



2016/0359(COD)

22.9.2017

*****I**

DRAFT REPORT

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

Committee on Legal Affairs

Rapporteur: Angelika Niebler

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0723),
 - having regard to Article 294(2) and Articles 53 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0475/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Employment and Social Affairs (A8-0000/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The objective of this Directive is to remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and

Amendment

(1) The objective of this Directive is to remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and

procedures on preventive restructuring, insolvency and second chance. This Directive aims at removing such obstacles by ensuring that viable enterprises in financial difficulties have access to effective national preventive restructuring frameworks which enable them to continue operating; that honest over indebted entrepreneurs have a second chance after a full discharge of debt after ***a reasonable period of time***; and that the effectiveness of restructuring, insolvency and discharge procedures is improved, in particular with a view to shortening their length.

procedures on preventive restructuring, insolvency and second chance. This Directive aims at removing such obstacles by ensuring that viable enterprises ***and entrepreneurs*** in financial difficulties, ***including individual entrepreneurs who are personally liable***, have access to effective national preventive restructuring frameworks which enable them to continue operating; that honest over indebted entrepreneurs have a second chance after a full discharge of debt after ***they have undergone an insolvency procedure***; and that the effectiveness of restructuring, insolvency and discharge procedures is improved, in particular with a view to shortening their length.

Or. en

Amendment 2

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***

Amendment

(13) ***Enterprises*** should benefit from a more coherent approach at Union level, ***in particular small- and medium-sized enterprises*** 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, ***check lists for*** restructuring plans should be developed nationally and made available online. ***Member States should consider, in particular, the needs and specificities of***

business.

*small- and medium-sized enterprises
when establishing such check lists.*

Or. en

Amendment 3

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 ***be available*** to ***enable*** 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. ***For that purpose***, third parties with relevant information such as accountants, tax and social security authorities ***should develop early warning tools and*** could be incentivised or obliged under national law to flag a negative development. ***All enterprises, regardless of their size, should, in principle, have access to any early warning tools put in place by Members States. However, Member States should be allowed to limit the access to some of those early warning tools to small- and medium-sized enterprises since, given their more limited resources, it is possible that such enterprises would experience greater difficulties with regard to becoming aware in good time of their financial difficulties.***

Amendment 4**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 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 5

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 6

Proposal for a directive Recital 18

Text proposed by the Commission

Amendment

(18) To promote efficiency and reduce delays and costs, national preventive restructuring frameworks should include flexible procedures limiting the involvement of judicial or administrative authorities to where it is necessary and proportionate in order to safeguard the interests of creditors and other interested parties likely to be affected. To avoid unnecessary costs and reflect the early nature of the procedure, debtors should in principle be left in control of their assets and the day-to-day operation of their business. The appointment of a restructuring practitioner, whether a mediator supporting the negotiations of a

(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.

restructuring plan or an insolvency practitioner supervising the actions of the debtor, should not be mandatory in every case, ***unless Member States decide to make it so.*** 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 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. ***Additionally, the debtor or a majority of the debtor's creditors could be interested in having an expert who could facilitate the negotiations.***

Or. en

Amendment 7

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

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.

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 **and that an obligation of the debtor to file for insolvency under national law has not yet arisen**. If further extensions are granted, the judicial or administrative authority should be satisfied that there is a strong likelihood that a restructuring plan will be adopted. Member States should ensure that any request to extend the initial duration of the stay is made within a reasonable deadline so as to allow the judiciary or administrative authorities to deliver a decision within due time. Where a judicial or administrative authority does not take a decision on the extension of a stay of enforcement before it lapses, the stay should cease to have effects on the day the stay period expires. In the interest of legal certainty, the total period of the stay should be limited to **six** months.

Or. en

Amendment 8

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,

Amendment

(20) To ensure that the creditors do not suffer detriment, the stay should not be granted or, if granted, should not be prolonged or should be lifted when creditors are unfairly prejudiced by the stay of enforcement **or when the legal obligation to file for insolvency has**

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.

