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THE ROLE, FUNCTIONS AND DUTIES OF INSOLVENCY PRACTITIONER IN RESTRUCTURING PROCEEDINGS

Master thesis

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LIST OF ABBREVIATIONS

COVID-19	Coronavirus Disease 2019
DIP	Debtor-in-possession
EIR	European Insolvency Regulation (Recast)
InsO	Insolvenzordnung (German Insolvency Code)
JCOERE	Judicial Co-operation Supporting the Restructuring, Insolvency and Discharge of Debt in the EU
Member State	Member State of the European Union
Restructuring Directive	Restructuring 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 Restructuring Directive (EU) 2017/1132 (Restructuring Directive on restructuring and insolvency)
SME/SMEs	Small and Medium-sized Enterprise(s)
StaRUG	Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen
UNCITRAL	United Nations Commission on International Trade Law
US Chapter 11	US Chapter 11of the United States Bankruptcy Code
US/USA	United States of America

INTRODUCTION

The relevance of the master thesis. The increasing complexity of modern economies and the growing interconnectedness of global financial markets have heightened the importance of effective legal frameworks for dealing with business distress. Unlike liquidation, which terminates business operations, restructuring offers a second chance to financially distressed yet potentially solvent companies, allowing them to reorganise their debts and continue operating. [1]

The relevance of this master's thesis stems from the growing prominence of restructuring as a legal and economic tool across the European Union and beyond. Particularly within the European Union, the adoption of Restructuring Directive[2] on preventive restructuring frameworks, discharge of debt, and disqualifications has accelerated reforms in Member States' insolvency laws. One of the core elements of the Restructuring Directive is the defined role and function of insolvency practitioners, especially in preventive procedures where a full insolvency declaration is not required. Restructuring Directive now establishes only a few provisions concerning the role, duties, and actions of insolvency practitioners. Even though they are established, provisions still lack legal clarity.

Despite these developments, the role, duties, and legal position of insolvency practitioners in restructuring proceedings remain unclear across jurisdictions in the European Union and non-EU countries. Some countries grant broad discretionary powers to insolvency practitioners, while others define their responsibilities more narrowly or assign them to courts or administrative authorities.[3] This thesis addresses this gap by examining how insolvency practitioners contribute to the effectiveness of restructuring proceedings in different national frameworks, the challenges they face in performing their duties, and how their role is evolving under EU insolvency law.

Another reason this study is relevant is the dual nature of the insolvency practitioner's responsibilities. On the one hand, the insolvency practitioner acts as a legal officer bound by statutory duties, often appointed by courts or creditors. On the other hand, the insolvency practitioner also performs complex commercial, managerial, and even psychological tasks, such as mediating conflicting interests, assessing the feasibility of restructuring plans, and ensuring procedural fairness. This duality makes the role of insolvency practitioners both technically demanding and legally

[1] Gerard McCormack «The European Restructuring Directive» (2021), 18.
[2] "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)," EUR-Lex, accessed 12 May 2026.
[3] Reinhard Bork, Kristin van Zwieten «Commentary on European insolvency regulation» (2022), 364.

significant. The way insolvency practitioners are regulated, empowered, and supervised can greatly influence the success or failure of restructuring proceedings.

From a broader policy perspective, this thesis is also relevant to the post-COVID-19 economic recovery from a broader policy perspective. Many businesses across Europe continue to face financial strain due to the long-term effects of the pandemic, inflationary pressures, and geopolitical uncertainties such as the war in Ukraine.[4] In this context, restructuring mechanisms supported by competent and responsible insolvency practitioners are more vital than ever. Legal systems must be equipped to address not only crises but also opportunities for recovery, renewal, and sustainable growth. This thesis contributes to that goal by analysing the legal and practical dimensions of one of the most crucial actors in restructuring proceedings, the insolvency practitioner.

Finally, the functions and powers of insolvency practitioners in restructuring proceedings remain a rather underexplored area. Literature on insolvency law and restructuring mechanisms, especially regarding the role and legal status of practitioners under harmonised European rules, is growing but still developing. This thesis helps deepen academic understanding and also offers useful insights for lawmakers, practitioners, and others involved in corporate recovery.

Scientific research problem. In restructuring proceedings, insolvency practitioners play a key role. However, the laws that define their responsibilities and duties vary widely between countries and are often interpreted differently. These differences mostly come from the national laws of EU Member States. Although the Restructuring Directive sets some basic standards, it still gives Member States a lot of freedom in deciding how to define the role, appointment, powers, and duties of insolvency practitioners.This lack of common rules presents a challenge to achieving the requirements of procedural consistency and legal predictability in the context of insolvency practitioners, which derive from several sources. At the EU level, they derive explicitly from Recitals 1 and 2 of the Restructuring Directive, which explicitly identify the reduction of procedural fragmentation and the improvement of legal certainty as core objectives of harmonisation. The research problem, therefore, lies in determining *how the functions and duties of the insolvency practitioner are defined, implemented, and assessed in restructuring proceedings, particularly in light of recent legal developments and the cross-border implications of such proceedings?* In light of the adoption of the Restructuring Directive, questions arise *about the functions and powers of insolvency practitioners in restructuring proceedings? To what extent does the involvement of an insolvency practitioner in*

[4] Financial Stability Review, May 2024 https://www.ecb.europa.eu/press/financial-stability-publications/fsr/html/ecb.fsr202405~7f212449c8.en.html.

preventive restructuring proceedings enhance or hinder the effectiveness of the rescue process? This research aims to address these questions.

This research also goes beyond examining the functions and powers of insolvency practitioners by addressing their rights, namely the actions they are legally permitted to take in the course of their duties and the legal boundaries. *Additionally, it considers the role of insolvency practitioners in restructuring proceedings, specifically under the EU law, namely what level of involvement is appropriate under the Restructuring Directive, and in which circumstances should their appointment be mandatory?*

The level of the analysis of the research problem. The legal and practical issues surrounding the role, functions, and duties of insolvency practitioners in restructuring proceedings have been the subject of scholars and policymakers in recent years. However, the level of analysis across jurisdictions remains uneven, fragmented, and in some areas insufficient.

The existing literature in the sphere of the general duties of insolvency practitioners includes the works of such scholars like Reinhard Bork[5], Stephan Madaus[6], Gerard McCormack[7] etc. In addition to that, the question of the rights and duties of an insolvency practitioner in restructuring proceedings has been widely analysed by scholars and practitioners, including prof. Wan Wai Yee, who conducted a comprehensive analysis, highlights that in Mainland China under the Enterprise Bankruptcy Law, the insolvency practitioner supervises the restructuring process even under debtor-in-possession, while remaining under strict court and creditors' committee oversight, though the EBL faces criticism for lacking transparency in creditor information disclosure, thereby limiting the insolvency practitioner's ability to ensure adequate transparency[8].

Given these deficiencies, this master's thesis aims to raise the level of analysis by combining doctrinal, comparative, and practical perspectives on the insolvency practitioner's role.

Scientific novelty of the master thesis. This thesis provides a novel contribution by examining the role of the insolvency practitioner not only as a formal legal actor but also as a functional stakeholder whose actions can significantly affect the outcome of restructuring efforts. It

[5] Reinhard Bork, "Pre-insolvency frameworks: Developments in the European Union," *International Insolvency Review* 33, no. 1 (2024),https://onlinelibrary.wiley.com/doi/epdf/10.1002/iir.1515.

[6] Stephan Madaus, "The Cross-Border Effects of Restructurings: Principles for Improved Cross-Border Restructuring Laws," SSRN Working Paper (May 2022), https://stephanmadaus.de/wp-content/uploads/2021/12/Madaus-Cross-border-restructuring-law-first-principles-WP-2021-2-Dec.-15-2021.pdf.

[7] McCormack, Gerard. "The European Restructuring Directive". Cheltenham, UK: Edward Elgar Publishing, 2021. https://doi.org/10.4337/9781789908817.

[8] Wan, Wai Yee, Public or Private Gatekeepers in Non-Consensual Debt Restructurings in Emerging Jurisdictions (March 1, 2023). Forthcoming in International Insolvency Review, Available at SSRN: https://ssrn.com/abstract=4496161.

bridges doctrinal, regulatory, and procedural dimensions and incorporates emerging not only the EU law developments, such as the transposition of Restructuring Directive, but also US Chapter 11of the US Bankruptcy Code. In doing so, this thesis contributes to filling a significant gap in the literature by offering a focused, critical, and practice-oriented examination of insolvency practitioners in restructuring, grounded in both national and European legal developments. It also provides a platform for further research into the professional standards, training, and regulation of insolvency practitioners in line with contemporary challenges and policy goals.

Practical significance of research. This master thesis provides practical insights for legal scholars who study insolvency law, preventive restructuring, and the harmonisation of EU insolvency rules. It is also useful for insolvency practitioners, restructuring advisers, and lawyers working with financially troubled businesses in the US, Germany, and Ukraine, especially those dealing with practitioner appointment, duties, and liability in restructuring cases. Law students interested in insolvency and commercial law can use the comparative analysis to see how different legal systems approach the practitioner's role. The thesis is also relevant for legislators and policymakers at both national and EU levels, as it points out gaps in current regulations and suggests specific reforms, such as changes to Article 5 of the Restructuring Directive and introducing a tiered model for practitioner involvement.

The aim of the master thesis is to critically examine the appointment, functions and powers of insolvency practitioners in restructuring proceedings in the EU law and selected national jurisdictions and assess whether participation of insolvency practitioners in restructuring proceedings contributes to the effectiveness of business rescue.

The objectives of the master thesis

1. To define the role, legal status, and authority of insolvency practitioners in restructuring proceedings.

2. To examine how the insolvency practitioner is appointed, what rights and duties the practitioner holds in the selected foreign jurisdictions and to identify how each legal system balances debtor autonomy against the need for independent oversight in restructuring proceedings.

3. To analyse whether and to what extent the participation of an insolvency practitioner in restructuring proceedings contributes to the effectiveness of the rescue process, and critically evaluate the models of appointment of an insolvency practitioner in restructuring proceedings.

Methods used in the master thesis. Several methods will be used during the current scientific research.

First, one of the main methods will be the method of data collection and data analysis, due to the necessity of studying and analysing the big number of legal texts, case law, as well as scholars' articles. As a result, the collected data will be analysed, structured and some conclusions will be deduced.

Second, as it stems from the title of the master thesis, one of the purposes of the current research is to conduct a comparative analysis of different approaches to the regulation of the considered problematic. Therefore, a comparative method will be used as well to analyse and compare different jurisdictions, both European and those outside the Union, as regards the effectiveness of their approach to the regulation of the issues that are subject to the current research.

Another important scientific method is a linguistic one, which is crucial for determining the significant concepts used by legislative authorities across different jurisdictions when regulating specific issues related to the topic of the current research.

Also, another important method that is worth mentioning is a logical method that can be seen as an interconnector between all the above-mentioned methods and allows us to make a complete vision of a problem that is subject to the current analysis and to elaborate some reasonable solutions to it.

The structure of the master thesis.

The first chapter will explore restructuring as one of the modern methods of overcoming insolvency. The legal nature and main goal are described: restoration of the debtor's solvency and preservation of the enterprise. The effectiveness of the restructuring will also be described. The principle that the debtor continues to manage his property will be analysed. Additionally, the need to appoint an insolvency practitioner as an independent entity that ensures the balance of interests of the parties and monitors compliance with the law will be analysed.

The second section will examine the process of appointing an insolvency practitioner in restructuring procedures, as well as his legal status, rights and obligations. In particular, the conditions for appointing such an entity in individual jurisdictions are analysed: the USA, Germany and Ukraine.

The third chapter of this research will delve into the impact of the participation of an insolvency practitioner on the effectiveness of restructuring procedures, considering the already analysed powers and status of such an entity.

Disclaimer. In the preparation of this master's thesis, artificial intelligence tools were used solely for grammar verification and to assist with literature search. All legal analysis, interpretation of sources, structure of the research, and final conclusions were developed independently by the author. A tool such as as DeepL was used to accurately translate the author's thoughts.

Defense statements.

