such as Directive 2002/47/EC of the European Parliament and of the Council on financial collateral arrangements.***

Or. en

Amendment 211

Daniel Buda

Proposal for a directive

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

(2) ***The appointment by a judicial or administrative authority of a practitioner***

(2) ***Member States may provide for expert supervision of the restructuring procedure to be mandatory. Member***

in the field of restructuring shall not be mandatory in every case.

States may, in order to respect the creditors' rights, give them a major role to play in deciding on the need for the appointment of an insolvency practitioner and in the selection of such a practitioner to supervise the procedure for restructuring a 'debtor in possession'.

Or. ro

Amendment 212
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall not be mandatory in every case **and shall be subject to Member States' legislation.**

Or. en

Amendment 213
Emil Radev

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

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

Amendment

2. **Member States may provide for cases in which** the appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall not be mandatory.

Or. bg

Amendment 214

Jiří Maštálka, Kateřina Konečná

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

Text proposed by the Commission

Amendment

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

deleted

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

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

Or. en

Amendment 215

Sergio Gaetano Cofferati, Edouard Martin

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 216

Daniel Buda

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

Text proposed by the Commission

Amendment

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

(3) Member States **shall order** the appointment of a practitioner in the field of restructuring in the following cases:

Or. ro

Amendment 217

Emil Radev

Proposal for a directive

Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

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

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

Or. bg

Amendment 218

Jiří Maštálka, Kateřina Konečná

Proposal for a directive

Article 5 – paragraph 3 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 219

Emil Radev

Proposal for a directive

Article 5 – paragraph 3 – point a a (new)

Text proposed by the Commission

Amendment

(aa) where, with a decision by a judicial or administrative authority to open restructuring proceedings, individual enforcement actions are temporarily stayed in accordance with Article 6.

Or. bg

Amendment 220

Jiří Maštálka, Kateřina Konečná

Proposal for a directive

Article 5 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(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. *deleted*

Or. en

Amendment 221

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 222

Daniel Buda

Proposal for a directive

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) Representatives of the borrower's employees shall be regularly informed about the restructuring process and about all developments recorded.

Or. ro

Amendment 223

Gilles Lebreton

Proposal for a directive

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall encourage the designation of pooled networks as registered practitioners.

Or. fr

Amendment 224

Daniel Buda

Proposal for a directive

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

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

(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 ***in line with national law*** if and to the extent

support the negotiations of a restructuring plan.

such a stay is necessary to support the negotiations of a restructuring plan.

Or. ro

Amendment 225

Emil Radev

Proposal for a directive

Article 6 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. bg

Amendment 226

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Upon a fully justified application, the judicial authority shall investigate the issue of a stay order in case of extrajudicial proceedings.

Or. en

Amendment 227

Emil Radev

Proposal for a directive

Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States shall ensure that a stay of individual enforcement actions may be ordered in respect of all types of creditors, including secured and preferential creditors.

Or. bg

Amendment 228
Jean-Marie Cavada

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States shall ensure that a stay of individual enforcement actions ***is*** ordered in respect of all types of creditors, including secured and preferential creditors. ***They may opt for the possibility of the judicial or administrative authority not granting the provisional stay of individual enforcement actions or lifting a stay of individual enforcement actions already granted in respect of that creditor or class of creditors, at the request of the creditors concerned.***

Or. fr

Amendment 229
Rosa Estaràs Ferragut

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

Amendment

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

2. Member States shall ensure that a stay of individual enforcement actions may be **obtained by the debtor** in respect of all types of creditors. The stay may be general, covering all creditors, or limited, covering one or more individual creditors, in accordance with national law.

Or. en

Amendment 230

Jiří Maštálka, Kateřina Konečná

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 231

António Marinho e Pinto

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

3. Paragraph 2 shall not apply to **workers' outstanding claims except if and to the extent that Member States ensure by other means that the payment of such claims is guaranteed at a level of protection at least equivalent to that**

Amendment

3. Paragraph 2 shall not apply to **possible rights to compensation. Employees' wages and other benefits shall be paid promptly and in full.**

provided for under the relevant national law transposing Directive 2008/94/EC.

Or. pt

Amendment 232

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Paragraph 2 shall not apply to workers' outstanding claims except if and to the extent that Member States ensure by other means that the payment of such claims is guaranteed at *the same* level.

Or. en

Amendment 233

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 6 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Member States shall limit the duration of the stay of individual enforcement actions to a maximum period of no more than *three* months.
However, in case of financial contracts and netting arrangements that period shall not exceed 48 hours.

Or. en

Amendment 234

Gilles Lebreton

**Proposal for a directive
Article 6 – paragraph 4**

Text proposed by the Commission

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

Amendment

4. Member States shall limit the duration of the stay of individual enforcement actions to a maximum period of no more than **twelve** months **and provide for a quarterly assessment of ongoing negotiations**.

