

EUROPEAN RESTRUCTURING SCHEMES

Snapshot on the status of implementation of the EU Restructuring Directive in selected Member States and the new English scheme

Update: May 2022

Introduction

Through the EU Directive on Restructuring and Insolvency of 20 June 2019 (EUR 2019/1023, "**Directive**"), the European Union has imposed an obligation on its member states to offer a more attractive and flexible restructuring scheme in their respective local law. The initial deadline to do so had been 17 July 2021. Only a handful of countries (most notably Germany and The Netherlands) had implemented the Directive within the initial deadline, whilst the other countries made use of the possibility to ask for a one year extension.

In April 2021, we published an overview of the status of implementation as the initial deadline approached (please see our newsletter [here](#)). In the last year, a number of additional countries have proceeded with implementation. This newsletter provides an update in key jurisdictions. For further information, please contact the team listed at the end.

The Directive

The Directive was also in part a reaction to the forum shopping phenomenon observed with continental European companies in a financial crisis to restructure their debt under an English scheme of arrangement. The scheme of arrangement, which is not an insolvency process, offers the possibility to implement debt restructuring on the basis of a majority decision by the creditors. Under these rules, a single "hold-out"

creditor is unable to block a reasonable restructuring plan if the majority of creditors approves it. Many European countries did not offer such a valuable possibility outside of an insolvency procedure. In many cases, insolvencies are value-destructive and lower the prospects of recovery for creditors.

For these reasons, the Directive made it mandatory for EU Member States to offer a "preventive restructuring framework" ("**Framework**") for companies in a financially distressed situation when there is a likelihood of insolvency, with a view to preventing the insolvency and ensuring the viability of the company. Distressed companies should be given the possibility to restructure their debt under the protection of individual enforcement actions on the basis of the majority of the creditors' decisions. Moreover, according to the Directive, new financing, interim financing and other restructuring-related transactions should be protected against avoidance actions in case the restructuring fails and the companies still file for insolvency.

However, as is characteristic of directives, the EU Member States have some leeway in their implementation decisions. Some European countries went ahead and their "national schemes of arrangement" have already entered into force. Below we provide a high-level summary of the current status of the Directive's implementation process in key jurisdictions.

Status in selected European countries



AUSTRIA

Austria has implemented the Directive into Austrian law by way of the so-called Bundesgesetz über die Restrukturierung von Unternehmen ("ReO"), which came into effect on 17 July 2021.

The Austrian legislator has — in most cases — merely implemented the minimum requirements laid down in the Directive. The Austrian legislator has made use of the leeway granted under the Directive only with respect to the creation of a so-called simplified procedure (vereinfachtes Verfahren). In particular, the Austrian legislator has not exercised the option granted to Member States that entitles providers of new financing or interim financing to receive payments prior to other creditors. The Austrian legislator has argued that exercising this option would conflict with the strict principle of equal treatment of creditors under Austrian insolvency law.

As of today, we are not aware of any practical cases, noting that the commencement of ReO proceedings generally will not be made public in the insolvency register, save for the publication of European Restructuring Proceedings. From a practical viewpoint, we expect — in line with the ongoing discussions in Austrian legal literature — that the rather burdensome requirements to commence ReO proceedings are likely to make a restructuring under this new framework unappealing for SMEs, which limits the scope of application to only a small number of large enterprises.



BELGIUM

Although there have not yet been any official publications, we understand that Belgium has availed itself of the provision in the Directive that allows for an extension of the implementation period by one year. A working group prepared draft implementing legislation. This draft is currently under review by different organisations such as the National Labour Council (NAR) and the Central Business Council (CRB). After their advice, the draft will be submitted to the Council of State. Once the recommendations of the Council of State have been considered, the draft will be submitted to the House of Representatives. Although, the Directive must be implemented by 17 July 2022. This timing no longer seems feasible in light of the above.

As the working group has not yet submitted a formal proposal to the Chamber of Representatives, it remains to be seen which approach the Belgian legislator will opt for. Based on the information in our possession, the main discussion is whether to opt for a minimalist approach, aligning as much as possible with the current legislation and implementing only the mandatory provisions of the Directive, or if it will opt for a more comprehensive review of existing laws.