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

Or. en

Amendment 9

Proposal for a directive

Recital 21

Text proposed by the Commission

(21) Creditors to which the stay applies should also not be allowed to withhold performance, terminate, accelerate or in any other way modify executory contracts during *the stay period*, provided the debtor continues to comply with its existing obligations under such contracts. Early termination would endanger the ability of the business to continue operating during restructuring negotiations, *especially when it concerns* contracts for essential supplies such as gas, electricity, water, telecoms and card payment services. However, in order to protect the legitimate interests of creditors and to ensure the least disruption to the operation of creditors in the supply chain, the stay should only apply in respect of the claims which arose before the stay was granted. In order to achieve a

Amendment

(21) Creditors to which the stay applies should *during the stay period* also not be allowed to withhold performance, terminate, accelerate or in any other way modify *essential* executory contracts, provided the debtor continues to comply with its existing obligations under such contracts. . *Essential executory contracts are* contracts for essential supplies such as gas, electricity, water, telecoms and card payment services. Early termination *of such contracts* would endanger the ability of the business to continue operating during restructuring negotiations. However, in order to protect the legitimate interests of creditors and to ensure the least disruption to the operation of creditors in the supply chain, the stay should only apply in respect of the claims which arose

successful restructuring, the debtor should pay in the ordinary course of business claims of and owed to creditors unaffected by the stay and the claims of creditors affected by the stay that arise after the stay is granted.

before the stay was granted. In order to achieve a successful restructuring, the debtor should pay in the ordinary course of business claims of and owed to creditors unaffected by the stay and the claims of creditors affected by the stay that arise after the stay is granted.

Or. en

Amendment 10

Proposal for a directive Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) Nothing should prevent debtors 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.

Or. en

Amendment 11

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

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

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

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

Or. en

Amendment 12

Proposal for a directive

Recital 26

Text proposed by the Commission

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

Amendment

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

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

Or. en

Amendment 13

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

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.

value of the enterprise as a going concern.
The involvement of a judicial or administrative authority should in principle be a sufficient guarantee for creditors that the absolute priority rule has been respected. However, if Member States consider it appropriate, they should be able to vary the minimum number of affected classes required to approve the restructuring plan as long as that minimum number still represents the majority of classes.

Or. en

Amendment 14

Proposal for a directive Recital 32

Text proposed by the Commission

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

Amendment

(32) Interested affected parties should have the possibility to appeal a decision on the confirmation of a restructuring plan. However, in order to ensure the effectiveness of the plan, to reduce uncertainty and to avoid unjustifiable delays, appeals should not have suspensive effects on the implementation of a restructuring plan. 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. ***Member States should ensure in any case that the non-suspensive effects of the appeal depend on the inclusion in the plan of a provision for monetary compensation for dissenting creditors in the event that they succeed in demonstrating that the best interest of creditors test has not been adhered to.***

Amendment 15**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/EC , Council Directive 2001/23/EC , Directive 2002/14/EC of the European Parliament and of the Council , Directive 2008/94/EC of the European Parliament and of the Council and Directive 2009/38/EC of the European Parliament and of the Council . The obligations concerning the information and consultation of workers under national law implementing the above-mentioned Directives remain fully intact. This includes obligations to inform and consult workers' representatives on the decision to have recourse to a preventive restructuring framework in accordance with Directive 2002/14/EC. ***Given the need to ensure an appropriate level of protection of workers, Member States should in principle exempt workers' outstanding claims, as defined in Directive 2008/94/EC, from any stay of enforcement irrespective of the question whether these claims arise before or after the stay is granted. Such a stay should be permissible only for the amounts and for the period that the payment of such claims is effectively guaranteed by other means under national law. Where Member States extend the cover of the guarantee of payment of workers' outstanding claims established by Directive 2008/94/EC to preventive restructuring procedures set up by this Directive, the exemption of***

Amendment

(34) ***Workers should enjoy full labour law protection throughout*** preventive restructuring procedures ***and their rights to information should in no way be reduced or restricted. This*** Directive is ***thus*** without prejudice to workers' rights guaranteed by Council Directive 98/59/EC , Council Directive 2001/23/EC , Directive 2002/14/EC of the European Parliament and of the Council , Directive 2008/94/EC of the European Parliament and of the Council and Directive 2009/38/EC of the European Parliament and of the Council . 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.