Or. fr

Amendment 235

António Marinho e Pinto, Jean-Marie Cavada

**Proposal for a directive
Article 6 – paragraph 4**

Text proposed by the Commission

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

Amendment

4. The duration of the stay of individual enforcement actions **shall be fixed by agreement between the parties directly involved at between two and six months, which may be extended for an identical** period.

Or. pt

Amendment 236

Daniel Buda

**Proposal for a directive
Article 6 – paragraph 4**

Text proposed by the Commission

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

Amendment

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

Amendment 237

Jiří Maštálka, Kateřina Konečná

Proposal for a directive

Article 6 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 238

Kosma Złotowski, Angel Dzhambazki

Proposal for a directive

Article 6 – paragraph 5 – point b

Text proposed by the Commission

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

Amendment

(b) the continuation of the stay of individual enforcement actions does not unfairly prejudice the rights or interests of any affected parties.
Member States shall set the particular conditions that the debtor would have to comply with in order to extend the stay or grant a new period of stay.

Or. en

Amendment 239

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Article 6 – paragraph 5 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the obligation for the debtor to file for insolvency under national law arose during the period of the stay of individual enforcement actions.

Or. pt

Amendment 240
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

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

Amendment

7. The total duration of the stay of individual enforcement actions, including extensions and renewals, shall not exceed twelve months. ***A stay exceeding three months shall require the consent of secured creditors who are affected by the plan.***

Or. en

Amendment 241
Stefano Maullu

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. it

Amendment 242
Jiří Maštálka, Kateřina Konečná

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 243
Daniel Buda

Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. ro

Amendment 244
Daniel Buda

Proposal for a directive
Article 6 – paragraph 8 – introductory part

Text proposed by the Commission

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

Amendment

(8) Member States shall ensure that judicial or administrative authorities - **in line with their remit under national law** - may lift the stay of individual enforcement actions, in whole or in part:

Or. ro

Amendment 245
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 6 – paragraph 8 – point b a (new)

Text proposed by the Commission

Amendment

(ba) at the request of a creditor if (i) its security interest or other interest in property is not adequately protected, or (ii) the property is not necessary for an effective restructuring.

Or. en

Amendment 246
Jean-Marie Cavada

Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

Or. fr

Amendment 247
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

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

Amendment

9. Member States shall ensure that, where an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions, ***or if no relevant progress has been made in the negotiations of the restructuring plan due to the debtor's uncooperative behaviour***, 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.

Or. en

Amendment 248
Emil Radev

Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

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

Amendment

9. Member States shall ensure that, where an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions, the judicial or administrative authority may 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.

Or. bg

Amendment 249
António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

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

Amendment

9. Member States shall ensure that **the judicial or administrative authority may determine that** an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions, **and as a consequence** the judicial or administrative authority may decide not **to** 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.

Or. pt

Amendment 250
Daniel Buda

Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

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

Amendment

(9) Member States shall ensure that, where an individual creditor or a single class of creditors is or would be unfairly prejudiced by a stay of individual enforcement actions, the judicial or administrative authority may decide - **in line with their remit under national law** - 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.

Or. ro

Amendment 251
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

1. Where the obligation of the debtor to file for insolvency under national law arises during the period of the **stay of individual enforcement actions**, that obligation shall be suspended for the duration of the **stay**.

Amendment

1. Where the obligation of the debtor to file for insolvency under national law arises during the period of the **ongoing restructuring procedure**, that obligation shall be suspended for the duration of the **restructuring**.

Or. en

Amendment 252
Jiří Maštálka, Kateřina Konečná

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 253
Kosma Zlotowski, Angel Dzhambazki

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

Amendment

2. **The ongoing restructuring procedure** covering all creditors shall prevent the opening of insolvency

insolvency procedures at the request of one or more creditors.

procedures at the request of one or more creditors.

Or. en

Amendment 254

Rosa Estaràs Ferragut

Proposal for a directive

Article 7 – paragraph 2

Text proposed by the Commission

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

Amendment

2. *Any stay of individual enforcement actions* shall prevent the opening of insolvency procedures at the request of *any creditor*.

Or. en

Amendment 255

Sergio Gaetano Cofferati, Edouard Martin

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.