1. Mandatory participation of an insolvency practitioner in restructuring proceedings may discourage directors from opening of restructuring proceedings and weakens the flexible and preventive nature of restructuring proceedings under Restructuring Directive. If an insolvency practitioner had to be appointed in every case, it would raise costs, make early restructuring less likely, and go against the debtor-in-possession approach set out by the Restructuring Directive.
2. Effectiveness of restructuring proceedings depends on clearly defined rights and duties of insolvency practitioners, ensuring both effective supervision of the process and respect for the debtor-in-possession principle.

CHAPTER 1. RESTRUCTURING AS AN INSTRUMENT TO DEAL WITH INSOLVENCY

The rising difficulties of today's economies and the growing interconnection of global economies have had a significant impact on business management, making it more essential than ever. Among all mechanisms working to rescue financially distressed businesses, restructuring proceedings have emerged as a crucial factor in preserving viable businesses, protecting jobs, and maintaining creditor value. Restructuring is regarded as a second chance for business and a start on a new page.

This chapter explores the definition of preventive restructuring, the role of restructuring in insolvency law, the distinction between restructuring and bankruptcy, effective tools for implementing restructuring, and the principle of debtor-in-possession, which is applied in restructuring proceedings. In addressing these questions, this chapter establishes the conceptual groundwork of the thesis by exploring the notion of preventive restructuring, its place within insolvency law, and how it differs from traditional bankruptcy procedures. It further presents key restructuring mechanisms, with particular attention to the debtor-in-possession principle, which occupies a central role in both US Chapter 11and the Restructuring Directive. In doing so, the chapter sets out the analytical framework that underpins the comparative analysis conducted in the chapters that follow.

1.1 Legal Nature of Restructuring

The definition of restructuring is provided in the Restructuring Directive which establishes that 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.[9]

In my view, the definition of restructuring in the Restructuring Directive is intentionally broad, which is both an advantage and a drawback. On the one hand, it gives Member States the flexibility to design their own restructuring systems tailored to their legal and economic needs. On the other hand, it is not very precise and leaves important questions open, especially what actually counts as restructuring and what is simply a hidden liquidation or asset sale. For example, including the sale of a business as a possible restructuring measure is unclear, because in practice it may lead to the end of

[9]Restructuring Directive, para. 1, Art. 2, https://eur-lex.europa.eu/eli/dir/2019/1023/oj.

the debtor rather than its rescue, which does not fully align with the Restructuring Directive's preventive aim. In addition, the definition focuses only on structural and operational changes and does not address procedural rules, requirements, or protections for stakeholders. As a result, it works more as a general guideline for Member States than as a clear legal standard, and its real meaning depends on how each country implements it.

The main aim of insolvency law is to ensure that creditors do not fight among themselves for the debtor's property but are required to act together. If there were no additional costs and difficulties, they would agree on a fair distribution themselves. From the point of view of efficiency, it is more profitable for creditors not to try to be the first to "grab" the money, but to agree to divide all the debtor's property among themselves proportionally, receiving a share from the common fund rather than their individual rights.[10] On the contrary, creditors in restructuring proceedings assist the company before it fails. They may agree to reduce the company's debt and/or provide additional financing. This allows the company to keep operating. In return, creditors keep a claim on the company's future value, either as debt (the company still owes them money) or as equity (ownership in the company).[11]

Insolvency law encompasses several related concepts, including insolvency, bankruptcy, and liquidation. Each one marks a specific stage or legal result that comes from a debtor's financial problems. However, what are the real differences between them? Insolvency is a situation under which the value of a debtor's assets falls below the level of its liabilities. On the contrary, bankruptcy is official information about the status of a company that has met insolvency.[12] So, insolvency is more about a company's financial affairs, while bankruptcy is a legal status under which a court initiates proceedings for liquidation.

Liquidation proceedings aim to enable non-viable firms to be dissolved as efficiently as possible and to allow the second one to continue restructuring viable firms.[13] As mentioned earlier, in Europe, the main form of insolvency was liquidation. However, year by year, it was evident that it only causes trouble for debtors. For example, when liquidation is ineffective and only increases

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[10] Bazinas, Ioannis, "Preventive Restructuring Frameworks and the Separate Domain of Cross-Border Restructuring Law," *SSRN Electronic Journal* (December 2, 2021): 1, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4087668.
[11] *Ibid.,* 2.
[12] A. Puneri, "Bankruptcy: A Legal Comparison,"*Journal of Legal, Ethical and Regulatory Issues* 26, S3 (2023): 1, https://www.researchgate.net/publication/370057836_Bankruptcy_A_legal_comparison, 1.
[13]Becker, Bo, and Martin Oehmke, "Restructuring and Insolvency – Opportunities for Reform in Europe,"*ASC Insight*, no. 4 (May 2025): 6, https://www.esrb.europa.eu/pub/asc/insights/shared/pdf/esrb.ascinsight4.es.pdf.

debts.[14] So, a good insolvency mechanism is a key component of a well-functioning of market-based economy, which promotes enterprise and competition.[15]

The ideas of restructuring of business in financial distress became more popular in the XIX-first part of the XXth century in the US of America. Firstly, it was established under railroad receiverships. As railroads were an important part of the US economy, their owners were interested in something other than liquidation. The solution for that was an act known as "Federal equity receiverships". The main distinction was that these receiverships were handled in courts of equity, which were separate from bankruptcy proceedings.[16] In such a way, railroads were not liquidated but preserved.

After that, the US faced the "Great Depression", a period which forced the US legislator to find a solution for preserving small businesses after the global economic downturn.[17] The government decided to rethink the bankruptcy code, which aims to avoid liquidation of a company.[18] The legislator's main act, adopted shortly after those times, was the Chandler Act, and the well-known US Chapter 11was incorporated into it. This Chapter was meant to deal with present in a small business plan of arrangement, designed to be carried out by a private business owner and differs from those in Chapter X proceedings**,** which largely involve publicly listed companies.[19]

After the Chandler Act, the main reform, known as the Bankruptcy Reform Act 1978, gathered all reorganizational procedures mentioned in the Chandler Act into one serious mechanism.[20] The Bankruptcy Reform Act of 1978 created US Chapter 11, which we can see in the US Bankruptcy Code, and introduced the debtor-in-possession principle, which made restructuring more debtor-oriented and focused on preserving a company as a whole.

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[14] Alexander Lehmann, "Will Better Insolvency Standards Help Europe's Debt Deleveraging?," *Bruegel*, January 23, 2017, https://www.bruegel.org/blog-post/will-better-insolvency-standards-help-europes-debt-deleveraging.

[15] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), 103, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

[16] "US Chapter 11Bankruptcy Overview," KPPB Law, accessed March 30, 2026, https://www.kppblaw.com/chapter-11-bankruptcy-overview/.

[17] "Great Depression," Wikipedia, accessed March 30, 2026, https://en.wikipedia.org/wiki/Great_Depression

[18] Harvey R. Miller and Shai Y. Waisman, "Is US Chapter 11Bankrupt?," *Boston College Law Review* 47, no. 1 (2025): 133, https://bclawreview.bc.edu/articles/1029/files/63b7f2e9cd2ed.pdf.

[19] Chad P. Pugatch, Craig A. Pugatch, and Travis Vaughan, "The Lost Art of US Chapter 11Reorganization," *University of Florida Journal of Law & Public Policy* 19, no. 1 (2008): 45, https://scholarship.law.ufl.edu/jlpp/vol19/iss1/4/.

[20] Dirk Hackbarth, "Financial Distress, Stock Returns, and the 1978 Bankruptcy Reform Act," LinkedIn, April 27, 2015, https://www.linkedin.com/pulse/financial-distress-stock-returns-1978-bankruptcy-reform-hackbarth/.

In the 1990s, US Chapter 11underwent significant changes due to its practical application. The DIP principle was used more broadly through the principles of DIP financing and retention plans, leading to a change in control from shareholders to creditors.[21]

Even nowadays, US legislators are making changes to Chapter 11, for example, in 2019, the Small Business Debtor Reorganisation Act was introduced. The Act aims to make bankruptcy proceedings more efficient and accessible for small businesses. To achieve this, it establishes the subchapter within US Chapter 11tailored specifically to such debtors, streamlining the restructuring process and alleviating the procedural burdens and costs typically associated with traditional corporate reorganisations. Notably, the Act also eliminates the requirement that equity holders in small business cases contribute new value to retain their ownership interests without satisfying creditors in full.[22]

Some of the features of Chapter 11, such as the debtor-in-possession principle (management), were mentioned previously, in addition, a moratorium protects the company from its creditors, and an insolvency practitioner can be appointed only in very limited circumstances. Other features include that even when some creditors do not agree with the restructuring plan, the court still can approve it if one group of creditors agree with it and the court believes that this plan will work for the entity. Such a procedure is called "cram-down rules". Another feature is that the company can obtain new financing during the restructuring process, and lenders can be given priority over existing creditors if the court determines those creditors are sufficiently protected.[23]

The experience of the US of America inspired the European Union to make at least partial harmonisation of EU law.[24] The main objective of US Chapter 11is to provide debtors with legal protection that facilitates reorganisation, allowing creditors to benefit from the debtor's going-concern value rather than receiving a potentially lower recovery through liquidation.

In some countries of the European Union, even before the adoption of the Restructuring Directive, restructuring was not a new way to deal with insolvency. For example, the Irish Examinership procedure, which resembles restructuring in legal nature, has existed since 1990.In Germany, a restructuring plan option was introduced in 1999 under the name "Insolvenzplan".[25]

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[21] Sreedhar T. Bharath, Venkatesh (Venky) Panchapagesan, and Ingrid M. Werner, "The Changing Nature of Chapter 11,"*Fisher College of Business Working Paper*, November 1, 2010, 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1102366.

[22] Gerard McCormack, "Introduction," in *The European Restructuring Directive* (Cheltenham, UK: Edward Elgar Publishing, 2021), para. 1.73, https://doi.org/10.4337/9781789908817.00008.

[23] *Ibid.,* para. 1.68.

[24] Anne Epaulard and Chloé Zapha, "Bankruptcy Costs and the Design of Preventive Restructuring Procedures" (Banque de France Working Paper №. 810; Université Paris-Dauphine Research Paper No. 3840236, April 2021), 1 (para. 3, fn. 3), https://ssrn.com/abstract=3840236.

[25] Irene Lynch Fannon, Jennifer Gant, and Aoife Finnerty, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 1: Identifying Substantive Rules in Preventive Restructuring Frameworks Including the Preventive*

Nevertheless, the European Union made significant steps before the Restructuring Directive on restructuring and insolvency finally went into force.[26] Right after the 2007-2008 financial crisis, the liquidation of businesses due to rising unemployment rates raised this issue.[27] After that time, Member States began seeking a solution by improving their national legislation, however, another crisis in 2014 hit them. To support economic recovery and strengthen a recovery and rescue mechanisms among Member States, the 2014 Recommendation was published.[28] However, this Recommendation was not successful among Member States, a lot of them failed to respond to the initiative, and the European Commission decided to present a 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.[29] Among all reasons which pushed Member States to adopt and harmonize restructuring procedures as a second chance for a lot of businesses was the lockdown during COVID-19, which became a big challenge for economies all over Europe. Many companies were aware of economic shutdown and, as a result, a potential increase in insolvencies across the EU.[30] In this context, the example of US Chapter 11illustrates restructuring as an important legal instrument for preserving viable businesses, rather than serving solely as an element of EU law harmonisation.[31]

Besides this, the European Commission considered the potential risk which can be minimised by adopting a Restructuring Directive on restructuring. In some European countries, businesses lacked the ability to restructure before becoming insolvent. The assessment further highlighted significant differences between Member States regarding key aspects of restructuring frameworks. Because many restructuring cases in the EU involve companies operating in more than one country, the large differences between national restructuring rules make it harder for banks to lend and for businesses to raise capital across the EU. This weakens both the Banking Union and the Capital Markets Union.[32]

Restructuring Directive which May Be Incompatible with Judicial Cooperation Obligations (January 14, 2020), 10, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855380.

[26]"Restructuring Directive", https://eur-lex.europa.eu/eli/dir/2019/1023/oj/eng.

[27]Gert-Jan Boon and Emilie Ghio, "An EU Preventive Restructuring Framework: A Hole in One?," *International Insolvency Review* 28 (2019): 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3689002.

