# 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)

## DIRECTIVE (EU) 2019/1023 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) The objective of this Directive is to contribute to the proper functioning of the internal market and remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures concerning preventive restructuring, insolvency, discharge of debt, and disqualifications. Without affecting workers' fundamental rights and freedoms, this Directive aims to remove such obstacles by ensuring that: viable enterprises and entrepreneurs that are in financial difficulties have access to effective national preventive restructuring frameworks which enable them to continue operating; honest insolvent or over-indebted entrepreneurs can benefit from a full discharge of debt after a reasonable period of time, thereby allowing them a second chance; and that the effectiveness of procedures concerning restructuring, insolvency and discharge of debt is improved, in particular with a view to shortening their length.

(2) Restructuring should enable debtors in financial difficulties to continue business, in whole or in part, by changing the composition, conditions or structure of their assets

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and their liabilities or any other part of their capital structure — including by sales of assets or parts of the business or, where so provided under national law, the business as a whole — as well as by carrying out operational changes. Unless otherwise specifically provided for by national law, operational changes, such as the termination or amendment of contracts or the sale or other disposal of assets, should comply with the general requirements that are provided for under national law for such measures, in particular civil law and labour law rules. Any debt-to-equity swaps should also comply with safeguards provided for by national law. Preventive restructuring frameworks should, above all, enable debtors to restructure effectively at an early stage and to avoid insolvency, thus limiting the unnecessary liquidation of viable enterprises. Those frameworks should help to prevent job losses and the loss of know-how and skills, and maximise the total value to creditors — in comparison to what they would receive in the event of the liquidation of the enterprise's assets or in the event of the next-best-alternative scenario in the absence of a plan — as well as to owners and the economy as a whole.

(3) Preventive restructuring frameworks should also prevent the build-up of non-performing loans. The availability of effective preventive restructuring frameworks would ensure that action is taken before enterprises default on their loans, thereby helping to reduce the risk of loans becoming non-performing in cyclical downturns and mitigating the adverse impact on the financial sector. A significant percentage of businesses and jobs could be saved if preventive frameworks existed in all the Member States in which businesses' places of establishment, assets or creditors are situated. In restructuring frameworks the rights of all parties involved, including workers, should be protected in a balanced manner. At the same time, non-viable businesses with no prospect of survival should be liquidated as quickly as possible. Where a debtor in financial difficulties is not economically viable or cannot be readily restored to economic viability, restructuring efforts could result in the acceleration and accumulation of losses to the detriment of creditors, workers and other stakeholders, as well as the economy as a whole.

(4) There are differences between Member States as regards the range of the procedures available to debtors in financial difficulties in order to restructure their business. Some Member States have a limited range of procedures that allow the restructuring of businesses only at a relatively late stage, in the context of insolvency procedures. In other Member States, restructuring is possible at an earlier stage but the procedures available are not as effective as they could be, or they are very formal, in particular because they limit the use of out-of-court arrangements. Preventive solutions are a growing trend in insolvency law. The trend favours approaches that, unlike the traditional approach of liquidating a business in financial difficulties, have the aim of restoring it to a healthy state or, at least, saving those of its units which are still economically viable. That approach, among other benefits to the economy, often helps to maintain jobs or reduce job losses. Moreover, the degree of involvement of judicial or administrative authorities, or the persons appointed by them, varies from no involvement or minimal involvement in some Member States to full involvement in others. Similarly, national rules giving entrepreneurs a second chance, in particular

by granting them discharge from the debts they have incurred in the course of their business, vary between Member States in respect of the length of the discharge period and the conditions for granting such a discharge.

(5) In many Member States, it takes more than three years for entrepreneurs who are insolvent but honest to be discharged from their debts and make a fresh start. Inefficient discharge of debt and disqualification frameworks result in entrepreneurs having to relocate to other jurisdictions in order to benefit from a fresh start in a reasonable period of time, at considerable additional cost to both their creditors and the entrepreneurs themselves. Long disqualification orders, which often accompany a procedure leading to discharge of debt, create obstacles to the freedom to take up and pursue a self-employed, entrepreneurial activity.

(6) The excessive length of procedures concerning restructuring, insolvency and discharge of debt in several Member States is an important factor triggering low recovery rates and deterring investors from carrying out business in jurisdictions where procedures risk taking too long and being unduly costly.

(7) Differences between Member States in relation to procedures concerning restructuring, insolvency and discharge of debt translate into additional costs for investors when assessing the risk of debtors getting into financial difficulties in one or more Member States, or of investing in viable businesses in financial difficulties, as well as additional costs of restructuring enterprises that have establishments, creditors or assets in other Member States. This is most notably the case with restructuring international groups of companies. Investors mention uncertainty about insolvency rules or the risk of lengthy or complex insolvency procedures in another Member State as being one of the main reasons for not investing or not entering into a business relationship with a counterpart outside the Member State where they are based. That uncertainty acts as a disincentive which obstructs the freedom of establishment of undertakings and the promotion of entrepreneurship and harms the proper functioning of the internal market. Micro, small and medium-sized enterprises (‘SMEs’) in particular do not, for the most part, have the resources needed to assess risks related to cross-border activities.

(8) The differences among Member States in procedures concerning restructuring, insolvency and discharge of debt lead to uneven conditions for access to credit and to uneven recovery rates in the Member States. A higher degree of harmonisation in the field of restructuring, insolvency, discharge of debt and disqualifications is thus indispensable for a well-functioning internal market in general and for a working Capital Markets Union in particular, as well as for the resilience of European economies, including for the preservation and creation of jobs.