Or. en

Amendment 256
Kosma Złotowski, Angel Dzhambazki

Proposal for a directive
Article 7 – paragraph 4

Text proposed by the Commission

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

Amendment

4. ***Without prejudice to specific legislation, such as Directive 2002/47/EC of the European Parliament and of the Council on financial collateral arrangements,*** Member States shall ensure that, during the stay period, ***unsecured*** creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify executory ***and*** essential contracts which are necessary for the continuation of the day-to-day operation of the business ***to the detriment of the debtor for debts that came into existence prior to the stay, provided that the debtor complies with its obligations under such contracts.***

Or. en

Amendment 257
Rosa Estaràs Ferragut

Proposal for a directive
Article 7 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Member States shall ensure that, during the stay period, creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify executory contracts to the detriment of the debtor for debts that came into existence prior to the stay, ***provided the debtor continues to comply with its existing obligations under such contracts.*** Member States may limit

are necessary for the continuation of the day-to-day operation of the business.

the application of this provision to essential contracts which are necessary for the continuation of the day-to-day operation of the business.

Or. en

Amendment 258

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Article 7 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. pt

Amendment 259

Kosma Zlotowski, Angel Dzhambazki

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

Amendment

deleted

entry into restructuring negotiations, a requested for a stay of individual enforcement actions, the ordering of the stay as such or any similar event connected to the stay.

Or. en

Amendment 260
Angelika Niebler

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 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, ***unless they are affected by the stay and they can prove that they would suffer significant disadvantages from such an event.***

Or. de

Amendment 261
Daniel Buda

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.

Or. ro

Amendment 262

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Article 7 – paragraph 6

Text proposed by the Commission

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

Amendment

6. Member States shall ensure that nothing prevents the debtor from paying in the ordinary course of business claims of or owed to unaffected creditors and the claims of affected creditors that arise *at any time during* the period of the stay.

Or. pt

Amendment 263

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive

Article 7 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Member States shall ensure that the matters covered by paragraphs 1 to 7 of this Article are without prejudice to the right of workers to collective bargaining and the right to collective action, including the right to strike.

Or. en

Amendment 264

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Member States shall require restructuring plans ***to be confirmed*** by a judicial or administrative authority ***and shall guarantee that plans are notified for assessment to employees' representatives or to the debtors' employees themselves, where they have no representative, for their opinion. Restructuring plans shall*** contain at least the following information:

Or. pt

Amendment 265

Jiří Maštálka, Kateřina Konečná

Proposal for a directive

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Member States shall require restructuring plans submitted for confirmation by a judicial or administrative authority to contain at least the following information ***and shall ensure that such information is the subject of information and consultation with the workers' representatives, and where there are no workers' representatives, with the workers themselves:***

Or. en

Amendment 266

Daniel Buda

Proposal for a directive

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

Text proposed by the Commission

Amendment

(aa) where appropriate, the identity of the restructuring practitioner

Or. ro

Amendment 267

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

Article 8 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 268

Sergio Gaetano Cofferati, Edouard Martin

Proposal for a directive

Article 8 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) a valuation of the present value of the debtor or the debtor's business as well as a reasoned statement on the causes and the extent of the financial difficulties of the debtor, ***including a description of any assets, debts and their location; this shall***

include an evaluation of the financial obligations relating to and the financial flows towards and from the business' parent companies and subsidiaries, in order to estimate the financial capacity of the debtor's economic group when joint responsibility may arise.

Or. en

Amendment 269
Kosma Zlotowski, Angel Dzhambazki

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

Text proposed by the Commission

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

Amendment

(b) a valuation of the present value of the debtor or the debtor's business as well as *an expected liquidation valuation of the debtor or the debtor's business, all prepared by a judicial expert, and* a reasoned statement on the causes and the extent of the financial difficulties of the debtor;

Or. en

Amendment 270
Daniel Buda

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

Text proposed by the Commission

(d) the classes into which the affected parties have been grouped 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;

Amendment

(d) the classes into which the affected parties have been grouped - *in line with national law on the basis of objective and transparent 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;

Amendment 271

Sergio Gaetano Cofferati, Evelyn Regner, Sylvia-Yvonne Kaufmann, Edouard Martin, Jytte Guteland

Proposal for a directive

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

Text proposed by the Commission

Amendment

(iiia) all organisational aspects and possible consequences on employment levels, emanating from the restructuring plan, including the impact on subsidiaries and subcontractors, on working conditions and remuneration of workers;

Or. en

Amendment 272

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

Proposal for a directive

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

Text proposed by the Commission

Amendment

(iiib) evidence that any negative impact will not affect occupational pension funds and schemes for retired and current workers;

Or. en

Amendment 273

Sergio Gaetano Cofferati, Edouard Martin

Proposal for a directive

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

Text proposed by the Commission

Amendment

(iic) eventual possibilities of selling business;

Or. en

Amendment 274

António Marinho e Pinto

Proposal for a directive

Article 8 – paragraph 1 – point g

Text proposed by the Commission

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

Amendment

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

Or. pt

Amendment 275

Jiří Maštálka, Kateřina Konečná

Proposal for a directive

Article 8 – paragraph 1 – point g

Text proposed by the Commission

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

Amendment

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

anticipated necessary pre-conditions for its success.

success. ***Such an opinion or reasoned statement shall be the subject of validation by an external expert.***

Or. en

Amendment 276

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 8 – paragraph 1 – point g

Text proposed by the Commission

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

Amendment

(g) an opinion or reasoned statement by the person responsible for proposing the restructuring plan, ***with that person being determined by each Member State,*** 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.