[28] *Ibid.*

[29] Reinhard Bork, "Pre-Insolvency Frameworks: Developments in the European Union," *International Insolvency Review*33, no. 1 (2024): 7, https://onlinelibrary.wiley.com/doi/epdf/10.1002/iir.1515.

[30] Bo Becker and Martin Oehmke, "Restructuring and Insolvency - Opportunities for Reform in Europe," *ASC Insight*, no. 4 (May 2025): 3,https://www.esrb.europa.eu/pub/asc/insights/shared/pdf/esrb.ascinsight4.es.pdf.

[31] Gerard McCormack, "Chapter 1: Introduction," in *The European Restructuring Directive* (Cheltenham, UK: Edward Elgar Publishing, 2021), para. 1.39,https://doi.org/10.4337/9781789908817.00008.

[32] José M. Garrido, Cynthia M. DeLong, Ali Rasekh, and Andrea Rosha, "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive," *IMF Working Papers* 2021, no. 152 (2021): 8, https://www.elibrary.imf.org/view/journals/001/2021/152/article-A001-en.xml

The key elements of Restructuring Directive in 2019 were the establisment of a common legal framework within the Union to identify financial difficulties at an early stage, the introduction of common rules that allow honest but unsuccessful entrepreneurs to start a new business within three years after bankruptcy, without being limited by old debts and measures to make procedures quicker and more efficient by reducing differences between national legal systems and uncertainty about which rules apply.[33]

The main distinction between the US Chapter 11and the Restructuring Directive is that, firstly, in the US Chapter 11, a stay (moratorium) is automatic in its effects and global in its reach, but under the Restructuring Directive, it is discretionary. Moreover, the automatic stay occurs upon filling the petition under para 362 of US Bankruptcy Code.[34] Secondly, both the Restructuring Directive and US Chapter 11rely primarily on the debtor-in-possession model, preserving the debtor's managerial control as the default position. However, both frameworks permit the appointment of an insolvency practitioner in exceptional circumstances. Under the Restructuring Directive in the three situations specified in Article 5(3), and under US Chapter 11where the statutory grounds of § 1104 are satisfied. Thirdly, while the Restructuring Directive contains relatively detailed provisions on new and interim financing, the key issue is to harmonise their practical effectiveness and whether such mechanisms function as intended in practice. At the same time, under Chapter 11, DIP financing is more detailed, with the possibility of super-priority under specific circumstances. [35]

Overall, restructuring emerged from the evolution of a liquidation-oriented approach to save viable businesses. The US bankruptcy law has strongly influenced the European Union policymakers which, after multiple financial crises and unsuccessful soft-law initiatives, moved towards harmonisation of restructuring proceedings through the adoption of the Restructuring Directive. Ultimately, restructuring is justified as an alternative to liquidation. While liquidation aims at the orderly exit of non-viable firms, restructuring provides a second chance for viable businesses by enabling early intervention and financial reorganisation. In this sense, modern insolvency frameworks increasingly prioritise business rescue over asset distribution, recognising that preserving economic value benefits not only debtors and creditors, but also the broader economy, even at the multinational level.

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[33]Vittorio Minervini, "Insolvency, Competition, and the Theory of the Firm," *European Business Law Review* 32, no. 4 (2021): 761, https://kluwerlawonline-com.skaitykla.mruni.eu/journalarticle/European+Business+Law+Review/32.3/EULR2021026.

[34] Gerard McCormack, "Chapter 1: Introduction," in *The European Restructuring Directive* (Cheltenham, UK: Edward Elgar Publishing, 2021), para. 1.69, https://doi.org/10.4337/9781789908817.00008.

[35] *Ibid.,* para. 1.33.

1.2 Purpose of Restructuring

The legal nature of restructuring is not as simple as it may seem at first glance, and several questions arise. What is the difference between restructuring and bankruptcy? Why is restructuring justified? What are the aims of restructuring proceedings?

Before answering these questions, it is worth analysing the influence of restructuring from different perspectives. The first one is the market. From this perspective, the main aim of restructuring is to minimise the so-called 'domino effect' of insolvency, which literally means that the fewer insolvencies and the more restructuring there is, the more stable national and international markets will be.[36] At the same time, restructuring aims to make market competition among businesses more stable.

From the economic perspective, restructuring allows for the preservation of going-concern value, which is often significantly higher than the value realised through liquidation. At the same time, restructuring 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.[37] For example, according to the data collected from different European companies, during restructuring, a lot of them increased the number of work places while simultaneously improving their financial performance and operational efficiency.[38] Although creditors rarely initiate restructuring proceedings, it is preferable for them to do so, as success often requires creditors to accept limited losses, which are usually lower than those associated with liquidation. The ability of lenders, including banks, to absorb such losses is therefore essential for enabling the restructuring of viable firms without jeopardising financial stability.[39]

From a corporate governance perspective, restructuring frameworks create mechanisms that encourage cooperation between management and creditors while improving oversight over corporate decision-making during financial distress. For example, to rescue a company from complete liquidation, management and creditors should establish a restructuring plan and take

[36] Ilya Kokorin, "Insolvency of Significant Non-Financial Enterprises: Lessons from Bank Failures and Bank Resolution," *European Business Law Review* 32, no. 3 (2021): 522, https://kluwerlawonline-com.skaitykla.mruni.eu/journalarticle/European+Business+Law+Review/32.3/EULR2021019.
[37] "Restructuring Directive," Recital 2.
[38] "Restructuring Events Databases," European Restructuring Monitor (ERM), accessed 27 March 2026, https://www.eurofound.europa.eu/en/surveys-and-data/european-restructuring-monitor.
[39] Bo Becker and Martin Oehmke, "Restructuring and Insolvency – Reform Opportunities in Europe,"*ASC Insight* No. 4 (European Systemic Risk Board, May 2025), 7, accessed March 27, 2026, https://www.esrb.europa.eu/pub/asc/insights/shared/pdf/esrb.ascinsight4.en.pdf.

all necessary steps to implement it, and in such way preserve the company. Thus, restructuring involves not just a legal nature but also an economic one.

1.3. Effectiveness as the Aim of Restructuring Proceedings

The main aim and function of restructuring is to be efficient and to help companies overcome financial distress. The Restructuring Directive established certain measures to guide restructuring proceedings and practitioners in conducting effective restructuring. For example, under Recital 16 of the Restructuring Directive, efficient restructuring means that companies are making better assessments of the actions which they are planning under such procedure, while supporting the efficient adjustment of insolvent or over-indebted debtors and reducing the economic and social burdens of their deleveraging process. At the same time, such procedures should apply with flexibility for each national legal system of the country.[40]

Efficiency also means that a debtor should be able to take measures to avoid bankruptcy proceedings.[41] In liquidation proceedings the main aim is to maximise the value of the debtor's assets to ensure a greater return for the creditors. However, how can the restructuring proceedings be assessed in terms of duration? Can it be assumed that restructuring, which takes for the debtor, for example, 10 years can be counted as an efficient procedure? The Restructuring Directive did not establish a clear definition of duration, but it stated that national frameworks should promote flexible procedures for restructuring that enable efficient performance.[42] Moreover, the Restructuring Directive provided a maximum period of the stay of individual enforcement actions, which should not exceed 12 months.[43]

Besides, to enhance the effectiveness of restructuring proceedings Member States should use such tools as minimising costs for small businesses. For example, the Restructuring Directive emphasises that restructuring proceedings should be efficient, cost-effective, and not excessively lengthy.[44] It particularly highlights the need to reduce procedural costs, especially for SMEs,[45] and to avoid unnecessary expenses.[46] Furthermore, the Restructuring Directive underlines that overly long procedures negatively affect recovery rates and may deter investment.[47] In this regard, Member States

[40]Restructuring Directive, Recital 16.
[41]*Ibid.,* Recital 22.
[42] *Ibid.,* Recital 29.
[43]*Ibid.,*, Article 6.
[44]*Ibid.,*, Recital 1.
[45] *Ibid,* Recital 29.
[46] *Ibid,* Recital 30.
[47] *Ibid,* Recital 6.

are required to establish flexible restructuring frameworks aimed at minimising delays and costs, thereby improving overall efficiency and outcomes for creditors.[48]

For making such a procedure efficient, the Restructuring Directive provided information that an efficient procedure also means the maximisation of the debtor's rights to the safeguards and at the same time minimisation of the mandatory involvement of judicial or administrative authorities in such proceedings. [49]

The Restructuring Directive does not merely enshrine the principle of efficiency as a declaratory norm but also established the preconditions necessary for its substantive realisation. For example, it requires that the Member States should create courts or chambers or appoint specialised judges in accordance with national law. At the same time Member States should not prioritise this procedure but take all steps to encourage debtors to use the restructuring procedure, knowing that it will be efficient.[50]

Also, in the event of appointing a restructuring practitioner, he or she should be suitably trained and appointed in a transparent manner. Such an obligation for Member States means that this is not just a formality, the more an insolvency practitioner is trained, the more the procedure will be operationally effective, and they will ensure the debtor that they are working on the same consequences, preserving a company[51].

In conclusion, the Restructuring Directive treats efficiency not as a supplementary objective, but as a core and integral element of the restructuring framework. The national legislation framework should enable debtors to restructure efficiently at an early stage.[52] The Restructuring Directive is not in favour of formal procedures, which are not as effective as they can be.[53] Moreover, the Restructuring Directive focuses on the concrete practical outcomes of restructuring procedures: minimising job losses and losses of value for creditors in the supply chain, preserving know-how and skills, and linking this to an effective framework that should work in practice.[54]

1.4. Principle of Debtor-in-Possession

[48] *Ibid*, Recital 16.
[49]*Ibid.*, Recital 29.
[50]*Ibid.*, Recital 86.
[51] *Ibid.,* Recital 85.
[52] *Ibid.,* Recital 2.
[53] *Ibid.,* Recital 4.
[54] *Ibid.,* Recital 16.

In insolvency law, one of the main principles that governs all restructuring processes is debtor-in-possession.[55] The term "debtor-in-possession" means that the debtor keeps control over the day-to-day operations of its business during restructuring, taking on a role that in some cases can be performed by a third party appointed by the court.[56] Usually, this role is performed by an insolvency practitioner. Article 5(1) of the Restructuring Directive provides that Member States must ensure that debtors who use restructuring proceedings remain fully, or at least partly, in control of their assets and the day-to-day management of their business.