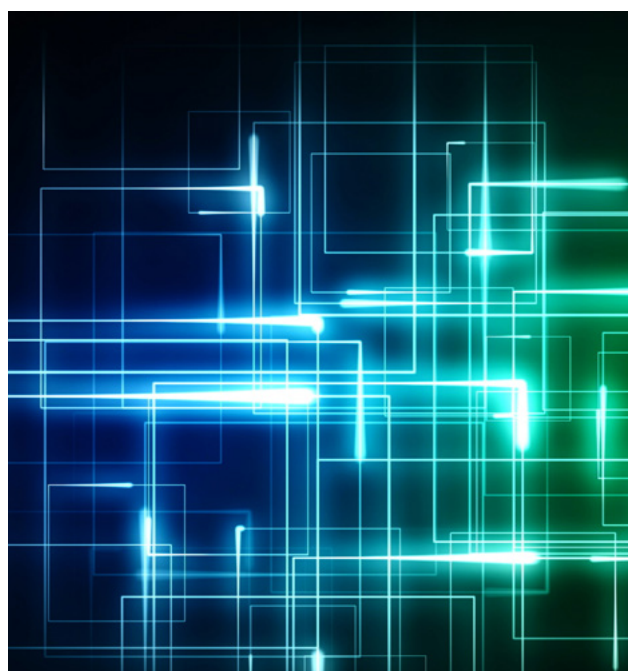
That being said, the current Belgian legislative framework is already largely in line with the main objectives of the Directive. Indeed, Belgian law currently provides for three judicial reorganisation procedures intended to safeguard the continuity of part or all of the assets or activities of the enterprise. The most popular of these procedures is reorganisation by collective agreement. The initiative for commencing this (public) procedure belongs to the debtor. In principle, the debtor remains in possession during the procedure. The debtor benefits from a moratorium in the period between the opening of the procedure by the court and the ratification by the court of the reorganisation plan. The debtor will prepare a reorganisation plan, setting out the measures proposed by the debtor to redress its business (including typically substantial debt write-offs). This plan must then be approved by a double majority of creditors. The reorganisation plan will be approved through a positive vote by a double 50% + one majority by (i) the headcount of creditors affected by the reorganisation plan and (ii) the principal amounts of their claims. If such approval is obtained and subject to court ratification, unsecured minority dissenting creditors will be bound by the reorganisation plan.

Nonetheless, the Belgian legislative framework will certainly undergo changes, as it is not yet fully aligned with the minimum requirements of the Directive. For example, there is currently no requirement for creditors to vote in separate classes.



ENGLAND & WALES

The UK left the EU on 31 October 2019, in advance of the 2021 deadline for the implementation of the Directive into national law. The EU-UK Trade and



Cooperation Agreement made no provision for the continued recognition of, or co-operation in, insolvency and restructuring proceedings.

However, independent of the Directive, the Corporate Insolvency and Governance Act 2020 came into force on 26 June 2020. It introduced a new restructuring plan procedure amongst its package of permanent measures. Directors faced with financial distress can now weigh up the new restructuring plan, or the existing tried and tested scheme of arrangement. Both processes require members and creditors to be grouped into classes based on their rights. The classes then vote on whether to accept the proposed plan or scheme, and in each case final approval (or sanction) rests with the court. For a restructuring plan to be approved, 75% in value of the creditors or voting members within each class must approve the plan (although there is provision for cross-class cram down where the plan is not approved by each class (see below)). In a scheme of arrangement, the scheme must also be approved by a majority in number of creditors, although this test does not apply to a restructuring plan. To date, much of the developed jurisprudence around schemes of arrangement has been drawn upon by the courts in relation to the restructuring plan.

To be eligible for a restructuring plan, (i) a company must have encountered, or be likely to encounter, financial difficulties affecting its ability to carry on

business as a going concern; and (ii) the purpose of the proposed plan must be to eliminate, reduce, prevent or mitigate the effect of those financial difficulties. It is not necessary for the company to be insolvent to be eligible. The plan can be used by both English and foreign companies, although in the latter case the company must also have a sufficient connection with England and Wales.

A key feature of the restructuring plan is cross-class cram down. Cross-class cram down allows a company to apply to the court to approve a restructuring plan, even where there are dissenting classes of creditors or members that voted against the plan. In these circumstances the court can approve such a plan, provided it is satisfied with the following:

1. If the plan is sanctioned, no members of the dissenting classes would be any worse off than they would be in the event of a relevant alternative.
2. At least one class of creditors or members that would receive a payment or have a genuine economic interest in the company in the event of a relevant alternative has voted in favour of the plan.

The relevant alternative is defined as whatever the court considers most likely to occur in relation to the company if the compromise or arrangement were not sanctioned by the court. The court has a wide discretion to consider what the relevant alternative would be.