Or. en

Amendment 277

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 278

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

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

Text proposed by the Commission

Amendment

1a. Member States shall define the conditions under which creditors and workers may legitimately propose an alternative restructuring plan.

Or. en

**Amendment 279
António Marinho e Pinto**

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

Text proposed by the Commission

Amendment

3a. Member States shall ensure that the entitlements and claims of employees are not affected by the restructuring plans and that occupational pension funds or schemes remain intact, since they do not form part of the business's property that is covered by the restructuring plans.

Or. pt

**Amendment 280
Daniel Buda**

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

Text proposed by the Commission

Amendment

(3a) Member States shall ensure that pay entitlements and any workers' rights are not affected by restructuring plans, without prejudice to Article 6(3) of this Directive.

Amendment 281

Daniel Buda

Proposal for a directive

Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

(1) Member States shall ensure that any affected creditors have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2), ***guaranteeing the application of the criterion of respect for creditors' interests set out in Article 2(9).***

Or. ro

Amendment 282

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

Proposal for a directive

Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that any affected creditors have a right to vote on the adoption of a restructuring plan ***after having been duly informed about the procedure and its potential consequences.*** Member States may also grant such voting rights to affected equity holders, in accordance with Article 12(2).

Or. en

Amendment 283

Jiří Maštálka, Kateřina Konečná

Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 284
Daniel Buda

Proposal for a directive
Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Member States shall ensure that workers' representatives are duly informed about the content of the restructuring plan before its adoption in accordance with Union and national law.

Or. ro

Amendment 285
António Marinho e Pinto

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with

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

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.

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 *for employees and equity holders to be treated in separate classes of their own, as preferential creditors, including in respect of any debts owed to the State. Employees' representatives shall be informed and consulted, shall be able to propose alternative solutions that guarantee the maintenance of jobs, and shall be able to request intervention by an external expert who would draw up alternative proposals, with the same status and consideration as any other plan or proposal.*

Or. pt

Amendment 286
Emil Radev

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 287

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin, Jytte Guteland

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 288

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States **may provide** that affected parties are treated in separate classes which reflect the class formation criteria. Classes **may** 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. **If affected by a**

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.

restructuring plan, secured claims *may* be treated in *a* separate *class* for the purposes of adopting a restructuring plan. Member States may also provide that workers are treated in a separate class of their own.

Or. en

Amendment 289

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 290

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Workers' representatives shall be informed and consulted. They shall have the right to propose alternative plans in order to safeguard employment. They

shall also have the right to request external expertise in order to formulate alternative plans or counter-proposals. Those plans shall be accorded the same status and consideration than any other plan or proposal.

Or. en

Amendment 291

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive

Article 9 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Restructuring plans shall not have a negative impact on occupational pension funds and schemes.

Or. en

Amendment 292

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

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

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%, **or 80% in the case of secured creditors**, in the amount of claims or interests in each class.

Or. en

Amendment 293

Sergio Gaetano Cofferati, Evelyn Regner, Sylvia-Yvonne Kaufmann, Edouard Martin

Proposal for a directive

Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall ensure that, if the plan includes decisions likely to lead to substantial changes in work organisation or in contractual relations, workers who are affected by the restructuring plan shall have the right to vote on it and their approval shall be compulsory for confirmation of the plan.

Or. en

Amendment 294

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive

Article 9 – paragraph 6

Text proposed by the Commission

Amendment

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.

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.

However, where they exist, collective agreements and the outcomes of collective bargaining shall be respected.

Or. en

Amendment 295

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 9 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States where it is partially or totally impossible that credits of State entities are affected by restructuring plans shall ensure that those credits form a separate class, which shall be treated separately, and that those State entities do not have voting rights for the approval of the restructuring plan.

Or. en

Amendment 296

Jiří Maštálka, Kateřina Konečná

Proposal for a directive

Article 9 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States shall guarantee that, in case other creditors fail to collaborate, the workers' restructuring plan may be presented to the relevant judicial or administrative authority and can be adopted without the consent of non-cooperative creditors.

Or. en

Amendment 297

Rosa Estaràs Ferragut

Proposal for a directive

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that the **following** restructuring plans can become binding on the parties only if they are

1. Member States shall ensure that the restructuring plans **which affect the interests of dissenting affected parties** can become binding on the parties only if they

confirmed by a judicial or administrative authority:

are confirmed by a judicial or administrative authority.