However, Art. 5 of the Restructuring Directive sets out three exceptions where an insolvency practitioner must be appointed. The first one, where a general stay of individual enforcement actions is granted under Article 6(3) and the authority finds the appointment necessary to protect the parties' interests. The second is when the restructuring plan requires confirmation through a cross-class cram-down under Article 11. The third is when the appointment is requested by the debtor or by a majority of the creditors, in which case the creditors bear the costs. In all these situations, the main role of the practitioner is to assist the debtor and the creditors in negotiating and preparing the restructuring plan.[57]

The main role of an insolvency practitioner in these cases is to assist the debtor and creditors in negotiating and drafting a restructuring plan. The Restructuring Directive does not restrict Member States from setting their own rules on the appointment of an insolvency practitioner, and in some cases makes such appointment mandatory. However, this conflicts with the core principle of the Restructuring Directive – the debtor-in-possession rule. [58]

At the same time, while the Restructuring Directive generally allows Member States discretion in deciding whether to appoint an insolvency practitioner during restructuring, Article 5(3) introduces mandatory cases in which such an appointment is required. It is also essential to emphasize that, by setting only a minimum standard for the appointment of an insolvency practitioner, the Restructuring Directive limits their role to assisting the debtor and creditors in negotiating and drafting

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[55] *Ibid.,* Art. 5.
[56] United Nations Commission on International Trade Law, *UNCITRAL Legislative Guide on Insolvency Law, Part Three* (New York: United Nations, 2010), accessed 26 March 2026, 77, https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/leg-guide-insol-part3-ebook-e.pdf.
[57] Restructuring Directive, Art. 11.
[58] *Judicial Co-operation Supporting Economic Recovery in Europe: Report 1 - Identifying Substantive Rules in Preventive Restructuring Frameworks Including the Preventive Restructuring Directive Which May Be Incompatible with Judicial Cooperation Obligations*, research report (2020), 151, https://www.researchgate.net/publication/351443191_Research_Report_Judicial_Co-operation_Supporting_Economic_Recovery_in_Europe_Report_1_Identifying_Substantive_Rules_in_Preventive_Restructuring_Frameworks_Including_the_Preventive_Restructuring_Direct.

the restructuring plan.[59] However, the Restructuring Directive provides further guidance on the role of insolvency practitioners. He is not performing such a role, he is also supervising the activity of the debtor during the negotiations on a restructuring plan, reporting to a judicial or administrative authority and taking partial control over the assets or affairs of the debtor during negotiations.[60] In such a way, the Restructuring Directive does not establish a single, uniform concept of an insolvency practitioner, instead leaving room for Member States to determine how this role should be implemented, including whether the practitioner acts as a manager, monitor, or supervisor.[61] For example, under Belgian law, the insolvency practitioner appointment is additional, it can only assist the debtor in making and performing a restructuring plan. [62]

The concept of debtor-in-possession in the Restructuring Directive was taken from the USA (Chapter 11), while in the European context, this notion requires clarification, particularly as proceedings have traditionally involved the appointment of an insolvency practitioner by a court or other competent authority. The main fear of applying such a principle in Europe was that the management that almost drove the company into bankruptcy might continue to run it but must implement rehabilitation (restructuring) measures. The best captured attitude is by the phrase 'One should not keep the fox to guard the henhouse'.[63] The concern expressed by this phrase is that the same management whose decisions contributed to the company's financial distress remains in control during restructuring, creating an inherent conflict of interest. Critics of the DIP model argue that allowing pre-petition management to remain in charge rewards subpar performance and undermines stakeholder confidence, since that management may be motivated by self-interest, such as preserving their own positions rather than by the best interests of creditors and the estate.[64] At the same time, financial distress is frequently caused by external market factors rather than managerial misconduct, and the existing management's operational knowledge and industry relationships are often a genuine asset to the restructuring process.[65] The European legislation, therefore, reflects a structural tension

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[59]Restructuring Directive, Art. 5.
[60] *Ibid.,* Art. 2.
[61] McCormack, Gerard. "The European Restructuring Directive," Cheltenham, UK: Edward Elgar Publishing, 2021, 6, https://doi.org/10.4337/9781789908817.
[62]European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), 155, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
[63] Roelf Jakob Weijs and Bob Wessels, "Proposed Recommendations for the Reform of US Chapter 11 U.S. Bankruptcy Code" (Amsterdam Law School Research Paper No. 2015-14, Centre for the Study of European Contract Law Working Paper No. 2015-05, April 17, 2015), para. 2.1.1, https://ssrn.com/abstract=2595577.
[64] *Ibid.,* 8.
[65] *Ibid.,* 9.

between the efficiency benefits of continuity in management and the creditor protection concerns that arise when those responsible for a company's decline are also entrusted with its rescue.[66]

In conclusion, debtor-in-possession principle is widely used in the USA and proved that under restructuring proceedings, it is the main tool for making it efficient. However, within the European Union, Member States differ in their approach to the debtor-in-possession model, as the Directive leaves them discretion regarding whether and to what extent an insolvency practitioner should be involved in restructuring proceedings.

1.5 Need for Appointment of an Insolvency Practitioner in the Rescue Procedure

Though the principle of debtor-in-possession is dominant in restructuring proceedings, the question arises what the real relations in restructuring proceedings between an insolvency practitioner and management of the company which stays in power? Before turning to the approach adopted by the Restructuring Directive, it is worth setting out the general principles that govern the role of insolvency practitioners in restructuring proceedings. In contemporary restructuring frameworks, the degree of control retained by the debtor can vary considerably, spanning a spectrum from full debtor-in-possession control to arrangements in which an insolvency practitioner supervises or partly assumes control over the debtor's operations. This balance reflects the competing need to preserve the debtor's business expertise on the one hand, and to ensure adequate creditor protection and guard against mismanagement on the other. The practitioner's role may therefore range from monitoring the debtor's conduct and facilitating negotiations to, in more serious cases, assuming responsibility for aspects of day-to-day management. Understanding this conceptual framework is essential to appreciating the model ultimately adopted under the Restructuring Directive.

The Restructuring Directive explicitly provides information that one of the main tasks of an insolvency practitioner under restructuring can be the supervision of the activity of a debtor or partial taking over control of a debtor's daily operation.[67] The conclusion is that the debtor-in-possession principle does not imply full autonomy for the debtor in decision-making or upon filing a restructuring plan. On the contrary, it reflects that the existing management remains in control of the company, subject to certain limitations and oversight. An insolvency practitioner, therefore, holds greater authority than the debtor-in-possession, overseeing the debtor's activities and acting as a neutral intermediary between the debtor and its creditors.

[66] *Ibid.,* 8.
[67] Restructuring Directive, Recital 30.

Another question which arises is how the insolvency practitioner can assist the debtor (management of the debtor) in possession where the practitioner is granted, under national law, more extensive powers in the conduct of the business than the debtor. The Restructuring Directive establishes that an insolvency practitioner should perform his duties in a competent, impartial and independent way.[68] However, the functions of advising cannot be fully recognised as impartial. The conclusion is that the main function of an insolvency practitioner is to assist the debtor during restructuring and preserve their business.

Furthermore, the appointment of an insolvency practitioner in restructuring proceedings raises doubts. On the one hand, the appointment of an insolvency practitioner generally requires only a single court decision, rather than a lengthy procedural sequence. On the other the debtor wants to make everything as quick as possible and preserve the business. Besides this, the replacement of management fully or partially can cause chaos or disturbances in the company, but when the DIP principle is working, the management knows where costs can be cut, understands operational risks and can make decisions quickly. [69]

The key issue concerns reconciling maintaining the debtor in control during restructuring with the company's prior financial distress; in this context, the involvement of an insolvency practitioner as an independent supervisor may provide oversight and balance.

The main aim of restructuring is to put in place necessary mechanisms that financially distressed but viable enterprises and entrepreneurs can access to ensure effective national restructuring mechanisms allowing them to remain in operation.[70] These measures were designed specifically to avoid unnecessary costs, to reflect the early nature of restructuring and to encourage debtors to apply for restructuring proceedings at an early stage of their financial difficulties. For these reasons, the principle of debtor-in-possession, whereby no insolvency practitioner is appointed, should apply. [71]

The effectiveness of an insolvency regime is determined largely by the institutions that administer it. Chief among these is the judicial system, including courts and administrative authorities with decision-making powers as well as insolvency insolvency practitioners.[72]

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[68] *Ibid.,* para. 1, Art. 27.
[69] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), 154, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
[70] Restructuring Directive, Recital 1.
[71] *Ibid.*, Recital 30.
[72] José M. Garrido, Cynthia M. DeLong, Ali Rasekh, and Andrea Rosha, "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive,' *IMF Working Papers* 2021, no. 152 (2021): 31, https://www.elibrary.imf.org/view/journals/001/2021/152/article-A001-en.xml.

The question, however, is how the insolvency practitioner fits within the effectiveness principle established by the Restructuring Directive. The Restructuring Directive also declares that insolvency practitioners are appointed in a proper manner (usually by court) with due regard to the need to ensure efficient procedures and supervise when carrying out their tasks. All these steps require a lot of costs on the part of the debtor. For example, to appoint a practitioner, the debtor should apply to court, which means the debtor should pay additional costs for this procedure. After that, when an insolvency practitioner is appointed, the Restructuring Directive ensured a mechanism about sufficient remuneration of practitioners.[73]

To summarise the first chapter, the framework of restructuring proceedings which was introduced in the Restructuring Directive is a chance for businesses and it is a new approach for insolvency law. Unlike traditional bankruptcy proceeding, restructuring is based on the negotiations between the debtor and creditors enables early intervention to preserve viable business. The term "efficiency" in the Restructuring Directive emphasised not as a notion but as a tool that requires minimising costs, reducing delays, and ensuring practical actions of restructuring frameworks.

Also, by providing only minimum harmonisation and not establishing a clear approach to the application of the debtor-in-possession principle, the Restructuring Directive may contribute to further divergence rather than harmonisation of restructuring procedures among Member States, particularly in those where the DIP model is not applied at all.

Overall, restructuring proceedings represent a complex but essential component of modern insolvency law. Their success lies in achieving a delicate balance between competing interests, ensuring that viable businesses are preserved, creditor rights are respected, and economic value is maximised. As such, restructuring is not merely an alternative to bankruptcy, but a cornerstone of a modern, efficient, and resilient market economy.

[73] Restructuring Directive, Art. 27.

CHAPTER 2. PROCESS OF APPOINTMENT, RIGHTS AND DUTIES OF INSOLVENCY PRACTITIONER IN RESTRUCTURING PROCEEDINGS

An insolvency practitioner in restructuring proceedings is a pivotal figure. Across different jurisdictions, the practitioner can be an officer of the court, a private professional or a state-supervised manager. In some cases, an insolvency practitioner can replace the management of the debtor under restructuring, supervise them or serve as a neutral facilitator of the negotiations between the debtor and creditors.

The role of the insolvency practitioner in restructuring proceedings is not entirely uniform across Member States, although Article 2(12) of the Restructuring Directive provides a definition at the EU level. While implementing the debtor-in-possession principle, the Restructuring Directive does not establish the full scope of rights and obligations. By contrast, in the US, the debtor-in-possession principle is widely applied, meaning that the existing management typically remains in control of the business during restructuring proceedings. Overall, this chapter compares the procedure of appointment of IP in the USA, Germany (European Union Member State) and Ukraine (a country, which seeks EU accession). These three jurisdictions cover three distinct legal traditions, phases of institutional development and relationships to restructuring proceedings. This chapter aims to provide a comparative legal analysis of the process of appointment, rights and duties of insolvency practitioner in three jurisdictions: the US of America, the Federal republic of Germany and Ukraine and answer such research questions: how do these three States regulate the process of appointment of insolvency practitioner, rights and duties of insolvency practitioner under restructuring proceedings, how an insolvency practitioner can perform his duties, when the management of the debtor remains in possession of all its assets? How can a person who does not know the actual status of the matters of the company have access to them and help the debtor with a restructuring plan? Who can be an insolvency practitioner and what are their main duties in restructuring?

2.1. Conditions for Appointment of Insolvency Practitioner in Selected Jurisdictions

The USA is the country of origin of the modern debtor -in-possession principle. US Chapter 11of the U.S. Bankruptcy Code defines that a debtor-in-possession is the debtor, except when a person is serving as a trustee in the case.[74] Rather than enumerating every statutory duty, what matters

[74] US Bankruptcy Code, Section 1101.

analytically is that this dual role creates an inherent tension: the debtor manages the estate in the creditors' interest while simultaneously pursuing its own restructuring objectives. This structural conflict is precisely why the appointment of an independent trustee, though exceptional, remains a necessary corrective mechanism within the US Chapter 11framework.

The appointment of a trustee under US Chapter 11is relatively rare, as the U.S. Bankruptcy Code is based entirely on the debtor-in-possession principle. However, such an appointment may only be made for compelling reasons, including where management has acted improperly. This includes cases in which management committed fraud, dishonesty, incompetence, or material mismanagement of the company's affairs, both before and after the bankruptcy proceedings were opened, as well as similar cases. The decision to appoint a trustee should not depend on the number of shareholders or the size of the company's assets or liabilities.[75] A trustee may also be appointed if it is in the best interests of creditors, shareholders, or other persons interested in the bankruptcy estate, regardless of the number of security holders or the size of the company's assets or liabilities.[76] Thus, US Chapter 11establishes a rule that when a trustee is appointed, he replaces the debtor-in-possession and assumes full control of the bankruptcy estate.

For these reasons, the U.S. legislature has deliberately limited the grounds for the appointment of a trustee, with the aim of encouraging company management to initiate US Chapter 11proceedings at an early stage, when the prospects of rescuing the business remain viable, and liquidation can still be avoided. This increases the likelihood of successful reorganisation of companies as a going concern, and some courts even consider US Chapter 11to be a more effective debt restructuring tool than private negotiations with creditors (out-of-court settlements).[77] US Chapter 11establishes that the court may appoint a trustee only upon the request of one of the parties. At the same time, in the US case law, courts have applied the provisions on the appointment of a trustee without establishing the grounds expressly provided for in Chapter 11. This was the case in Third Circuit Court of Appeals' decision in U.S. Mineral Products.

