

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)

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter and scope

- 1 This Directive lays down rules on:
 - a preventive restructuring frameworks available for debtors in financial difficulties when there is a likelihood of insolvency, with a view to preventing the insolvency and ensuring the viability of the debtor;
 - b procedures leading to a discharge of debt incurred by insolvent entrepreneurs; and
 - c measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.
- 2 This Directive does not apply to procedures referred to in paragraph 1 of this Article that concern debtors that are:
 - a insurance undertakings or reinsurance undertakings as defined in points (1) and (4) of Article 13 of Directive 2009/138/EC;
 - b credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
 - c investment firms or collective investment undertakings as defined in points (2) and (7) of Article 4(1) of Regulation (EU) No 575/2013;
 - d central counter parties as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;
 - e central securities depositories as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014;
 - f other financial institutions and entities listed in the first subparagraph of Article 1(1) of Directive 2014/59/EU;
 - g public bodies under national law; and
 - h natural persons who are not entrepreneurs.
- 3 Member States may exclude from the scope of this Directive procedures referred to in paragraph 1 that concern debtors which are financial entities, other than those referred to in paragraph 2, providing financial services which are subject to special arrangements under which the national supervisory or resolution authorities have wide-ranging powers of intervention comparable to those laid down in Union and national law in relation to the financial entities referred to in paragraph 2. Member States shall communicate those special arrangements to the Commission.
- 4 Member States may extend the application of the procedures referred to in point (b) of paragraph 1 to insolvent natural persons who are not entrepreneurs.

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Member States may restrict the application of point (a) of paragraph 1 to legal persons.

5 Member States may provide that the following claims are excluded from, or are not affected by, preventive restructuring frameworks referred to in point (a) of paragraph 1:

- a existing and future claims of existing or former workers;
- b maintenance claims arising from a family relationship, parentage, marriage or affinity;
or
- c claims that arise from tortious liability of the debtor.

6 Member States shall ensure that preventive restructuring frameworks have no impact on accrued occupational pension entitlements.

Article 2

Definitions

1 For the purposes of this Directive, the following definitions apply:

- (1) ‘restructuring’ means measures aimed at restructuring the debtor's business that include changing the composition, conditions or structure of a debtor's assets and liabilities or any other part of the debtor's capital structure, such as sales of assets or parts of the business and, where so provided under national law, the sale of the business as a going concern, as well as any necessary operational changes, or a combination of those elements;
- (2) ‘affected parties’ means creditors, including, where applicable under national law, workers, or classes of creditors and, where applicable, under national law, equity holders, whose claims or interests, respectively, are directly affected by a restructuring plan;
- (3) ‘equity holder’ means a person that has an ownership interest in a debtor or a debtor's business, including a shareholder, in so far as that person is not a creditor;
- (4) ‘stay of individual enforcement actions’ means a temporary suspension, granted by a judicial or administrative authority or applied by operation of law, of the right of a creditor to enforce a claim against a debtor and, where so provided for by national law, against a third-party security provider, in the context of a judicial, administrative or other procedure, or of the right to seize or realise out of court the assets or business of the debtor;
- (5) ‘executory contract’ means a contract between a debtor and one or more creditors under which the parties still have obligations to perform at the time the stay of individual enforcement actions is granted or applied;
- (6) ‘best-interest-of-creditors test’ means a test that is satisfied if no dissenting creditor would be worse off under a restructuring plan than such a creditor would be if the normal ranking of liquidation priorities under national law were applied, either in the event of liquidation, whether piecemeal or by sale as a going concern, or in the event of the next-best-alternative scenario if the restructuring plan were not confirmed;
- (7) ‘new financing’ means any new financial assistance provided by an existing or a new creditor in order to implement a restructuring plan and that is included in that restructuring plan;

- (8) ‘interim financing’ means any new financial assistance, provided by an existing or a new creditor, that includes, as a minimum, financial assistance during the stay of individual enforcement actions, and that is reasonable and immediately necessary for the debtor's business to continue operating, or to preserve or enhance the value of that business;
- (9) ‘entrepreneur’ means a natural person exercising a trade, business, craft or profession;
- (10) ‘full discharge of debt’ means that enforcement against entrepreneurs of their outstanding dischargeable debts is precluded or that outstanding dischargeable debts as such are cancelled, as part of a procedure which could include a realisation of assets or a repayment plan or both;
- (11) ‘repayment plan’ means a programme of payments of specified amounts on specified dates by an insolvent entrepreneur to creditors, or a periodic transfer to creditors of a certain part of entrepreneur's disposable income during the discharge period;
- (12) ‘practitioner in the field of restructuring’ means any person or body appointed by a judicial or administrative authority to carry out, in particular, one or more of the following tasks:
- (a) assisting the debtor or the creditors in drafting or negotiating a restructuring plan;
 - (b) supervising the activity of the debtor during the negotiations on a restructuring plan, and reporting to a judicial or administrative authority;
 - (c) taking partial control over the assets or affairs of the debtor during negotiations.
- 2 For the purposes of this Directive, the following concepts are to be understood as defined by national law:
- a insolvency;
 - b likelihood of insolvency;
 - c micro, small and medium-sized enterprises (‘SMEs’).

Article 3

Early warning and access to information

1 Member States shall ensure that debtors have access to one or more clear and transparent early warning tools which can detect circumstances that could give rise to a likelihood of insolvency and can signal to them the need to act without delay.

For the purposes of the first subparagraph, Member States may make use of up-to-date IT technologies for notifications and for communication.

- 2 Early warning tools may include the following:
- a alert mechanisms when the debtor has not made certain types of payments;
 - b advisory services provided by public or private organisations.
 - c incentives under national law for third parties with relevant information about the debtor, such as accountants, tax and social security authorities, to flag to the debtor a negative development.

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3 Member States shall ensure that debtors and employees' representatives have access to relevant and up-to-date information about the availability of early warning tools as well as of the procedures and measures concerning restructuring and discharge of debt.

4 Member States shall ensure that information on access to early warning tools is publicly available online and that, in particular for SMEs, it is easily accessible and presented in a user-friendly manner.

5 Member States may provide support to employees' representatives for the assessment of the economic situation of the debtor.