Or. en

Amendment 298

Rosa Estaràs Ferragut

Proposal for a directive

Article 10 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 299

Rosa Estaràs Ferragut

Proposal for a directive

Article 10 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) restructuring plans which provide for new financing.

deleted

Or. en

Amendment 300

Sergio Gaetano Cofferati, Edouard Martin

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ba) restructuring plans which involve the loss of more than 10 jobs;

Or. en

Amendment 301

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin

Proposal for a directive

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

Text proposed by the Commission

Amendment

(bb) restructuring plans which are subject to counter-proposals from the class of workers or other creditors;

Or. en

Amendment 302

Daniel Buda

Proposal for a directive

Article 10 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

(c) any new financing is necessary *and proportionate* to implement the restructuring plan.

Or. ro

Amendment 303

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive

Article 10 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) that entrepreneurs and directors do not abuse of the provisions of this Directive by means of "tactical insolvencies" with the aim of circumventing or undermining the rights of creditors, workers, other stakeholders

and their responsibilities to the relevant Member State(s).

Or. en

Amendment 304

Jiří Maštálka, Kateřina Konečná

Proposal for a directive

Article 10 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) workers' representatives have been informed and consulted

Or. en

Amendment 305

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive

Article 10 – paragraph 2 – point c b (new)

Text proposed by the Commission

Amendment

(cb) that restructuring plans do not have the effect of perpetrating a fraud on creditors, workers, other stakeholder or the relevant Member State(s).

Or. en

Amendment 306

Rosa Estaràs Ferragut

Proposal for a directive

Article 10 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that judicial or administrative authorities *may*

3. Member States shall ensure that judicial or administrative authorities refuse

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.

to confirm a restructuring plan where that plan does not have a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business.

Or. en

Amendment 307
Daniel Buda

Proposal for a directive
Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

(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:

Amendment

(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:

Or. ro

Amendment 308
Daniel Buda

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

Text proposed by the Commission

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

Amendment

(a) fulfils the conditions in Article 10(2), ***while ensuring compliance with all the requirements laid down in national law***;

Or. ro

Amendment 309
Daniel Buda

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

Text proposed by the Commission

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

Amendment

(b) has been approved by **the majority of classes** of affected creditors **amongst which there is neither** an equity-holder class **nor** any other class which, upon a valuation of the enterprise, would not receive any payment or other consideration if the normal ranking of liquidation priorities were applied;

Or. ro

Amendment 310
Kosma Zlotowski, Angel Dzhambazki

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

Text proposed by the Commission

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

Amendment

(b) has been approved by **those classes of the** affected creditors **representing the majority in amount** of the **claims, which** would receive any payment or other consideration if the normal ranking of liquidation were applied.

Or. en

Amendment 311
Daniel Buda

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. ro

Amendment 312

Sergio Gaetano Cofferati, Edouard Martin

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.

Or. en

Amendment 313

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

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 the present directive, are not undermined by the restructuring process and that there is independent supervision of compliance with the relevant Members

States' and Union's legislation. These rights shall include, in particular:

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

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

Or. en

Amendment 314
Daniel Buda

Proposal for a directive
Article 13 – title

Text proposed by the Commission

Valuation by the *judicial or administrative authority*

Amendment

Valuation by the *competent authorities of the Member States*

Or. ro

Amendment 315
Daniel Buda

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

Amendment

(1) A liquidation value shall be determined by the *authorities of the Member States and the legality thereof by the* judicial or administrative authority

grounds of an alleged breach of the best interest of creditors test.

where a restructuring plan is challenged on the grounds of an alleged breach of the best interest of creditors test.

Or. ro

Amendment 316
Kosma Zlotowski, Angel Dzhambazki

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. ***An alternative*** 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.

Or. en

Amendment 317
Kosma Zlotowski, Angel Dzhambazki

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

Text proposed by the Commission

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

Amendment

2. An enterprise value shall be determined by the judicial or administrative authority on the basis of the value of the enterprise as a going concern ***where a restructuring plan is challenged*** in the ***rest of*** cases.

Or. en

Amendment 318
Daniel Buda

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

Text proposed by the Commission

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

Amendment

(2) An enterprise value shall be determined by the ***authorities of the Member States*** on the basis of the value of the enterprise as a going concern in the following cases:

Or. ro

Amendment 319
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 13 – paragraph 2 – point a

Text proposed by the Commission

(a) ***where a cross-class cram-down application is necessary for the adoption of the restructuring plan;***

Amendment

deleted

Or. en

Amendment 320
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 13 – paragraph 2 – point b

Text proposed by the Commission

(b) ***where a restructuring plan is challenged on the grounds of an alleged breach of the absolute priority rule.***

Amendment

deleted

Or. en

Amendment 321
Daniel Buda

Proposal for a directive
Article 13 – paragraph 3

Text proposed by the Commission

(3) Member States shall ensure that properly qualified experts are appointed to assist the ***judicial or administrative authority, when necessary and appropriate***, for the purposes of the valuation, including where a creditor challenges the value of the collateral.