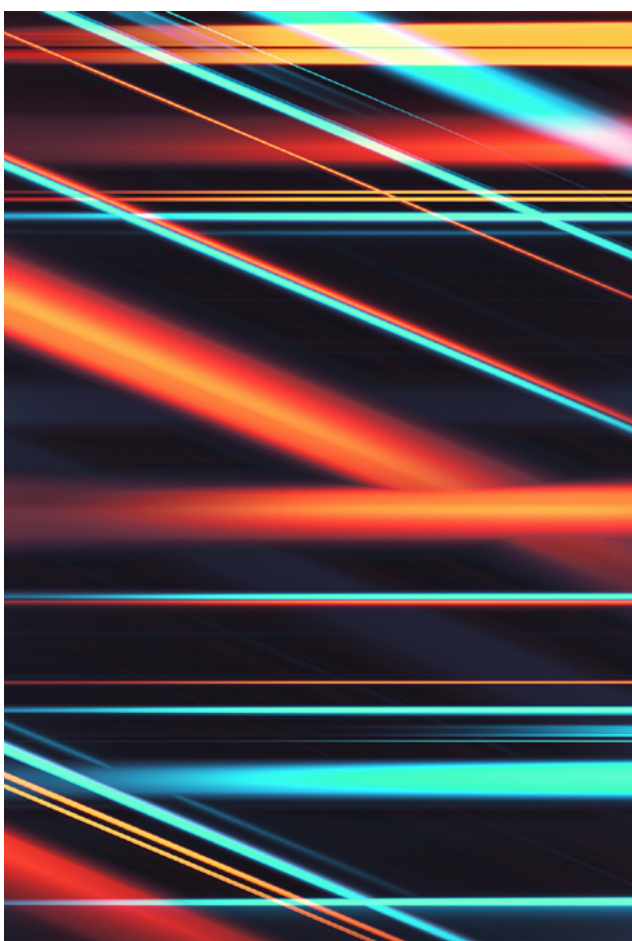
The restructuring plan has already been used in a number of high profile and high value restructurings. The cross-class cram-down has been successfully used in several cases too (*Deep Ocean*, *Virgin Active* and *Amicus Finance*). In the *Hurricane Energy* restructuring plan the Court refused the company's cross-class cram-down application. Indeed in that decision the Court refused to even sanction the proposed restructuring plan, as it was not convinced that the "relevant alternative" (if the plan was not sanctioned) would be a near term insolvent liquidation. Another interesting feature of the restructuring plan is the ability for a company to apply to exclude creditor classes from voting on a plan if it is established those classes have no genuine economic interest in the company (i.e. no prospect of any recovery through either the restructuring plan, or the relevant alternative). This was used for the first time in the *Smile Telecoms* restructuring plan.

FRANCE

The Directive has been implemented into French law by Ordinance No. 2021-1193 dated 15 September 2021, which came into effect on 1 October 2021.

The ordinance does not only focus on the mere implementation of new mechanisms but also reinforces the French preventive restructuring framework.

Regarding conciliation agreements, clauses whose purpose is to organise its consequences in case of nullity, voidance or termination are now considered as survival clauses. Furthermore, in conciliation



proceedings, without prior formal notice or legal action against the debtor from the creditor, the judge is now entitled to impose a standstill or an instalment plan over the claims not yet due when not accepted by the creditor at the request of the conciliator.

French safeguard proceedings have also been amended to comply with the Directive's Framework requirements: the financial accelerated safeguard and the accelerated safeguard proceedings have been merged into new accelerated safeguard proceedings, taking up to four months and still requiring the debtor to be involved in conciliation proceedings. Moreover, a "post-money" privilege has been created in safeguard and judicial reorganisation proceedings.

These amendments were necessary for the accelerated safeguard proceedings to be consistent with the core element of the ordinance: the substitution of creditors' committees by classes of affected parties in safeguard and reorganisation proceedings when the debtor exceeds some thresholds (i.e. 250 employees and EUR 20 million of net turnover or a net turnover of EUR 40 million) or at the request of the debtor, with the authorisation of the insolvency judge.

The introduction of this new concept of classes of affected parties in French law by the Directive requires that the nature of the claims be taken into consideration rather than the capacity of the creditors. Parties affected by the restructuring plan to be voted on, will be gathered following a "sufficient commonality of economic interest". As a minimum, there will be two classes of creditors (secured or unsecured). The creditors will have a significant power to vote on the safeguard and reorganisation plans and the cross-class cram down mechanism may be employed. French courts will have to control the restructuring plans, including upon criteria based on respect of the creditor's best interests — a new notion introduced by the Directive.