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.

Or. en

Amendment 16

Proposal for a directive Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) In order 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 of whether such claims arise before or after the stay is granted. Such a stay should be permissible only for the amounts and for the period in respect of which payment 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 under this Directive, the exemption of workers' claims from the stay of enforcement is unnecessary 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.

Or. en

Amendment 17

Proposal for a directive Recital 35

Text proposed by the Commission

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

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, *under this Directive*, in addition 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, 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.

Or. en

Amendment 18

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

Or. en

Amendment 19

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 ***and without having undergone an insolvency procedure*** 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.

Or. en

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) preventive restructuring procedures available for debtors in financial difficulty

Amendment

(a) preventive restructuring procedures available for debtors in financial difficulty

when there is a likelihood of insolvency;

when there is a likelihood of insolvency
and a likelihood to save the company from insolvency;

Or. en

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 22

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 23

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

Or. en

Amendment 24

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. en

Amendment 25

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;

Or. en

Amendment 26

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 27

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

Text proposed by the Commission

Early warning

Amendment

Early warning ***and access to information***

Or. en

Amendment 28

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.

Or. en

Amendment 29

Proposal for a directive Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Early warning mechanisms may include the following:

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

(b) reporting duties under loan agreements;

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

Or. en

Amendment 30

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 31

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

Text proposed by the Commission

Amendment

1a. Member States may provide that the access to restructuring proceedings is limited to enterprises who observe accounting and book-keeping obligations in accordance with national law.

Or. en

Amendment 32

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 33

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. en

Amendment 34

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

2. *Member States may provide that the supervision of a restructuring procedure by a practitioner in the field of restructuring is mandatory.*

Or. en

Amendment 35

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:

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

Or. en

Amendment 36

Proposal for a directive

Article 5 – paragraph 3 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 37

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 38

Proposal for a directive

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 39

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 if and to the extent such a stay is necessary to support the negotiations of a restructuring plan ***and provided that the obligation of the debtor to file for insolvency under national law has not yet arisen and that there is a likelihood of being able to save the company from insolvency.***

Or. en

Amendment 40

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, ***provided that they are participating in the negotiation of a restructuring plan.*** The stay may be general, covering all creditors, or limited, covering one or more individual creditors, in accordance with national law.

Or. en

Amendment 41

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 **is limited** to a maximum period of no more than **two** months.

Or. en

Amendment 42

Proposal for a directive

Article 6 – paragraph 5 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 43

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

Amendment

(b) the continuation of the stay of individual enforcement actions does not

unfairly prejudice the rights or interests of any affected parties.

unfairly prejudice the rights or interests of any affected parties; **and**

Or. en

Amendment 44

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 45

Proposal for a directive

Article 6 – paragraph 6

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 46

Proposal for a directive

Article 6 – paragraph 7

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 47

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

Text proposed by the Commission

Amendment

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.

1. Where the obligation of the debtor to file for insolvency under national law arises during the period of the ***general or individual*** stay, that obligation shall ***not*** be suspended for the duration of the stay.

Or. en

Amendment 48

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 49**Proposal for a directive
Article 7 – paragraph 3***Text proposed by the Commission**Amendment*

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

deleted

Or. en

Amendment 50**Proposal for a directive
Article 7 – paragraph 4***Text proposed by the Commission**Amendment*

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

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

of the day-to-day operation of the business.

prior to the stay.