Amendment

(3) Member States shall ensure that properly qualified experts are appointed to assist the ***authorities*** for the purposes of the valuation, including where a creditor challenges the value of the collateral.

Or. ro

Amendment 322
Emil Radev

Proposal for a directive
Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The stay shall apply from the moment the restructuring plan is adopted until it is discontinued in respect of claims against the debtor held by creditors involved in the adoption of the plan.

Or. bg

Amendment 323
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may exclude secured creditors from the effect of a restructuring plan.

Or. en

Amendment 324
Kosma Złotowski, Angel Dzhambazki

Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that a decision on the confirmation of a restructuring plan taken by a judicial authority may be appealed before a higher judicial authority and that a decision on the confirmation of a restructuring plan taken by an administrative authority may be appealed before a judicial authority.

Amendment

1. Member States shall ensure that a decision on the confirmation of a restructuring plan taken by a judicial authority may be **challenged or** appealed before **the same or** a higher judicial authority and that a decision on the confirmation of a restructuring plan taken by an administrative authority may be appealed before a judicial authority.

Or. en

Amendment 325
Kosma Złotowski, Angel Dzhambazki

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

2. Appeals shall be resolved in an expedited manner.

Amendment

2. **Challenges and** appeals shall be resolved in an expedited manner.

Or. en

Amendment 326
Kosma Złotowski, Angel Dzhambazki

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

Amendment

deleted

creditors, payable by the debtor or by the creditors who voted in favour of the plan.

Or. en

Amendment 327

Sergio Gaetano Cofferati, Edouard Martin

Proposal for a directive

Article 15 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 328

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 16 – paragraph 1

Text proposed by the Commission

1. Member States shall *ensure that* new financing and interim financing *are adequately encouraged and protected*. In particular, new and interim financing shall not be declared void, voidable or unenforceable as an act detrimental to the general body of creditors in the context of subsequent insolvency procedures, unless such transactions have been carried out fraudulently or in bad faith.

Amendment

1. Member States shall *aim to adequately encourage and protect* new financing and interim financing. In particular, new and interim financing shall not be declared void, voidable or unenforceable as an act detrimental to the general body of creditors in the context of subsequent insolvency procedures, unless such transactions have been carried out fraudulently or in bad faith.

Or. en

Amendment 329

Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin

**Proposal for a directive
Article 16 – paragraph 2**

Text proposed by the Commission

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

Amendment

2. Member States may rank new financing and interim financing senior to the claims of ordinary unsecured creditors, ***but they shall never rank them senior to the claims of the workers' class.***

Or. en

**Amendment 330
Stefano Maullu**

**Proposal for a directive
Article 16 – paragraph 2**

Text proposed by the Commission

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

Amendment

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

Or. it

**Amendment 331
Sergio Gaetano Cofferati, Evelyn Regner, Edouard Martin**

Proposal for a directive

Article 16 – paragraph 3

Text proposed by the Commission

Amendment

3. *The grantors of new financing and interim financing in a restructuring process shall be exempted from civil, administrative and criminal liability in the context of the subsequent insolvency of the debtor, unless such financing has been granted fraudulently or in bad faith.* *deleted*

Or. en

Amendment 332

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 18

Text proposed by the Commission

Amendment

Article 18

deleted

Duties of directors

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

Or. en

Amendment 333

Rosa Estaràs Ferragut

Proposal for a directive
Article 18 – title

Text proposed by the Commission

Amendment

Duties of directors

Obligations of directors

Or. en

Amendment 334
Daniel Buda

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

Text proposed by the Commission

Amendment

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

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

Or. ro

Amendment 335
Sergio Gaetano Cofferati, Evelyn Regner, Sylvia-Yvonne Kaufmann, Edouard Martin

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 336
Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 337

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive

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

Text proposed by the Commission

Amendment

(da) to comply with all their obligations to creditors, workers, other stakeholders, the state and its emanations, in accordance with national law.

Or. en

Amendment 338

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive

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

Text proposed by the Commission

Amendment

(db) to complete an annual statement confirming their compliance with their legal obligations.

Or. en

Amendment 339

Heidi Hautala

Proposal for a directive

Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Failure to comply with the above duties:

(a) shall be taken into account in determining the period and conditions of discharge as enshrined in Article 22;

(b) can lead to disqualification orders for directors, which, if issued in one Member State, shall prevent the same person from undertaking managerial duties in undertakings based in other Member States.