In order to carry out this best-interest-of-creditors test, the creditor's position within the context of the restructuring plan will have to be compared with the one the creditor would be in either in the best alternative solution or in a liquidation situation.

So, in order to ease the conduct of the test, the ordinance transposing the Directive has been coupled with the ordinance on securities law No. 2021-1192 (also dated 15 September 2021), clarifying the claims ranking within liquidation proceedings. This ordinance also expanded the securities toolbox possibly being authorised by the insolvency judge within proceedings and extended the natural person guarantor's protection applicable in safeguard proceedings to reorganisation proceedings.

Furthermore, the transposing ordinance provides for possibilities to challenge the classes' constitution and the restructuring plan's approval, but these remedies are restricted by very short time limits not to be overlooked.

GERMANY

Germany has implemented the Directive and the Framework into German law with a new act called "Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen" ("**StaRUG**"), which came into effect on 1 January 2021.

The measures of the Framework can be preceded by a so-called "restructuring moderation", which was not prescribed in the Directive and which is a fully consensual process without the possibility of majority decisions or the ordering of a moratorium. The great benefit of a restructuring moderation, which can be initiated by every debtor facing economic or financial difficulties, is the possibility of making a restructuring settlement between the debtor and its stakeholders "insolvency-proof" (i.e. protection of envisaged restructuring measures from insolvency clawback and "lender liability").

With respect to the actual Framework, a debtor is only entitled to enter it if they face imminent illiquidity, but are not yet actually illiquid or (technically) over-indebted. In essence, the Framework is a very flexible toolkit consisting of a menu of (court) measures that a debtor, who is at all times in charge and control of the whole process (debtor-in-possession), can choose from. Further, there is generally no supervision of the debtor by the restructuring court or a restructuring professional. However, on application of the debtor and in very sensitive cases (e.g. if the consumer's claims are involved) the court can appoint a restructuring adviser, which will support and supervise the debtor. Further, there is generally no direct involvement of the shareholders in the process.

In order to guarantee a "smooth" process, the restructuring court may — on the application of the debtor — also order an enforcement stop (moratorium). Additionally, the StaRUG provides for some restrictions regarding the termination of executory contracts by a creditor based on the mere reason that the debtor has initiated a restructuring under the Framework.

The core element of the Framework is the "restructuring plan". This is a type of agreement between the debtor and its stakeholders, which, under certain conditions, does not require the consent of all parties to the agreement if it is approved by the court. Under German law the plan **can** affect: claims against the debtor, collateral on assets belonging to the debtor, ownership in the company (shareholding right and the shareholding itself), inter-creditor agreements, guarantee claims against subsidiaries or collateral on assets of a subsidiary ("upstream security"). The plan may also provide for a sale of the debtor (asset/share deal) as a whole. However, the plan **cannot** affect the claims of employees (neither salaries nor pension claims). Further, there is no option to change or terminate executory contracts.

To be accepted, the plan needs to be approved by each group, with an approval of 75% of the represented claims in each group being sufficient (meaning that a



24.9% minority within each group can be overruled; "intra-group cram down"). However, provided that the creditors are treated fairly compared to their likely recovery and rank in an alternative insolvency, the court can also overrule an entire group that refuses the plan ("cross-class cram down").

The voting on the restructuring plan can, but does not necessarily have to, take place in court. In any event, the restructuring court must confirm the plan if the measures provided therein will come into binding effect. Under a confirmed plan, new financings will also be largely protected against insolvency clawback and "lender liability" risks.

After one year of being enacted, the new law has been used less than had been expected — but this is also due to the generally very calm environment of the German R&I market. A total of only 24 notifications of a restructuring project have been made to the newly formed restructuring courts — only four of which have ended with a court-approved restructuring plan (with the case of ETERNA being the most prominent one). Also, a number of four restructuring moderations have been carried out. However, it is still too soon to say whether the new law is a success, as it still has to prove its effectiveness in a more distressed environment and after the market participants have gained some experience with it.



The European Restructuring Directive has not yet been implemented in Italy. In fact, in January 2021 Italy requested a one-year extension (i.e. until 17 July 2022) of the deadline to do so from the European Commission, in accordance with Article 34(2) of the Directive.

In the meantime, Legislative Decree No. 14 dated 12 January 2019 ("**Insolvency Code**") — which was originally supposed to enter into force in August 2020 — deeply reformed Italian bankruptcy law by taking into account EU Regulation No. 848/2015, Commission Recommendation No. 2014/135 and the UNCITRAL principles on insolvency, providing a legal framework already partially consistent with the Directive. The Insolvency Code, in fact, is based on a forward-looking approach, the fundamental goal of which is to ensure

the recovery of distressed businesses at an early stage. The new provisions' aim is to highlight as soon as possible the symptoms of a business crisis through the creation of an early warning mechanism, in order to press the management of a company to promptly intervene in the case of a crisis.