This case involved a company that manufactured fire-resistant materials and insulation. In 2001, the company filed for US Chapter 11bankruptcy due to significant asbestos-related liabilities. During the bankruptcy proceedings, the debtor proposed several plans of reorganisation. However, the debtor and the asbestos-related plaintiffs were unable to reach an agreement on a consensus plan.

[75] *Ibid.,* Section 1104.
[76] *Ibid.,* Section 1104.
[77] Martin J. Bienenstock, "Conflicts between Management and the Debtor in Possession's Fiduciary Duties," *University of Cincinnati Law Review* 61 (1992): 550.

More than two years have passed since then, and no significant progress has been made in resolving the case. In addition, the lengthy process has strained relations between the debtor and the plaintiffs. The bankruptcy court also noted that the debtor had failed to list all creditors in its schedules. That is why the court doubted that the parties would be able to reach an agreement on their own.[78]

The case raises the question of whether a bankruptcy court is empowered to appoint a US Chapter 11trustee on its own initiative (*sua sponte*) under 11 U.S.C. §1104(a)(2), in the absence of a formal motion by a party and without evidence of misconduct by the debtor's management as required under §1104(a)(1). This issue is particularly significant considering the general principle of limited judicial intervention in U.S. bankruptcy proceedings.

In resolving this issue, the court proceeded to appoint a trustee based on §1104(a)(2), finding that such an appointment was in the best interests of creditors and the bankruptcy estate. By doing so, the court relied on a broader, interest-based justification rather than on proven managerial wrongdoing, thereby extending the scope of judicial discretion in trustee appointments beyond the more traditional, party-driven framework.

There is a view among some scholars that allowing the appointment of a receiver in such circumstances gives the court too much power to decide and intervene in bankruptcy cases, and this is inconsistent with the general logic of the Bankruptcy Code, which states that judges should not intervene in bankruptcy cases.[79]

This position is convincing. A *sua sponte* appointment of a trustee, made without a formal motion by any party and in the absence of proven managerial misconduct, effectively allows the court to substitute its own judgment for that of the parties most directly affected by the proceedings. Such an approach not only stretches the boundaries of judicial discretion beyond what the US Chapter 11statutory framework anticipates but also risks undermining the foundational premise of the debtor-in-possession model: that the debtor, not the court, should lead its own restructuring. Where a case has stalled due to the parties' inability to reach consensus, the appropriate response should be procedural facilitation rather than the imposition of external control, which introduces additional costs, disrupts business continuity, and may ultimately prove counterproductive to the rescue objective that US Chapter 11is designed to serve.

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[78] Paul D. Leake, "US Chapter 11Transfer Tax Exemption Expanded by the Eleventh Circuit," *Business Restructuring Review*4, no. 1 (January/February 2005): 10, https://www.jonesday.com/-/media/files/publications/2005/02/business-restructuring review/files/brreview2005pdf/fileattachment/brreview2005.pdf.

[79] *Ibid.,* 10.

Germany took a different approach to appointing an insolvency practitioner. On 1 January 2021, Germany adopted a new legislative act on restructuring, which is called “Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen” (hereinafter StaRUG)[80]. The time of adoption was the spring/summer 2020, during which German authorities thought that they would lessen the economic impact of the pandemic lockdown.[81] The analytical significance of the StaRUG practitioner lies not in the enumeration of their functions, but in the fundamentally supervisory, as opposed to managerial, nature of the role. In contrast to the US Chapter 11trustee, who supplants management in its entirety, the StaRUG practitioner collaborates with the debtor, serving as an independent monitor rather than a replacement for corporate leadership. This legislative architecture evidences a conscious commitment to safeguarding debtor autonomy while simultaneously affording creditors an impartial mechanism of oversight, a balance that is integral to the conceptual foundation of the StaRUG framework. [82]

In Germany restructuring proceedings had been introduced before the adoption of the Restructuring Directive. In January 1999 had the legislative act which called Insolvenzordnung (“InsO”) was adopted under which insolvent businesses can be liquidated, sold or restructured and restructuring proceedings were contained in sections 217-269 InsO, so-called “Insolvency Plan Procedure”.[83] Based on this insolvency plan, a viable business should be restructured. These provisions were taken from US Chapter 11of the US Bankruptcy Code, and the famous debtor-in-possession principle was used under these proceedings, this legislation gave a lot of freedom to choose whether to appoint insolvency practitioner or not.[84] After adopting a Restructuring Directive, Germany decided to implement the provisions of the Restructuring Directive in a separate legal act (StaRUG), which added more clarity for restructuring proceedings in Germany. For nowadays, two legal acts that guide restructuring proceedings exist in Germany. Not all scholars and policymakers

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[80] “Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen (Unternehmensstabilisierungs- und -restrukturierungsgesetz - StaRUG),” accessed 12 May 2026, https://www.gesetze-im-internet.de/StaRUG/BJNR325610020.html.

[81] Horst Eidenmuller, “What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws,” *European Business Organization Law Review* (2023): 234 https://heinonline.org/HOL/P?h=hein.journals/eunbuioiz24&i=231.

[82] “Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen (Unternehmensstabilisierungs- und -restrukturierungsgesetz - StaRUG),” accessed 12 May 2026, https://www.gesetze-im-internet.de/StaRUG/BJNR325610020.html.

[83] Horst Eidenmuller, “What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws,” *European Business Organization Law Review* (2023): 233, https://heinonline-org.skaitykla.mruni.eu/HOL/Page?handle=hein.journals/eunbuioiz24&id=231&collection=journals&index=.

[84] Horst Eidenmuller, “What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws,” *European Business Organization Law Review* (2023): 233, https://heinonline-org.skaitykla.mruni.eu/HOL/Page?handle=hein.journals/eunbuioiz24&id=231&collection=journals&index=.

were satisfied with this decision. For example, they decided to call this decision a political instrument rather than a solution for restructuring.[85] From another point of view, German lawmakers just did not want to do superfluous actions and explain to the European Commission that, despite its name, the Insolvency Plan Procedure meets all the Restructuring Directive's requirements.[86]

Following the adoption of StaRUG, the German legislator established the DIP principle as the primary approach in restructuring proceedings, subject to the conditions set out in paras 73 and 77 of StaRUG, which require the appointment of a restructuring practitioner in specific circumstances.[87] The debtor remains the central actor: only the debtor may initiate the procedure and propose a restructuring plan, thereby excluding competing initiatives by creditors or the practitioner.[88]

The appointment of an insolvency practitioner under restructuring proceedings is governed by para 73 of StaRUG, which obliges the restructuring court to appoint a practitioner *ex officio* in four situations where the restructuring plan affects the rights of consumers or small and medium-sized enterprises; where the debtor applies for a stabilization order directed at all or substantially all creditors; where monitoring of the plan has been agreed under § 72 StaRUGand where restructuring requires overcoming creditor resistance through a cross-class cram-down under § 26 StaRUG[89]. While the court retains discretion to decline the appointment of a practitioner, such exceptions are construed narrowly. Pursuant to § 73 Abs. 3 StaRUG, the practitioner may additionally be appointed in an expert capacity to evaluate creditor protection and compliance with plan confirmation requirements, a specialized mandate addressed to the court rather than to the debtor.[90]

Under art. 77 StaRUG, an optional practitioner may be appointed at the request of the debtor or creditors holding 25% of claims.[91] This practitioner serves as a facilitator rather than a supervisor, assisting in the preparation and negotiation of the restructuring plan and addressing information asymmetries between parties.[92] The scope of duties is determined by the applicant, although the court may extend these powers under art. 76 StaRUG.

[85] *Ibid.,* 233.
[86] *Ibid.,* 233.
[87] Christoph G. Paulus, "The New German Preventive Restructuring Framework," *Orizzonti del Diritto Commerciale*, accessed April 18, 2026,233, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[88] "Special Issue Preventive Restructuring 4: Germany: Still Waiting for the Revolution in Restructuring to Come?," HERO, June 28, 2022, accessed 12 May 2026, https://www.online-hero.nl/art/4351/special-issue-preventive-restructuring-4-germany-still-waiting-for-the-revolution-in-restructuring-to-come.
[89] "Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG)," Section 73(1)(1).
[90] "Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG)," Sections 49 et seq.
[91] *Ibid.,* Section 73(1)(2).
[92] *Ibid.,* Sections 49 et seq.

The key elements of the appointment regime under StaRUG can therefore be identified as follows. First, the appointment is exceptional rather than default, reflecting a deliberate legislative preference for minimal judicial involvement and preservation of the out-of-court nature of restructuring. Second, the mandatory and optional practitioners serve structurally distinct functions, namely the former operates as a safeguard in higher-risk scenarios where creditor interests require independent protection, while the latter acts as a process facilitator engaged at the parties' initiative. Third, even where a practitioner is appointed, the debtor retains control over the procedure, with the practitioner operating under court supervision and, where applicable, oversight by the creditors' committee. This differentiated and conditional appointment model reflects the Restructuring Directive's objective of enabling early and efficient restructuring while preserving Member States' flexibility in determining the degree of external oversight.

Ukraine's experience is a significant component of this master's thesis, as it is expected to become a future member of the European Union. To align its laws with European standards, Ukraine was required to implement the Restructuring Directive. The main Ukrainian legal act which regulates insolvency proceedings is the Code of Ukraine on Bankruptcy Procedures. On the 1st of January 2025, Law № 3985-IX on Amendments to the Code of Ukraine on Bankruptcy Procedures and Certain other Legislative Acts of Ukraine on the Implementation of Restructuring Directive and the Introduction of Preventive Restructuring Procedures came into force in Ukraine. Into this Code, a new Chapter was added "Book Three. Preventive Restructuring" which consolidated the ability of enterprises to restore their financial stability even before the onset of insolvency.[93]

Before adopting such a procedure, the Ukrainian legislation had an alternative way, which was called «sanitation». This procedure was not popular for business. As of 2021, 72 applications for pre-trial reorganization were filed with commercial courts, which was the highest figure. Gradually, their number began to decrease. In 2022, there were 16 applications, and in 2023, 17 applications, almost unchanged. [94] However, after implementation of the restructuring in the Ukrainian legislation, the situation has not improved. For almost a year, only one case involving restructuring was opened in Ukraine. This observation is particularly salient in light of the fact that both restructuring and sanitation pursue analogous core objectives. Sanitation and restructuring proceedings have one goal:

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93 Serhii Bolinskyi, "Introduction of Preventive Restructuring Procedures: Opportunities and Risks,"*Yurydychna Hazeta*(Legal Newspaper), February 17, 2025, accessed April 18, 2026, https://yur-gazeta.com/publications/practice/bankrutstvo-i-restrukturizaciya/zaprovadzhennya-procedur-preventivnoyi-restrukturizaciyi-mozhlivosti-ta-riziki.html.

94 "Introduction of a Preventive Debt Restructuring Mechanism for Businesses: Supreme Court Judges Participated in the Discussion," Supreme Court of Ukraine, July 17, 2024, accessed 12 May 2026,https://supreme.court.gov.ua/supreme/pres-centr/news/1638680/.

the continuation of the company's existence and the prevention of bankruptcy. According to Ukrainian researchers, restructuring is used in cases where an enterprise’s financial situation has not reached a level that requires resolution under the Insolvency Law. The main goal of this process is to support the company's business and protect the rights of third parties, namely, creditors, employees and business partners. In addition, simply implementing the Restructuring Directive in legislation is not enough if the procedures it introduces do not work in practice. A restructuring framework that exists only “on paper”, without functioning self-assessment tools, trained practitioners, and accessible court procedures, cannot achieve its preventive purpose, because debtors may not be aware of it or may be unable to use it effectively at an early stage of financial distress. Timely and proactive processing of these issues is crucial for building an effective restructuring proceedings system that goes beyond the formal implementation of the Restructuring Directive’s provisions and creates effective tools for all participants in the process.[95]

According to Art. 1 of the Code of Ukraine on Bankruptcy Procedures, the insolvency practitioner of preventive restructuring is an insolvency practitioner appointed by the commercial court to carry out the preventive restructuring procedure. The Code defines only three cases when an insolvency practitioner must be appointed, if, as of the date of the debtor's application to the commercial court, the debtor has not developed a preventive restructuring plan, and has added the concept of preventive restructuring to the application for the opening of the preventive restructuring procedure; if the commercial court applies measures to protect the debtor and if the debtor independently submits an application for approval of the preventive restructuring plan.