Or. en

Amendment 340
Gilles Lebreton

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

Text proposed by the Commission

Amendment

Member States shall provide that debtor companies may be subject to a procedure similar to that which exists with regard to household overindebtedness.

Or. fr

Amendment 341
Daniel Buda

Proposal for a directive
Article 19 – paragraph 1

Text proposed by the Commission

Amendment

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

(1) Member States shall ensure that ***honest*** over-indebted entrepreneurs may be fully discharged of their debts in accordance with this Directive ***after they have undergone an insolvency procedure.***

Or. ro

Amendment 342

Emil Radev

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.

Or. bg

Amendment 343

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

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 and / or competition law shall be excluded from a full discharge.

Or. en

Amendment 344

Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 20 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

(1) The period of time after which over-indebted entrepreneurs may be fully

(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:

discharged from their debts shall be no longer than *five* years starting from:

Or. de

Amendment 345
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 20 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

1. The period of time after which over-indebted entrepreneurs may be fully discharged from their debts shall be *at least* three years starting from:

Or. en

Amendment 346
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 20 – paragraph 1 – point a

Text proposed by the Commission

(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

Amendment

(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, *as described in paragraph 2 of Article 19 of this Directive*; or

Or. en

Amendment 347
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 20 – paragraph 2

Text proposed by the Commission

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.***

Amendment

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

Or. en

Amendment 348

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 21 – paragraph 1

Text proposed by the Commission

Member States shall ensure that, where an over-indebted entrepreneur obtains a discharge of debts in accordance with this Directive, any disqualifications from taking up or pursuing a trade, business, craft or profession which is connected with the entrepreneur's over-indebtedness shall cease to have effect at the latest at the end of the discharge period, ***without the need to re-apply to a judicial or administrative authority.***

Amendment

Member States shall ensure that, where an over-indebted entrepreneur obtains a discharge of debts in accordance with this Directive, any disqualifications from taking up or pursuing a trade, business, craft or profession which is connected with the entrepreneur's over-indebtedness shall cease to have effect at the latest at the end of the discharge period.

Or. en

Amendment 349

Sergio Gaetano Cofferati, Sylvia-Yvonne Kaufmann, Edouard Martin

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

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:

longer disqualification periods in certain well-defined circumstances and where such limitations are justified by a general interest, in particular where:

Or. en

Amendment 350
Heidi Hautala

Proposal for a directive
Article 22 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) The directors have systematically failed to comply with their duties under Article 18 of this Directive.

Or. en

Amendment 351
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 22 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) Member States provide that access to discharge procedures is granted not more than twice and that no discharge may be granted to the entrepreneur for a period of five years following his last debt discharge.

Or. en

Amendment 352
Kostas Chrysogonos, Kostadinka Kuneva

Proposal for a directive
Article 22 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 353

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Article 22 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. With regard to paragraph 1(a), 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.

Or. pt

Amendment 354

Jana Žitňanská, Kosma Złotowski, Angel Dzhambazki

Proposal for a directive

Article 23 – paragraph 2

Text proposed by the Commission

Amendment

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.***

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 ***are demonstrably faster and more efficient than a single procedure.***

Amendment 355

Kostas Chrysogonos, Jiří Maštálka, Kostadinka Kuneva

Proposal for a directive

Article 23 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that any supervision of a decision under paragraphs 1 and 2 of this Article is carried out by a competent judicial or administrative authority to prevent any abuse on the part of entrepreneurs.

Or. en

Amendment 356

Daniel Buda

Proposal for a directive

Article 24 – paragraph 1

Text proposed by the Commission

Amendment

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

(1) Member States shall ensure that the members of the judiciary and administrative authorities dealing with restructuring, insolvency and second chance matters receive initial and ***specialist*** further training.

Or. ro

Amendment 357

Emil Radev

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.

Or. bg

Amendment 358

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

Article 25 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 359

Emil Radev

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 encourage, by any means which they consider appropriate, ***the avoidance and/or elimination of conflicts of interest and*** 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.

Or. bg

Amendment 360

Kostas Chrysogonos, Kostadinka Kuneva

Proposal for a directive

Article 25 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall establish effective sanctions for breaches of the practitioners' obligations under this Article and other relevant legislation.

Or. en

Amendment 361

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 26 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that the process for the appointment, removal and resignation of practitioners in the field of restructuring, insolvency ***and second chance*** is clear, predictable and fair and fulfils, in particular, the requirements set out in paragraphs 2, 3 and 4.

1. Member States shall ensure that the process for the appointment, removal and resignation of practitioners in the field of restructuring ***and*** insolvency is clear, predictable and fair and fulfils, in particular, the requirements set out in paragraphs 2, 3 and 4.