The entry into force of the Insolvency Code has, however, been postponed by Law Decree No. 118/2021 dated 24 August 2021 (converted into Law No. 147/2021 dated 21 October 2021), in order to allow Parliament to make further changes to the new provisions, so that they are better tailored to the new economic scenario — which has been significantly impacted by the COVID-19 pandemic — as well as adapted to the Framework set out by the EU Directive 2019/1023. The Insolvency Code is therefore now expected to enter into force on 16 May 2022, except for the provisions concerning the early warning procedures for identifying and potentially remedying early-stage crises, which will enter into force at a later stage, i.e. on 31 December 2023.

It is worth mentioning that Law Decree No. 118/2021 also introduced a new early restructuring procedure (*composizione assistita della crisi*), which is available — starting from 15 November 2021 — to distressed debtors who fear their economic or financial conditions may escalate into financial crisis or insolvency but whose business has a reasonable likelihood of recovery. These debtors may file an application with the local Chamber of Commerce asking it to appoint an expert in order to assist them in assessing their situation and negotiating an "in possession" restructuring.



Although the deadline has passed, Luxembourg has not yet implemented the Directive and the Framework into its national law, and the likely timing for transposition remains uncertain. Draft Bill No. 6539 A on business preservation and the modernisation of bankruptcy law, which aims to favour reorganisation over liquidation, is still being discussed before the Luxembourg Parliament. It should be used to enact the Directive and the Framework into Luxembourg law.

Currently, there are three main alternatives to bankruptcy for governing restructuring in Luxembourg:

- Suspension of payments (sursis de paiement)

This procedure is available for a debtor that is temporarily unable to meet its financial obligations due to unexpected events but has sufficient assets, based on its balance sheet, to satisfy its debts. The court orders the suspension of the distressed debtor's payments to creditors for a given period. The procedure must be approved by creditors representing 75% of all the outstanding amounts.

- Controlled management (gestion contrôlée)

This procedure aims to place the management of the debtor's assets under the control of one or more court-appointed administrators (commissaires) to restructure its assets and the business or sell the assets under the best possible conditions under the supervision of the court and with the approval of the creditors. The debtor must act in good faith and not meet the two cumulative conditions for bankruptcy (i.e. being unable to pay its debts as they fall due and unable to obtain credit). The reorganization plan must be approved by more than 50% in number of the creditors, representing more than 50% in value of the debtor's liabilities. Creditors that do not participate in the proceedings remain subject to the agreed reorganisation plan and may not pursue their claims individually.

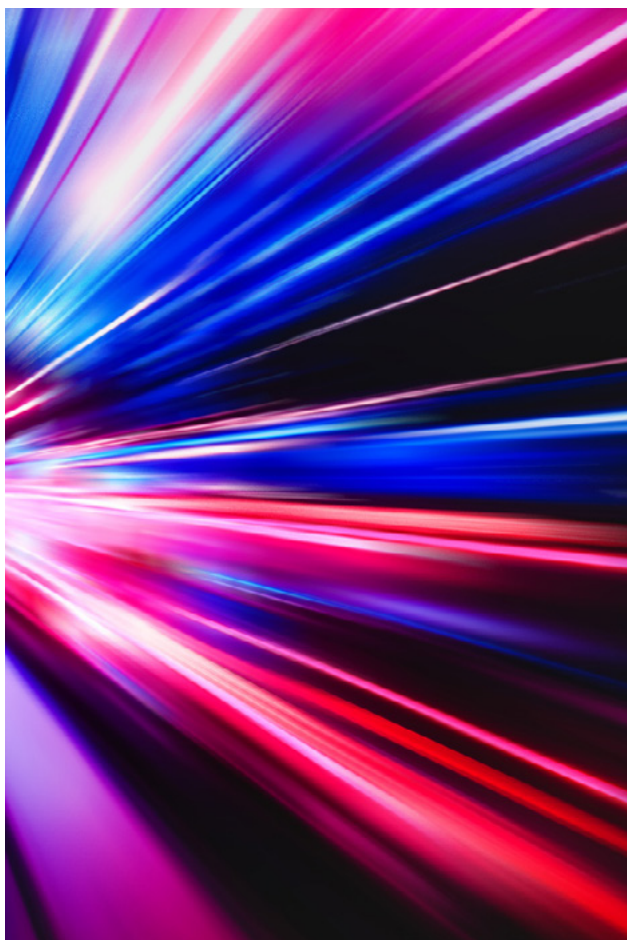
- Scheme of composition (concordat préventif de faillite)