The appointment of the insolvency practitioner in restructuring is governed by a differentiated model that distinguishes between mandatory and discretionary appointment. Mandatory appointment occurs in three principal circumstances: upon the opening of the preventive restructuring procedure, where the debtor has not prepared a restructuring plan by the date of filing the court application; where protective measures are to be applied by the commercial court; and where the court is to confirm the restructuring plan.[96] Where an appointment is mandatory, the insolvency practitioner serves until the conclusion of the commercial court’s hearing. A separate insolvency practitioner may also be appointed specifically to supervise the execution of the confirmed restructuring plan.[97]

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[95] V. Krykun and V. Derliuk, “Preventive Restructuring as a Legal Mechanism for Preventing Insolvency,” *New Ukrainian Law*, no. 2 (2025): 95, https://newukrainianlaw.in.ua/index.php/journal/article/download/752/688.

[96] V. Derliuk, “Rights and Duties of the Insolvency Practitioner,” *Ekonomika i Pravo* (*Economics and Law*), no. 3 (2024): 43, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

[97] *Ibid.*

The debtor nominates the insolvency practitioner when filing for restructuring proceedings or applying for protective measures. Creditors may propose an alternative candidate before the plan confirmation hearing.[98]

Ukrainian scholars are somewhat critical of the Restructuring Directive's implementation in the legislation. The Ukrainian model of practitioner intervention remains only partially formed, demonstrating a fragmentation that, while formally consistent with the minimum harmonisation approach of the Restructuring Directive, raises substantive concerns in practice. Most critically, the absence of clear quantitative and qualitative criteria for initiating practitioner involvement creates legal uncertainty since neither debtors nor creditors can reliably predict when intervention will occur, which undermines the preventive purpose of the procedure. Furthermore, the practitioner's role risks being reactive rather than preventive. Self-assessment tools are non-functional, leaving debtors unable to recognise financial distress early enough to use the procedure. Ukraine has transposed the Restructuring Directive in form, but not in substance.[99]

To sum up, all three systems represent three distinct positions on the spectrum of practitioner involvement. While the US strongly prioritizes debtor autonomy by limiting trustee appointment to exceptional cases, Germany applies a hybrid model allowing appointment where creditor protection requires additional safeguards. Ukraine, despite implementing preventive restructuring mechanisms continues to maintain a more formal framework. Overall, modern restructuring systems increasingly favour flexible rather than mandatory appointment models, suggesting that insolvency practitioner involvement is most effective when tailored to the complexity and risks of the individual case.

2.2. Rights of Insolvency Practitioner in Restructuring

When the insolvency practitioner is appointed, the question arises, what exactly insolvency practitioner is obliged to do or has the right to do? For example, in the USA, in a case of appointing trustee, he starts to perform all the debtors' functions. However, which function can he perform – supervisory or monitory? How does each jurisdiction define the status of an insolvency practitioner? It will be worth sorting these duties into five sections.

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[98] *Ibid.*

[99] V. Syniehubov, "Preventive Restructuring in Ukraine: Legal Framework and Challenges," *Yurydychnyi Visnyk*, no. 6 (2024): 143, https://www.yurvisnyk.in.ua/v6_2024/6_2024.pdf#page=139.

The first group encompasses the rights of the insolvency practitioner relating to the administration and protection of the insolvency estate. These rights include the authority to realise assets, assume responsibility for documentary and tax obligations, and retain professional advisers.

In the USA, when a trustee is appointed in a US Chapter 11proceeding, he replaces the debtor's management. All powers previously held by the debtor transfer to the trustee, who assumes full control over the enterprise and its key decisions. Pursuant to §704(a), as incorporated by reference through §1106(a)(1), the trustee is charged with the duty to marshal the debtor's assets and liquidate them for the benefit of creditors. [100] This means that the trustee must find all the debtor's assets, preserve them, and, if necessary, sell or use them effectively. In this case, the trustee is fully responsible for all assets received and must act as to preserve their value for creditors as much as possible.[101] In addition, he must also verify the debtor's financial condition and monitor the proper management of the property to avoid abuse and losses.

There is also another right of the insolvency practitioner. If the debtor fails to file required financial documents or tax returns, the responsibility for those documents and returns transfers to the trustee. Pursuant to § 521(a)(1) and § 1106(a)(6), the trustee is required to submit the missing records but does not incur personal tax liability.[102]This once again shows that the insolvency practitioner acts not just as a supervisor but as a full-fledged representative and insolvency practitioner of the debtor's estate.

Pursuant to § 327, the trustee is authorized, subject to court approval, to retain legal, financial, and valuation professionals in order to facilitate the efficient administration of the estate. Such involvement will help the trustee achieve the main goal of restructuring to preserve the business.

In the German StaRUG model, the restructuring practitioner does not have the same powers to manage assets as in the USA. The insolvency practitioner, however, occupies a fundamentally different position in this regard. The main feature is that the debtor continues to run the enterprise subject to the obligations imposed by the statute.[103] The insolvency practitioner does not replace the management, nor does it gain control over the assets. Nevertheless, the commissioner exercises an indirect protective function over the estate. The law prevents contracts from being automatically cancelled just because a restructuring case has started, which helps the business keep running. An

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[100] "US Bankruptcy Code, Chapter 11, Section 704(a)(1)".
[101] "US Bankruptcy Code, Chapter 11, Section 704(a)(2)".
[102] *Ibid.,* Section 1106(a)(6).
[103] Christoph G. Paulus, "The New German Preventive Restructuring Framework,"*Orizzonti del Diritto Commerciale*(2021): 21, accessed April 18, 2026, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.

insolvency practitioner is appointed to make sure the debtor follows the rules and does not take actions that could damage the restructuring process.[104]

Under StaRUG, courts can issue orders temporarily freezing creditor enforcement actions and preventing contract terminations, protecting the business during restructuring. Unlike traditional insolvency law, the insolvency practitioner does not take control of the debtor's assets. Instead an insolvency practitioner acts as a “watchdog”, monitoring compliance and reporting violations to the court. This reflects a deliberate legislative choice to keep the debtor in control while maintaining limited judicial oversight.[105]

Pursuant to § 76 para. 2 StaRUG, read in conjunction with § 97 InsO, the debtor is under a statutory obligation to furnish the practitioner with all information requisite for the proper execution of the practitioner’s duties. This comprehensive access enables the practitioner to assess the feasibility of the restructuring plan, discern potential risks to creditor interests, and report findings to the court. Notably, the practitioner does not supplant management, but rather operates as an independent supervisory body within the restructuring framework. [106]

In Ukraine the management of the debtor retains possession and continues to manage its business throughout the preventive restructuring proceedings. In this supervisory role, the insolvency practitioner monitors how the debtor runs their business. This is similar to the traditional job of managing someone’s estate, but with a more modern approach.[107]

This oversight right operates as a continuous check on the debtor's conduct throughout the procedure and is the primary mechanism through which the insolvency practitioner safeguards the integrity of the estate during the restructuring period. The insolvency practitioner appointed to oversee the implementation of the restructuring plan also has the power to give written approval for certain transactions. These include new financing, major deals outside the ordinary course of business, and any transactions specified in the court-approved plan. This requirement significantly limits the debtor’s ability to independently use or dispose of its assets during the monitoring phase.[108]

The protective measures available under the procedure, including temporary suspension of debt enforcement, further insulate the debtor's estate from creditor action during the restructuring

[104] *Ibid.,* 21-22.
[105] Christoph G. Paulus, “The New German Preventive Restructuring Framework,” *Orizzonti del Diritto Commerciale*(2021): 23, accessed April 18, 2026, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[106] “Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG),” Section 73(3).
[107] V. Derliuk, “Rights and Duties of the Insolvency Practitioner,” *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 44, accessed April 18, 2026, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.
[108] *Ibid.,* 43.

period. While these measures are granted by the court, the insolvency practitioner monitors compliance and must take action in the event of their violation.[109]

The second group covers investigation and review rights. Namely, the right to examine the debtor's full financial history, verify and reject unfounded creditor claims, and conduct a forward-looking assessment of plan viability, enabling the practitioner to act as an independent and impartial participant in the procedure

The verification of the debtor's activities and the claims of creditors is one of the most important functions of the trustee in the US Chapter 11procedure. The powers demonstrate that an insolvency practitioner performs the role of an independent and impartial participant in the procedure, rather than merely an assistant to the debtor. Under § 1106(a)(3), the trustee must investigate the debtor's financial condition, business operations, and full financial history, regardless of whether violations are apparentThis confirms that the trustee assumes full responsibility for conducting the business during the restructuring procedure.

No less important is verifying creditors' claims. According to § 704(a)(5), which is applied through § 1106(a)(1), the insolvency practitioner must review the submitted claims and deny those that are unfounded or inconsistent with the law. Thus, he acts as a kind of "filter" that prevents invalid claims to property distribution. If the review reveals violations, such as fraud or bad management, the insolvency practitioner is obliged to inform the court. [110]

Unlike traditional insolvency law, the StaRUG commissioner has no power to investigate the debtor's past conduct, their access to business records is limited strictly to what is needed to oversee the restructuring plan.[111] Access to financial records is essential for the insolvency practitioner to fulfill assigned responsibilities. In the absence of such access, the insolvency practitioner is unable to evaluate the viability of the restructuring plan, monitor the debtor's financial status, or submit reports to the court. The insolvency practitioner is granted access to the debtor's records and is required to report to the court regarding both the progress of restructuring and the debtor's actual insolvency status. Consequently, the moderator's role shifts from a neutral mediator to an indirect supervisory role on behalf of the court.[112]

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[109] *Ibid.,* 44.
[110] "US Bankruptcy Code, Chapter 11", Section § 1106(a)(4)
[111] Christoph G. Paulus, "The New German Preventive Restructuring Framework," *Orizzonti del Diritto Commerciale*(2021): 16, accessed April 18, 2026, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[112] *Ibid.*

The commissioner is responsible for reviewing the restructuring plan. In cases involving a cross-class cram-down, the commissioner provides the court with an expert assessment regarding whether the plan satisfies the best-interest-of-creditors test and the priority requirements under §§ 27-28 StaRUG. This responsibility confers a quasi-judicial function upon the commissioner, as the assessment directly influences outcomes for dissenting creditors. The commissioner's role is analogous to that of practitioners under Article 2(12) of the Restructuring Directive; however, German law has substantially expanded this function beyond the scope originally envisioned by the Restructuring Directive.[113]

The insolvency practitioner must continually assess whether the conditions for concluding the restructuring case are satisfied. In practice, this involves an ongoing evaluation of the debtor's financial situation.[114] In contrast to the US, the German commissioner does not examine the debtor's past. Instead, the commissioner assesses whether the restructuring plan is viable and equitable. This forward-looking approach aligns with the nature of StaRUG as a pre-insolvency procedure, in which no formal bankruptcy has been declared.

The insolvency practitioner’s investigation and review rights in the Ukrainian preventive restructuring framework are calibrated to the supervisory rather than managerial character of the role, yet they remain substantively significant. The commercial court may at any time require the insolvency practitioner to provide any information about the progress of the preventive restructuring procedure.[115] This right to request information, aimed at the insolvency practitioner rather than the debtor, means the insolvency practitioner maintain ongoing access to the debtor’s financial and operational data. To make this possible, the insolvency practitioner must also have corresponding rights to obtain and investigate information from the debtor.