(9) The additional cost of risk-assessment and of cross-border enforcement of claims for creditors of over-indebted entrepreneurs who relocate to another Member State in order to obtain a discharge of debt in a much shorter period of time should also be reduced. The additional costs for entrepreneurs stemming from the need to relocate to another Member State in order to benefit from a discharge of debt should also be reduced. Furthermore, the obstacles stemming from long disqualification orders linked to an entrepreneur's insolvency or over-indebtedness inhibit entrepreneurship.

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(10) Any restructuring operation, in particular one of major size which generates a significant impact, should be based on a dialogue with the stakeholders. That dialogue should cover the choice of the measures envisaged in relation to the objectives of the restructuring operation, as well as alternative options, and there should be appropriate involvement of employees' representatives as provided for in Union and national law.

(11) The obstacles to the exercise of fundamental freedoms are not limited to purely cross-border situations. An increasingly interconnected internal market, in which goods, services, capital and workers circulate freely, and which has an ever-stronger digital dimension, means that very few enterprises are purely national if all relevant elements are considered, such as their client base, supply chain, scope of activities, investor and capital base. Even purely national insolvencies can have an impact on the functioning of the internal market through the so-called domino effect of insolvencies, whereby a debtor's insolvency may trigger further insolvencies in the supply chain.

(12) Regulation (EU) 2015/848 of the European Parliament and of the Council[(4)] deals with issues of jurisdiction, recognition and enforcement, applicable law and cooperation in cross-border insolvency proceedings as well as with the interconnection of insolvency registers. Its scope covers preventive procedures which promote the rescue of economically viable debtors as well as discharge procedures for entrepreneurs and other natural persons. However, that Regulation does not tackle the disparities between national laws regulating those procedures. Furthermore, an instrument limited only to cross-border insolvencies would not remove all obstacles to free movement, nor would it be feasible for investors to determine in advance the cross-border or domestic nature of the potential financial difficulties of the debtor in the future. There is therefore a need to go beyond matters of judicial cooperation and to establish substantive minimum standards for preventive restructuring procedures as well as for procedures leading to a discharge of debt for entrepreneurs.

(13) This Directive should be without prejudice to the scope of Regulation (EU) 2015/848. It aims to be fully compatible with, and complementary to, that Regulation, by requiring Member States to put in place preventive restructuring procedures which comply with certain minimum principles of effectiveness. It does not change the approach taken in that Regulation of allowing Member States to maintain or introduce procedures which do not fulfil the condition of publicity for notification under Annex A to that Regulation. Although this Directive does not require that procedures within its scope fulfil all the conditions for notification under that Annex, it aims to facilitate the cross-border recognition of those procedures and the recognition and enforceability of judgments.

(14) The advantage of the application of Regulation (EU) 2015/848 is that it provides for safeguards against abusive relocation of the debtor's centre of main interests during cross-border insolvency proceedings. Certain restrictions should also apply to procedures not covered by that Regulation.

(15) It is necessary to lower the costs of restructuring for both debtors and creditors. Therefore, the differences between Member States which hamper the early restructuring of viable debtors in financial difficulties and the possibility of a discharge of debt for honest entrepreneurs should be reduced. Reducing such differences should

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bring greater transparency, legal certainty and predictability across the Union. It should maximise the returns to all types of creditors and investors and encourage cross-border investment. Greater coherence of restructuring and insolvency procedures should also facilitate the restructuring of groups of companies irrespective of where the members of the group are located in the Union.

(16) Removing the barriers to effective preventive restructuring of viable debtors in financial difficulties contributes to minimising job losses and losses of value for creditors in the supply chain, preserves know-how and skills and hence benefits the wider economy. Facilitating a discharge of debt for entrepreneurs would help to avoid their exclusion from the labour market and enable them to restart entrepreneurial activities, drawing lessons from past experience. Moreover, reducing the length of restructuring procedures would result in higher recovery rates for creditors as the passing of time would normally only result in a further loss of value of the debtor or the debtor's business. Finally, efficient preventive restructuring, insolvency and discharge procedures would enable a better assessment of the risks involved in lending and borrowing decisions and facilitate the adjustment for insolvent or over-indebted debtors, minimising the economic and social costs involved in their deleveraging process. This Directive should allow Member States flexibility to apply common principles while respecting national legal systems. Member States should be able to maintain or introduce in their national legal systems preventive restructuring frameworks other than those provided for by this Directive.

(17) Enterprises, and in particular SMEs, which represent 99 % of all businesses in the Union, should benefit from a more coherent approach at Union level. SMEs are more likely to be liquidated than restructured, since they have to bear costs that are disproportionately higher than those faced by larger enterprises. SMEs, especially when facing financial difficulties, often do not have the necessary resources to cope with high restructuring costs and to take advantage of the more efficient restructuring procedures available only in some Member States. In order to help such debtors restructure at low cost, comprehensive check-lists for restructuring plans, adapted to the needs and specificities of SMEs, should be developed at national level and made available online. In addition, early warning tools should be put in place to warn debtors of the urgent need to act, taking into account the limited resources of SMEs for hiring experts.

(18) When defining SMEs, Member States could give due consideration to Directive 2013/34/EU of the European Parliament and of the Council[(5)] or the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises[(6)].

(19) It is appropriate to exclude from the scope of this Directive debtors which are insurance and re-insurance undertakings as defined in points (1) and (4) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council[(7)], credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(8)], investment firms and collective investment undertakings as defined in points (2) and (7) of Article 4(1) of Regulation (EU) No 575/2013, central counterparties as defined in point (1) of Article 2 of Regulation