The debtor — acting in good faith and having already met the cumulative conditions for bankruptcy — initiates this court-supervised procedure to come to an arrangement with its creditors and to avoid being officially declared bankrupt. The court and a majority of the creditors representing 75% of the outstanding amount must accept/approve the scheme of composition. Unlike controlled management, creditors that do not participate are not subject to the agreed reorganisation plan and may pursue their claims individually.

In practice, the conditions to benefit from these alternative restructuring options are rarely met, leading the Luxembourg judge to declare the entity bankrupt.

Alternatively, contractual debt restructuring arrangements may be negotiated where there are reasonable grounds to save the distressed entity.

However, where the conditions for bankruptcy are met, the debtor is obliged to file for bankruptcy. As part of the COVID-19 measures, the managers/directors of Luxembourg companies benefit from a suspension of the obligation to file for bankruptcy within 30 days of the cessation of payments until 30 June 2022.



THE NETHERLANDS

The Netherlands has introduced a new instrument in its insolvency legislation: the Dutch scheme (Wet Homologatie Onderhands Akkoord (WHOA)). The WHOA came into effect on 1 January 2021.

Both the debtor and a creditor or shareholder can initiate the Dutch scheme. The debtor can deposit a scheme declaration with the court and then prepare (on its own or with the assistance of a court-appointed restructuring expert) a composition plan. The creditor or shareholder can request the court to appoint a restructuring expert who will then prepare a plan. A liquidity test applies: a debtor must — on a reasonable basis — assess that it cannot continue to pay its debts as they fall due (i.e. the debtor can use a Dutch scheme when it is still able to service its debts, whilst foreseeing that it cannot avoid insolvency in the future without restructuring of debts).

The Dutch scheme offers a very flexible toolkit, with very little court involvement (ratification only) or much more court involvement (including protective measures), depending on the measures sought. The debtor stays in full control of its assets (debtor in possession). The court can appoint a restructuring expert at the debtor's request or at the request of any creditor or shareholder. If a debtor wants to initiate Dutch scheme proceedings, shareholder approval is not required. Shareholders are involved to the extent that their rights are impacted.

A specific feature of the Dutch scheme is that there are two types of scheme: a public and a private scheme. Debtors may elect which type of process they prefer. The public scheme process will be registered in certain

public (insolvency) registers and court hearings are public, whilst private schemes' processes are only known to the parties that are directly involved in them with court hearings being held behind closed doors and no registration in public (insolvency) registers. The regimes for jurisdiction of the Dutch courts and for recognition of the two types of schemes differ, so this requires a careful assessment at an early stage.

The Dutch scheme offers various types of protection to ensure a smooth process when preparing the plan. The court may, for example, order a moratorium/stay of enforcement. Moreover, ipso facto clauses in contracts are set aside and bankruptcy or suspension of payment proceedings are stayed. Finally, the WHOA also offers fresh money protection.

The core element of the Dutch scheme is the plan. The plan may only impact the rights of a single group of creditors, or alternatively it may impact the rights of multiple groups of creditors and/or the rights of shareholders. The plan essentially is nothing but an agreement between the debtor and the parties whose rights are impacted by the plan. Rights of employees cannot be impacted by the Dutch scheme.

We note that there is limited recourse (against the debtor) for third parties such as guarantors or third parties acting as sureties, or third parties that have offered their own assets as security for claims of creditors toward the debtor, in case they pay those creditors. Should the third parties be affiliates of the debtor, their guarantees or sureties can be restructured as part of the plan subject to certain strict conditions being met.

Onerous ongoing contracts that the debtor is a party to may be amended or terminated as part of the plan. The debtor may request its contractual counterparty to voluntarily accept an amendment of the contract terms or a full or partial termination of the contract (with the damages claim of the contractual counterparty becoming part of the plan). Should the contractual counterparty accept the proposal, the court will have to confirm upon ratification of the plan. Should the contractual counterparty refuse to accept the debtor's proposal, the court may terminate the contract upon ratification of the plan (also, the damages claim of the contractual counterparty should be part of the plan).