Or. en

Amendment 51

Proposal for a directive Article 7 – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 52

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 53

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 **market** value of the debtor or the debtor's business **at the time of the submission of the plan for confirmation** as well as a reasoned statement on the causes **for** and the extent of the financial difficulties of the debtor;

Or. en

Amendment 54

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 55

Proposal for a directive

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

Text proposed by the Commission

Amendment

(iiia) the arrangements concerning provision of information and the consultation of workers' representatives in accordance with Union and national law;

Or. en

Amendment 56

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 a validation by an external expert of such opinion or reasoned statement.***

Or. en

Amendment 57

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 58

Proposal for a directive Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

Or. en

Amendment 59

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

Text proposed by the Commission

Amendment

- 3a. Member States shall ensure that workers' claims and any workers' rights are not affected by restructuring plans, without prejudice to Article 6(3) of this Directive. Member States shall also ensure that restructuring plans have no negative impact on occupational pension funds and schemes.**

Or. en

Amendment 60

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that any affected creditors have a right to vote on
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).

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

Or. en

Amendment 61

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. en

Amendment 62

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 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.

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

equity holders to be treated in separate *classes* of their own.

Or. en

Amendment 63

Proposal for a directive Article 9 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 64

Proposal for a directive Article 9 – paragraph 4

Text proposed by the Commission

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

Amendment

4. A restructuring plan shall be deemed to be adopted by affected parties, provided that a majority in the amount of their claims or interests *and a majority of creditors* is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan.

Or. en

Amendment 65

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 66

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 67

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

Text proposed by the Commission

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

Amendment

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

creditors.

restructuring plan.

Or. en

Amendment 68

Proposal for a directive Article 10 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Member States shall ensure that where a judicial or administrative authority is required to confirm a restructuring plan in order for it to become binding, a decision is taken ***within a reasonable time and*** without undue delay after the request for confirmation has been filed.

Or. en

Amendment 69

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. en

Amendment 70

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. en

Amendment 71

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 72

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

Amendment

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.

assist the judicial or administrative authority for the purposes of the valuation, including where a creditor challenges the value of the collateral.

Or. en

Amendment 73

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that restructuring plans which are confirmed by a judicial or administrative authority are binding upon each *party* identified in the plan.

Amendment

1. Member States shall ensure that restructuring plans which are confirmed by a judicial or administrative authority are binding upon each *and all parties* identified in the plan.

Or. en

Amendment 74

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 appealed *against* before a higher judicial authority and that a decision on the confirmation of a restructuring plan taken by an administrative authority may be appealed *against* before a judicial authority.

Or. en

Amendment 75

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. Appeals shall be **resolved** in an expedited manner.

Amendment

2. Appeals shall be **decided upon** in an expedited manner.

Or. en

Amendment 76

Proposal for a directive Article 15 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall ensure that the non-suspensive effect of an appeal against confirming a restructuring plan depends on the inclusion in the restructuring plan of a clause providing for monetary compensation to dissenting creditors who demonstrate that the best interest of creditors test has not been satisfied.

Or. en

Amendment 77

Proposal for a directive Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 78

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 79

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 **honest** over-indebted entrepreneurs may be fully discharged of their debts in accordance with this Directive **after they have undergone an insolvency procedure.**

Or. en

Amendment 80

Proposal for a directive Article 20 – paragraph 1

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

Amendment

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

longer than three years starting from:

starting from:

Or. en

Amendment 81

Proposal for a directive Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States may provide for longer discharge periods in the case of an entrepreneur that applies for a second or any subsequent discharge procedure.

Or. en

Amendment 82

Proposal for a directive Article 22 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 83

Proposal for a directive Article 22 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 84

Proposal for a directive Article 22 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 85

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

Amendment

No later than [5 years from the date of start of application of implementing measures] and every 7 years thereafter, the Commission shall present to the European

Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive, including on whether additional measures to consolidate and strengthen the legal framework on restructuring, insolvency and second chance should be considered.

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.
Special attention should be given to the impact of the Directive on small- and medium-sized enterprises, be it in their capacity of creditors or debtors.

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