The insolvency practitioner review function is most clearly articulated in the obligation to verify the formation of the classes of involved parties, assess the justification for the monetary claims of involved creditors, and notify the involved parties and the court of the results.[116]

The insolvency practitioner is both empowered and required to assess the number of claims disputed by the debtor or other creditors. This gives the insolvency practitioner a quasi-judicial role, allowing them to play a key part in resolving disputes over creditor claims without the need for full

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[113] Christoph G. Paulus, “The New German Preventive Restructuring Framework,” *Orizzonti del Diritto Commerciale*(2021): 16, accessed April 22, 2026, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[114] *Ibid.,* 21.
[115] V. Derliuk, “Rights and Duties of the Insolvency Practitioner,” *Ekonomika i Pravo* (*Economics and Law*), no. 3 (2024): 43, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.
[116] *Ibid.,* 44-45.

court proceedings.[117] This review right is particularly important given that creditor classification determines voting outcomes, and disputes over classification can be strategically used by either debtors seeking to dilute opposition or creditors seeking to block restructuring plans.

The insolvency practitioner's power to evaluate the prospects of plan execution and compliance with the best-interest-of-creditors criterion under applicable legislation completes the investigative dimension of the role, requiring the insolvency practitioner to undertake a forward-looking financial assessment of the restructuring plan's viability.[118]

The third group concerns reporting and disclosure obligations. They include including the duty to submit periodic operational reports, file investigative findings with the court, disclose identified violations to creditors, and propose or assess restructuring plans, through which the practitioner ensures transparency toward the court, creditors, and other parties throughout the procedure.

In US Chapter 11proceedings, the trustee’s reporting and disclosure obligations are very broad. They are necessary to ensure transparency in the proceedings, since the financial risks of this procedure will be borne by the creditors. Under §§ 704(a)(7) and 704(a)(8), applied through § 1106(a)(1), the trustee must provide information about the debtor's property to interested parties on request, submit Monthly Operating Reports during the proceedings, and file a final report with the court upon closure of the case. [119] Under § 1106(a)(4), the trustee must report the findings of its investigation to both the court and creditors. Where fraud, abuse, or mismanagement is identified, disclosure to creditors is mandatory.

In addition, under § 1106(a)(5), the insolvency practitioner must either submit a restructuring plan, explain why such a plan is not possible, or propose transferring the case to liquidation (Chapter 7). That is, he not only reports, but also actively pursues the case to completion.

In Germany, the approach is more limited. The commissioner's primary reporting duty is to keep the restructuring court continuously and fully informed of all developments material to the success or failure of the restructuring, including the state of creditor negotiations, the prospects for plan acceptance, and the emergence of any insolvency ground.[120]

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[117] V. Derliuk, “Rights and Duties of the Insolvency Practitioner,” *Ekonomika i Pravo* (*Economics and Law*), no. 3 (2024): 44, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.
[118] *Ibid.,* 43-44.
[119] “Federal Rules of Bankruptcy Procedure, Rule 2015(a)”.
[120] Christoph G. Paulus, “The New German Preventive Restructuring Framework,” *Orizzonti del Diritto Commerciale*(2021): 22, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.

This reporting obligation has a dual character. On one hand, it is a right in the sense that the commissioner has privileged access to the court and the institutional authority to place information before it that may lead to decisive judicial action, including the revocation of the restructuring case or the opening of formal insolvency proceedings. On the other hand, it is simultaneously a duty, the wrongful breach of which exposes the commissioner to liability.[121]

The insolvency practitioner is involved in the notification regime established by §§ 84-88 StaRUG, which determines whether the restructuring case is disclosed to the public. When the debtor requests public notification, the court is required to state the grounds for its jurisdiction in accordance with Article 3 of the European Insolvency Regulation.[122] The insolvency practitioner, in cases, where notification is ordered, plays a role in ensuring compliance with the procedural requirements for public disclosure. This function is with important cross-border implications, since publicly notified restructuring cases may qualify for listing in Annex A of the EIR Recast and thereby enjoy automatic recognition in other Member States.[123]

Where the restructuring plan includes a compliance monitoring mechanism under Section 79 StaRUG, the commissioner's reporting obligations extend beyond the conclusion of the plan confirmation into the implementation phase. The commissioner must notify the court if plan obligations are not being satisfied, giving creditors an institutional channel for enforcement that supplements their private law remedies.[124]

If the plan's implementation is monitored, the insolvency practitioner also reports whether the debtor is complying with its terms.[125] However, unlike in the USA, he is not obliged to submit regular reports on the debtor's activities or the property's financial situation. These obligations remain with the debtor himself according to § 32 StaRUG.

In Ukraine, the practitioner's reporting and disclosure functions serve as the primary institutional link between the preventive restructuring procedure and the commercial court's supervisory authority. The insolvency practitioner bears a duty to inform the court of grounds for closing the procedure, but the corresponding right to communicate directly with the court constitutes

[121] *Ibid.,* 23.
[122] *Ibid.,* 26.
[123] *Ibid.*
[124] *Ibid.,* 24.
[125] Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen (Unternehmensstabilisierungs- und -restrukturierungsgesetz - StaRUG)," Section 72

a privileged channel of institutional access that distinguishes the insolvency practitioner from ordinary procedural participants.[126]

Where an insolvency practitioner is appointed for plan execution monitoring purposes, the insolvency practitioner or the debtor is required to report to the court monthly on plan execution.[127] This monthly reporting cycle creates a structured disclosure rhythm that allows the court to maintain effective oversight of plan implementation without continuous judicial involvement, a practical application of the minimum court involvement principle that the Restructuring Directive aims to promote, albeit implemented through the insolvency practitioner rather than through genuinely autonomous debtor management.[128]

The insolvency practitioner is required to record how negotiations are conducted and to submit minutes of negotiations or creditor meetings to the commercial court. This duty, which, in the absence of an insolvency practitioner, falls on the debtor. This requirement further strengthens the procedure's framework for transparency and information disclosure.[129]This documentation obligation serves both procedural and substantive purposes: procedurally, it creates an evidentiary record of the negotiation process; substantively, it enables the court to assess whether the debtor and insolvency practitioner have engaged in genuine restructuring efforts or have merely gone through the formal motions.

The fourth group encompasses advisory and support functions. Namely, the right to assist in structuring and negotiating the restructuring plan, mediate between the debtor and creditors, and provide expert assessments to the court on plan adequacy and creditor protection, under which the practitioner facilitates a consensual resolution of the financial distress.

In US Chapter 11proceedings, the trustee's advisory role is not explicitly set out in law as a separate function, but he in fact, performs it constantly in practice. The trustee makes key decisions on how best to preserve and increase the value of the debtor's assets: whether to continue the business, sell assets, or abandon unprofitable contracts, as well as on what terms to form a restructuring plan.

The most significant expression of the trustee's role is the obligation to submit a restructuring plan under § 1106(a)(5) and § 1121 of Chapter 11. Given that the trustee has assumed control over

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[126] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (*Economics and Law*), no. 3 (2024): 44, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

[127] V. Krykun and V. Derliuk, "Preventive Restructuring as a Legal Mechanism for Preventing Financial Insolvency," *New Ukrainian Law* (2025), accessed 13 May 2026, 93, https://newukrainianlaw.in.ua/index.php/journal/article/view/752.

[128] Daoning Zhang, "Preventive Restructuring Frameworks: A Possible Solution for Financially Distressed Multinational Corporate Groups in the EU," *European Business Organization Law Review* 20 (2019): 295, https://doi.org/10.1007/s40804-018-0125-3.

[129] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (*Economics and Law*), no. 3 (2024): 44, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

the debtor's assets and conducted a thorough examination of its financial condition, he is best positioned to assess whether viable prospects for recovery exist and to formulate a plan accordingly. In this sense, the submission of a restructuring plan is not merely a procedural requirement but the central purpose of the trustee's appointment, the primary mechanism through which the debtor's financial difficulties are to be resolved.

In addition, the insolvency practitioner performs an advisory function in interaction with creditors, in particular through the creditors' committee (§ 1102), as well as in communication with the court and the state supervisory authority (U.S. Trustee), discussing all important decisions regarding the property.

In Germany, on the other hand, the advisory function is the main one. The advisory and support dimension of the insolvency practitioner's role is most clearly articulated in the optional commissioner regime under Section 77-79 StaRUG, where the commissioner functions as a mediator and facilitator rather than a court-appointed supervisor.[130] In this capacity, the commissioner may assist the debtor in structuring the restructuring plan, advising on the classification of creditor classes, formulating the plan's declaratory and constructive parts, and satisfying of the information requirements under Sections 14 and 15 StaRUG.[131]

The insolvency practitioner under Sections 94-99 StaRUG provides a related but distinct advisory function at the pre-formal stage of restructuring, supporting the debtor in out-of-court negotiations with creditors with a view to reaching a consensual agreement before recourse to the statutory toolbox becomes necessary.[132] The moderator's advisory role is aimed at supporting the initial stage of the European preventive restructuring frameworkб a phase of out-of-court negotiations carried out alongside, and influenced by, the possibility of a formal restructuring procedure.[133]

It bears emphasis, however, that the commissioner's advisory function must be exercised with strict impartiality. Unlike the debtor's own legal and financial advisors, who are retained advocates with a duty to advance the debtor's position, the commissioner's advisory input must be calibrated to the interests of the restructuring process as a whole, including the interests of creditors. This distinction is not always easy to maintain in practice, particularly where the debtor has proposed the

[130] Christoph G. Paulus, "The New German Preventive Restructuring Framework," *Orizzonti del Diritto Commerciale*(2021): 23, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[131] *Ibid.,* 16-17.
[132] *Ibid.,* 15-16.
[133] *Ibid.,* 13.

commissioner's appointment and the two parties have established a working relationship prior to the formal commencement of proceedings.[134]

The judicial voting procedure under Section 45 StaRUG, which may be invoked where the debtor prefers to have creditor voting conducted under court auspices, provides a further context for the commissioner's advisory role: the commissioner may assist the court in collecting the necessary information prior to the voting meeting and in organising the discussion of the plan's contents.[135]

The advisory and support function of the insolvency practitioner in Ukrainian preventive restructuring is formally designated as the primary purpose of the role. The practitioner's principal tasks are mediation between the debtor and creditors and preparation of the restructuring plan.[136] In this advisory capacity, the insolvency practitioner provides recommendations for preventing the debtor's insolvency, participates in drafting the preventive restructuring plan, and assesses the prospects of plan execution and compliance with the best-interest-of-creditors criterion.[137]

The mediatory function is particularly significant from a comparative perspective, since it positions the Ukrainian preventive restructuring insolvency practitioner is not similar to the German Restrukturierungsbeauftragter, whose supervisory and reporting obligations give the role a more distinctly institutional character. This comparison is not merely academic: the choice of a predominantly facilitative model implies that the insolvency practitioner's effectiveness depends heavily on the willingness of the debtor and creditors to engage in negotiation, rather than on the insolvency practitioner's own institutional powers.[138] The insolvency practitioner also reviews complaints and applications from creditors, providing a quasi-legal function that complements the mediatory role and gives creditors a channel for raising concerns about the debtor's conduct without triggering formal judicial proceedings.[139]

The fifth group comprises compliance obligations specific to the jurisdiction and type of proceeding: the duty to ensure continuity of employee welfare programs, tax reporting, patient safety obligations in medical cases, and adherence to plan implementation requirements, requiring the

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[134] Eidenmüller, Horst, "What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws," *European Business Organization Law Review* 24 (2023), 238, https://doi.org/10.1007/s40804-023-00271-9.
[135] Christoph G. Paulus, "The New German Preventive Restructuring Framework,"*Orizzonti del Diritto Commerciale*(2021): 24, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[136] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 43, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.
[137] *Ibid.*
[138] *Ibid.,* 45.
[139] *Ibid.,* 43-44.

practitioner to ensure that the debtor adheres to all statutory obligations throughout the restructuring process.

In US Chapter 11proceedings, the trustee has not only general powers but also a number of specific legal duties that go beyond the management or control of the property. This is because even in insolvency, the debtor continues to have obligations to employees, family members, and others, which are not extinguished by bankruptcy.

First, if the debtor previously administered employee welfare programs, the trustee must continue to fulfil these duties. [140] This means that pensions and other employee benefits must be preserved even during bankruptcy proceedings.

Second, if the debtor has obligations to pay alimony or other support to family members, the trustee must notify the appropriate authorities and parties of the proceedings. [141] This is done so that the interests of dependents are not ignored.