The classes of creditors and shareholders (whose rights are impacted by the plan) are eligible to vote on the plan. The debtor or the restructuring expert may decide on the voting process (though certain formalities have to be met to ensure that the parties that will vote can make an informed decision). The voting thresholds are two-thirds of the total amount of debt held by creditors that participate in the vote in a certain class, or two-thirds of issued capital for shareholders.

As a starting point, the plan can be ratified by the court (to bind dissenting creditors and/or shareholders) if all classes voted in favour (applying the voting thresholds). A cram down may then be applied within a class. The

"best interest of the creditors test" has to be met then (triggering rejection of the request for ratification of the plan if the test is not met).

Alternatively, a plan may be ratified by the court to bind dissenting creditors and/or shareholders if at least one class of creditors that is "in the money" (i.e. a class of creditors that would receive payment in the case of bankruptcy of the debtor) voted in favour of the plan. A cross-class cram down or cross-class cram up are possible. The court must reject the request for ratification in the case of cross-class cram down (among others) if certain specific tests are not met ("absolute priority rule" and "best interest of the creditors test"). We note that additional grounds for refusal of ratification apply in case of cross-class cram down.

Upon ratification, all parties whose rights are impacted by the plan are bound by it. Appeal against the ratification decision of the court is not possible.



POLAND

Poland has not implemented the Directive into Polish law yet, benefiting from the possibility to extend the implementation period until 17 July 2022. A legislative work is currently pending at the Ministry of Justice on a draft act implementing the Directive into the Restructuring Law and Bankruptcy Law (project No. UC120). The draft has not been published yet. The planned date of adoption of the draft Amending Act by the government is the second quarter of 2022; then the draft Amending Act will be passed to the Parliament.

Nevertheless, the current Polish legislative framework has been already largely in line with the main objectives of the Directive. The Bankruptcy Law provides, among others, for a debt relief procedure dedicated to a debtor being a natural person running a business, under which the remaining liabilities that have not been satisfied in the bankruptcy proceedings may be cancelled. Moreover, the Restructuring Law provides for four types of restructuring proceedings, including proceedings for approval of an arrangement (*postępowanie o zatwierdzenie układu*) ("**Polish Scheme of Arrangement**" or "**Polish Scheme**"). The main objective of the restructuring proceedings is to save the debtor from having to declare bankruptcy by allowing it to restructure under a restructuring arrangement with its creditors. The restructuring opportunity is available to debtors who are insolvent or threatened with insolvency.

The Polish Scheme was initially introduced in 23 June 2020 as a special, temporary anti-COVID-19 restructuring measure (as a modified type of the proceedings for approval of the arrangement that came into force in 1 January 2016). Then the updated version of this restructuring measure was implemented permanently into the Restructuring Law with effect on 1 December 2021.

The Polish Scheme takes place largely out of court. The debtor, prior the public announcement of the procedure, is obliged to select a restructuring practitioner itself;

agree the terms of cooperation with them and appoint them to the position; set up an arrangement date (in general, the Polish Scheme affects debts that arose prior to that date); and draft an initial restructuring plan, a list of recognised debts and a list of disputed debts. Then, at the restructuring practitioner's request, an announcement on selection of the arrangement date is published in the National Register of Debtors.

According to the Polish Scheme, the debtor remains in possession and keeps exercising the management of its assets in the ordinary course of business. The restructuring practitioner's consent, however, is required for the debtor to engage in activities exceeding the ordinary course of business. Moreover, the restructuring practitioner, among other things, oversees the debtor; can inspect the debtor's enterprise and actions regarding its assets; and draws up all the necessary restructuring documentation (together with the debtor), including a restructuring proposal for creditors.

The terms of restructuring the debtor's liabilities will be the same for all creditors, whereas if voting on the arrangement is carried out in creditors' groups, they will generally be the same for creditors in the same group, unless a creditor explicitly agrees to less favourable terms. A type of cross-class cram down mechanism is applicable. Importantly, according to the Polish Scheme, the debtor may also force secured creditors to be bound by the restructuring arrangement (if the arrangement proposal provides full satisfaction of the secured creditor or to a degree not less than the expected satisfaction from the enforcement of collateral).

Under the Polish Scheme, the restructuring arrangement with creditors is concluded by way of the restructuring practitioner collecting creditors' votes or on the creditors' meeting held by a restructuring practitioner, both without the restructuring court's participation. However, for the restructuring arrangement to be valid and binding against creditors, the procedure must end with the approval of the arrangement by the restructuring court.