Or. en

Amendment 362
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 26 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 363
Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive
Article 27

Text proposed by the Commission

Article 27

Supervision and remuneration of practitioners in the field of restructuring, insolvency and second chance

1. Member States shall put in place appropriate oversight and regulatory structures to ensure that the work of practitioners in the field of restructuring, insolvency and second chance is appropriately supervised. This oversight

Amendment

deleted

and regulation shall also include an appropriate and effective regime for sanctioning practitioners who have failed in their duties.

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

Or. en

Amendment 364

Emil Radev

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.

Or. bg

Amendment 365

Daniel Buda

Proposal for a directive

Article 28 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

(1) Member States *shall ensure that* the following actions *may be performed* electronically, including in cross-border situations:

(1) Member States *may perform* the following actions electronically, including in cross-border situations:

Or. ro

Amendment 366

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

Article 28 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) notifications to creditors;

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

Or. en

Amendment 367

Kosma Zlotowski, Angel Dzhambazki

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 of the European Parliament and the Council on insolvency proceedings (recast) shall not be permissible during restructuring proceedings.

Or. en

Amendment 368

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 29 – paragraph 1 – subparagraph 1

With a view to arriving at reliable annual statistics, Member States shall collect and aggregate at Member State level data on:

deleted

- (a) the number of procedures which were initiated, pending and resolved, broken down by:***
 - (i) preventive restructuring procedures,***
 - (ii) insolvency procedures such as liquidation procedures,***
 - (iii) procedures leading to a full discharge of debt for natural persons;***
- (b) the length of the procedure from initiation to payout, separate by types of procedures (preventive restructuring procedure, insolvency procedure, discharge procedure);***
- (c) the share of each type of outcome within each restructuring or insolvency procedure, including the number of procedures applied for but not commenced for lack of available funds in the debtor's estate.***
- (d) the average costs of each procedures awarded by the judicial or administrative authority, in euro;***
- (e) the recovery rates for secured and unsecured creditors separately, as well as the number of procedures with zero or no more than two percent total recovery rate in respect of each type of procedure referred to in point (a);***
- (f) the number of debtors subject to procedures referred to in point (a)(i) who within three years from the conclusion of such procedures are subject to either of the procedures referred to in points (a)(i) and (a)(ii);***
- (g) the number of debtors who, after having undergone a procedure referred to in point (a)(iii) of this paragraph, are subject to another such procedure or***

another procedure referred to in point (a) of this paragraph.

Or. en

Amendment 369

Heidi Hautala

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 370

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. pt

Amendment 371

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 372

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. pt

Amendment 373

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 374

Daniel Buda

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 **12 months after** [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.

Or. ro

Amendment 375

Heidi Hautala

Proposal for a directive

Article 29 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 376

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

Article 30 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

**1a. 30a
Obligation to report**

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

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

Or. en

Amendment 377

Kosma Zlotowski, Angel Dzhambazki

Proposal for a directive

Article 31 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. This Directive shall be without prejudice to the following acts, ***which shall prevail over this Directive:***

Or. en

Amendment 378

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 379

Jiří Maštálka, Kateřina Konečná, Kostas Chrysogonos

Proposal for a directive

Article 31 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 380

Heidi Hautala

Proposal for a directive

Article 33 – paragraph 1

Text proposed by the Commission

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

Amendment

No later than [3 years from the date of start of application of implementing measures] and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application **and impact of this Directive. On the basis of this 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: (a) the conditions for opening insolvency proceedings; (b) a common definition of insolvency; (c) the ranking of insolvency claims; and (d) avoidance actions.**

Or. en

Amendment 381

António Marinho e Pinto, Jean-Marie Cavada

Proposal for a directive

Article 33 – paragraph 1

Text proposed by the Commission

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

Amendment

No later than [5 years from the date of start of application of implementing measures] and every 7 years thereafter, the Commission shall ***review the application of this Directive and shall*** present to the European Parliament, the Council and the European Economic and Social Committee a report ***accompanied, if possible, by a proposal for new legislative acts*** to consolidate and strengthen the legal framework on restructuring, insolvency and second chance. ***That review shall not focus solely on the material recovery rate but also on solvency and restoring viability. Particular attention shall be paid to the impact on SMEs.***

Or. pt

Amendment 382

Emil Radev

Proposal for a directive

Article 34 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They shall apply those provisions from [2 years from the date of entry into force of this Directive], with the exception of the provisions implementing Title IV which shall apply from [3 years from the date of entry into force of this Directive].

Amendment

They shall apply those provisions from [3 years from the date of entry into force of this Directive], with the exception of the provisions implementing Title IV which shall apply from [4 years from the date of entry into force of this Directive].

Or. bg