



15.9.2022

## NOTICE TO MEMBERS

**Subject: Petition No 0076/2022 by José Alvarenga (Portuguese), on behalf of AMRE - Associação de Mediadores de Recuperação de empresas, on the full transposition of Directive (EU) 2019/1023 into Portuguese national law**

### 1. Summary of petition

The petitioner calls for the full transposition into Portuguese national law of Article 8 (2) of Directive 2019/1023, which stipulates that Member States shall provide online a comprehensive checklist for restructuring plans, adapted to the needs of SMEs. The check-list shall include practical guidelines on how the restructuring plan has to be drafted under national law. He considers that this harms SMEs and the proper exercise of the activities of insolvency mediators and court-appointed administrators.

### 2. Admissibility

Declared admissible on 29 April 2022. Information requested from Commission under Rule 227(6).

### 3. Commission reply, received on 15 September 2022

The petitioner, on behalf of Associação de Mediadores de Recuperação de Empresas (AMRE), asks whether Directive (EU) 2019/1023<sup>1</sup> of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency

---

<sup>1</sup> Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (Text with EEA relevance.), *OJL 172, 26.6.2019, p. 18–55.*

and discharge of debt, and amending Directive (EU) 2017/1132<sup>2</sup> (Directive on restructuring and insolvency) was correctly transposed into Portuguese law as regards transposition into Portuguese national law of Article 8 (2) of this Directive. The petitioner is convinced that the absence of online publication of a comprehensive checklist for restructuring plans, adapted to the needs of small and medium-sized enterprises (SMEs), which shall include practical guidelines on how the restructuring plan has to be drafted under national law, harms SMEs and the proper exercise of the activities of insolvency mediators and court-appointed administrators.

### The Commission's observations

The Directive on restructuring and insolvency was adopted on 20 June 2019 and entered into force on 16 July 2019. In its Article 34 (1), the Directive prescribed initially a two-year transposition period, but in Article 34 (2), it also foresaw a possibility for a one-year extension for Member States that encountered particular difficulties in implementing the Directive. The transposition deadline applicable to Portugal was the original deadline of 17 July 2021, and Portugal notified to the Commission the following transposition measures published in the Portuguese official Journal<sup>3</sup>. However, the majority of Member States applied for the extension and for them the transposition deadline was 17 July 2022.

Article 8 of the Directive on restructuring and insolvency defines in its first paragraph the minimum contents of the restructuring plan. The second paragraph of Article 8 continues with an obligation on Member States to make available:

- (a) online a comprehensive checklist for restructuring plans, adapted to the needs of SMEs, which shall include practical guidelines on how the restructuring plan has to be drafted under national law; and
- (b) this checklist in the official language or languages of the Member State and invites Member States to consider making the checklist available in at least one other language, in particular in a language used in international business.

### Conclusion

Given that a vast majority of Member States transposed the Directive on Restructuring and Insolvency only recently by the extended transposition deadline of 17 July 2022, the Commission will launch the assessment of the accuracy of the transposition as regards all Member States in autumn 2022. In the assessment of the Portuguese transposition, the Commission will consider the comments of the petitioner. At this stage, the Commission is not yet able to conclude whether petitioner's comments are pertinent in relation to the alleged incorrect transposition of the Directive on Restructuring and Insolvency.

---

<sup>2</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (Text with EEA relevance. ), *OJ L 169, 30.6.2017, p. 46–127*.

<sup>3</sup> Diaro da Republica I ; Number: 7/2022 ; Publication date: 2022-01-11 ; Page: 3 – 31): Lei n.º 9/2022, Estabelece medidas de apoio e agilização dos processos de reestruturação das empresas e dos acordos de pagamento, transpõe a Diretiva (UE) 2019/1023, do Parlamento Europeu e do Conselho, de 20 de junho de 2019, e altera o Código da Insolvência e da Recuperação de Empresas, o Código das Sociedades Comerciais, o Código do Registo Comercial e legislação conexa. Available at: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32019L1023>