During the procedure of the Polish Scheme (i.e. after the above-mentioned announcement is published in the register), the debtor generally enjoys a moratorium from an individual bailiff's enforcement actions taken by both non-secured and secured creditors. Moreover, the opening of the Polish Scheme also triggers certain restrictions in favour of the debtor on the admissibility of terminating agreements concerning real estate leases and rentals, credits, leasing, property insurance, bank accounts, surety, agreements covering licences granted to the debtor and guarantees or letters of credit, as well as other agreements essential for the running of the debtor's business.

The process of voting and applying to the restructuring court should be completed within four months from the date of announcement published in the register. If this deadline expires, the debtor loses the above-mentioned protection, in particular against individual enforcement actions of creditors. The restructuring court will issue a

decision in relation to the approval of the arrangement within two weeks from the date of filing the application (this is, however, a non-binding, instructional deadline only).

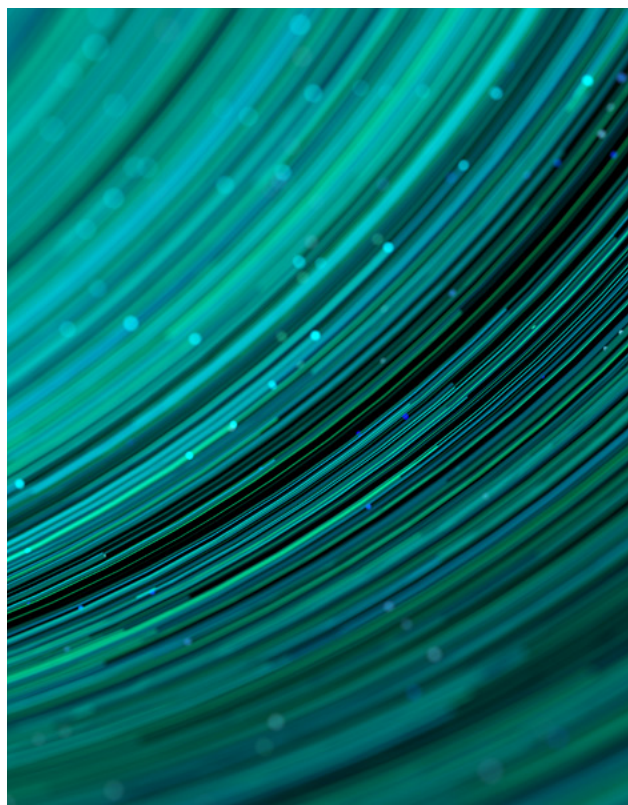


SPAIN

Spain has not implemented the EU Restructuring Directive yet.

An insolvency draft bill to implement the EU Restructuring Directive was approved by the Spanish Cabinet of Ministers on 21 December 2021. This draft bill was published on 14 January 2022 and its parliamentary process was initiated by the urgency procedure. The intention is to have it approved and in force by June 2022.

In the interim, the Recast Text of the Insolvency Act approved on 5 May 2020 is in force (TRLC). However, the moratorium on the duty to file for insolvency petition, which has been in force since 14 March 2020 and has been extended on several occasions, has been extended again. The deadline is now extended to 30 June 2022. According to this, the duty for the debtor to file for insolvency petition (bankruptcy) is suspended. A petition filed by any creditor will not be accepted.



Key contacts for this newsletter



Paris

Hector Arroyo
Partner

+ 33 1 4417 5300
hector.arroyo@bakermckenzie.com



Amsterdam

Valérie van den Berg
Counsel

+ 31 20 551 7843
valerie.vandenberg@bakermckenzie.com



Brussels

Eric Blomme
Partner

+ 32 2 639 36 11
eric.blomme@bakermckenzie.com



Warsaw

Karol Czepukojć
Counsel

+ 48 22 4453191
karol.czepukojc@bakermckenzie.com



Milan

Alberto Fornari
Partner

+ 39 02 76231 349
alberto.fornari@bakermckenzie.com



Frankfurt

Joachim Ponseck
Partner

+ 49 69 2 99 08 130
joachim.ponseck@bakermckenzie.com



Frankfurt

Artur Swierczok
Counsel

+ 49 69 2 99 08 187
artur.swierczok@bakermckenzie.com



Luxembourg

Jean-François Trapp
Partner

+ 352 26 1844 311
jean-francois.trapp@bakermckenzie.com



London

Priyanka Usmani
Partner

+ 44 20 7919 1791
priyanka.usmani@bakermckenzie.com



Vienna

Dr. Robert Wippel
Counsel

+ 43 1 242 50 544
robert.wippel@bakermckenzie.com



Madrid

José Luis Yus
Partner

+ 34 91 230 4500
jose-luis.yus@bakermckenzie.com

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