Third, in the event of medical facility's closure, the insolvency practitioner must ensure that patients are transferred to other facilities.[142] So as not to endanger their health and safety. These obligations show that the insolvency practitioner in the USA is responsible not only for financial matters, but also for compliance with the debtor's social and legal obligations.

In Germany, the situation is different. The commissioner must act with the diligence of a careful and responsible restructuring professional throughout the process. This standard is based, by analogy, on the duties applicable to company directors and insolvency insolvency practitioners, even though it is not expressly set out in the StaRUG.[143] This gap in the legislative framework has been identified as a source of significant legal uncertainty, potentially deterring qualified professionals from accepting appointments in high-risk cases.[144]

The commissioner's compliance obligations include ensuring that the debtor adheres to the notification duties imposed by Sections 32 and 42 StaRUG, in particular the obligation to notify the court immediately upon the emergence of an insolvency ground. Failure to ensure compliance when

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[140] "US Bankruptcy Code, Chapter 11, Section 704(a)(11)".
[141] *Ibid.,* Section 1106(a) (8), , Section 1106(c).
[142] *Ibid.,* Section 704(a)(12).
[143] Christoph G. Paulus, "The New German Preventive Restructuring Framework," *Orizzonti del Diritto Commerciale*(2021): 21, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[144] Eidenmüller, Horst, "What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws," *European Business Organization Law Review* 24 (2023), 237, https://doi.org/10.1007/s40804-023-00271-9.

the commissioner is aware of the debtor's breach may expose the commissioner to accessory liability alongside the debtor's directors.[145]

Where a cross-class cram-down is sought, the commissioner bears a specific compliance obligation to verify that the mandatory conditions of Section 26 StaRUG are satisfied: that the dissenting class would be no worse off under the plan than in the best alternative scenario, and that the class receives an adequate share of the plan value. This verification duty is a statutory compliance function of the highest practical importance, since its inadequate discharge may ground judicial rejection of the plan confirmation application under Section 63 StaRUG.[146]

Finally, the commissioner's remuneration itself constitutes a compliance matter: fees must be claimed and assessed in accordance with Sections 80-83 StaRUG and any deviation from the prescribed framework, including arrangements with the debtor that could give rise to a conflict of interest, would compromise both the commissioner's independence and the integrity of the proceeding.[147]

In Ukraine, the insolvency practitioner's compliance-oriented rights arise primarily from the obligation to monitor the debtor’s adherence to the protective measures imposed by the court and to take action in the event of violations.[148] This right to monitor compliance is paired with a duty to report any violations to the court. Together, they create a system where the person both checks what is happening and is responsible for informing the court-similar, though in a simpler form, to the role of insolvency practitioners in formal proceedings.

The practitioner’s written consent right, which is applicable during the plan monitoring phase to transactions involving new financing, significant out-of-ordinary transactions, and transactions defined by the confirmed plan, constitutes a compliance mechanism of considerable practical importance.[149] By conditioning certain debtor actions on insolvency practitioner consent, the statute creates a mandatory compliance checkpoint that protects against debtor opportunism during the vulnerable post-confirmation implementation period. However, unlike other European models, for example, the Swedish model, where the insolvency practitioner may declare a transaction ultra vires and null and void if completed without the required consent, the Ukrainian framework does not

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[145] Christoph G. Paulus, “The New German Preventive Restructuring Framework,” *Orizzonti del Diritto Commerciale*(2021): 22, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[146] *Ibid.,* 23-24.
[147] *Ibid.,* 22.
[148] V. Derliuk, “Rights and Duties of the Insolvency Practitioner,” *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 44, accessed April 18, 2026, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.
[149] *Ibid.,* 44.

expressly provide for a comparable nullification remedy, leaving the legal consequences of non-consensual transactions uncertain.[150]

To conclude, the analysis demonstrates that the scope of powers granted to insolvency practitioners varies significantly across national restructuring regimes. In debtor-oriented systems, practitioners primarily perform supervisory and advisory functions, whereas in more interventionist systems, they may exercise managerial or controlling powers. This suggests that the powers of insolvency practitioners are closely linked to the broader balance between debtor autonomy and creditor protection adopted by each jurisdiction.

2.3. Duties of Insolvency Practitioner in Restructuring

Duty of Independence and impartiality.

The duty of independence and impartiality is a cornerstone of insolvency practice, ensuring that the practitioner acts free from conflicts of interest and maintains neutrality between stakeholders.

In the US, this duty is explicitly reflected in the requirement that a trustee be a "disinterested person" under § 101(14) of US Chapter 11of the U.S. Code. Furthermore, § 1104 provides for the appointment of a trustee where management misconduct or conflicts of interest undermine the integrity of the process. A disinterested trustee must not have any materially adverse interest in relation to the debtor, creditors, or the estate. This requirement ensures that the trustee performs their functions objectively and without bias.

The root of this duty lies in Art. 26(1) of the Restructuring Directive, which requires Member States to ensure that practitioners are independent and impartial. Section 74 Abs. 1 of the StaRUG gives domestic expression to this requirement by making independence from both debtor and creditors a condition of appointment. Lack of independence is one of the main grounds for the removal of an insolvency practitioner under para 75 abs. 3 of the StaRUG The concept of independence extends beyond financial relationships to personal relationships that could compromise objective judgment. [151]

In Ukraine, independence is also a formal requirement for an insolvency practitioner, who acts as the insolvency practitioner of preventive restructuring. According to the Code of Ukraine on Bankruptcy Procedures, the insolvency practitioner must act independently and without conflict of

[150] *Ibid.,* 45.
[151] Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen (Unternehmensstabilisierungs- und -restrukturierungsgesetz - StaRUG)," Section 75, Abs. 3

interest when performing their duties.[152] However, unlike the U.S. model, Ukrainian legislation provides less detailed criteria for assessing independence, and the practical enforcement of this duty remains less developed.

Duty of care and competence.

The duty of care and competence requires the insolvency practitioner to perform their functions with professional diligence, skill, and efficiency.

In the US, this duty derives from the trustee's statutory responsibilities under §§ 704 and 1106 of US Chapter 11of the US Code. These provisions require the trustee to administer the estate, investigate the debtor's financial affairs, and ensure proper management of assets. The trustee is expected to act with the care of a prudent professional, reflecting their fiduciary role.

This duty is not explicitly stated in StaRUG, however, it is widely used as a standard analogy from art 60 of InsO. This duty includes competent review and assessment of the restructuring plan, timely reporting to the court and affected parties, and continuous monitoring of the debtor's conduct during proceedings to detect and report any misuse of the framework.

In Ukraine, the duty of care is reflected in the general obligations of the insolvency practitioner under the Code of Ukraine on Bankruptcy Procedures.

The duty of care and competence requires the insolvency practitioner to bring a defined level of professional knowledge, diligence and skill to every aspect of the assignment. Under Article 10, becoming an insolvency practitioner requires a legal or economic degree, at least three years of professional experience, completion of a six-month training programme, and registration with the Ministry of Justice.[153] These requirements reflect the legislature's recognition that the insolvency practitioner's tasks - from reviewing creditors' monetary claims and convening creditor meetings to executing asset realizations and challenging debtor transactions demand a verifiable and consistently high standard of expertise.

In the context of preventive restructuring, the duty of care acquires additional, procedure-specific dimensions. The insolvency practitioner of preventive restructuring (a role assigned by court appointment to the insolvency practitioner) is expected to evaluate the prospects of plan performance and compliance with the best-interests-of-creditors criterion, to verify the formation of creditor classes and the soundness of the monetary claims of involved creditors, and to supervise the debtor's ongoing

[152] "Code of Ukraine on Bankruptcy Procedures", Art. 1.
[153] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 41-42, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

business activity throughout the procedure.[154] Each of these tasks presupposes an active, analytically rigorous engagement with the debtor's financial and operational reality rather than mere formal compliance.

The Restructuring Directive explicitly provides that the debtor should, as a rule, retain full or at least partial control over its assets and day-to-day business operations, since removing the debtor from management would significantly reduce the likelihood of the debtor using early preventive procedures.[155] This design choice does not diminish the seriousness of the care obligation; it relocates its locus from operational control to diligent monitoring and timely intervention upon detection of violations.

From a comparative perspective, the duty of care encompasses active engagement rather than passive oversight. In Sweden, the insolvency practitioner must affirmatively approve the completion or securing of obligations arising before the commencement of restructuring, transactions outside the ordinary course of business, and disposals or encumbrances of assets material to the debtor's business; any transaction concluded without the required consent may be declared ultra vires and set aside.[156]

The proper discharge of the duty of care is secured by a complex of guarantees: legal regulation, continuous judicial oversight, professional and disciplinary liability for non-performance or improper performance, and the obligation to observe professional ethical principles.[157] Compliance with this duty is, in turn, a practical precondition for meaningful performance of the transparency and creditor-protection obligations examined in the following sub-sections.

Duty of Transparency and reporting.

Transparency and reporting obligations are essential for ensuring accountability and enabling creditor participation in restructuring proceedings.

In the US, trustees are subject to extensive reporting obligations under § 704(a)(7) and § 1106(a)(1). These provisions require the trustee to furnish information concerning the estate and its administration to creditors, the court, and the U.S. Trustee, including financial reports and operational updates.

Right after the appointment, the restructuring practitioner falls under the supervision of the restructuring court and is always accountable to and must report to the court on demand.[158] The

[154] *Ibid.,* 43.
[155] V.Krykun and V. Derliuk, "Preventive Restructuring as a Legal Mechanism for Preventing Financial Insolvency," *New Ukrainian Law* (2025), accessed 13 May 2026, 88-89, https://newukrainianlaw.in.ua/index.php/journal/article/view/752.
[156] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 45-46, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.
[157] *Ibid.,* 41-42.
[158] "Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG)," Section 75(1).

practitioner must disclose any circumstances that could affect their independence or suitability for the role. The duty to report circumstances justifying termination of proceedings is perhaps the most significant procedural obligation.[159] This duty is proactive: the practitioner cannot wait for the court to enquire but must communicate relevant information without delay. Effective oversight by practitioners is essential to prevent debtors acting in bad faith from abusing the pre-insolvency framework.[160]

In Ukraine, the insolvency practitioner must also ensure transparency throught the restructuring process. This includes submitting reports, opinions, and other procedural documents to the commercial court, as well as communicating with creditors. In the general bankruptcy framework, the commercial court may at any time require the insolvency practitioner of preventive restructuring to provide any information about the progress of the procedure.[161] This on-demand character of judicial information rights establishes full, timely and accurate disclosure as the default operational standard.

At the procedural level, the reporting obligation takes several concrete forms. During the execution phase of an approved restructuring plan, either the insolvency practitioner (if appointed) or the debtor must submit monthly reports to the commercial court on the progress of plan implementation.[162] These monthly reports are meant to keep the court regularly informed about whether the debtor is meeting its restructuring obligations and whether there are grounds to end the process, such as failure to follow the plan or cessation of business activities.

The obligation to document negotiations is equally significant. The debtor, or the insolvency practitioner where one has been appointed, is required to record the conduct of all negotiations and to submit minutes of creditor meetings and negotiations to the commercial court.[163] This requirement transforms what might otherwise be informal bilateral exchanges into a formal, auditable record, reducing the scope for disputes about what was agreed and when, and allowing the court to verify that the debtor and insolvency practitioner have fulfilled their procedural obligations in good faith.

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[159] *Ibid.,* Section 76 (1).

[160] José M. Garrido, Cynthia M. DeLong, Ali Rasekh, and Andrea Rosha, "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive," *IMF Working Papers* 2021, no. 152 (2021): 22, https://www.elibrary.imf.org/view/journals/001/2021/152/article-A001-en.xml

[161] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 43, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

[162] V. Krykun and V. Derliuk, "Preventive Restructuring as a Legal Mechanism for Preventing Financial Insolvency," *New Ukrainian Law* (2025), accessed 13 May 2026, 93, https://newukrainianlaw.in.ua/index.php/journal/article/view/752.

[163] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 44, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

The duty of transparency is further reinforced by the prohibition on submitting false information to the court. The submission of false information by the insolvency practitioner to the court constitutes an express ground on which the court may, on an application by the debtor or the creditor assembly, remove the insolvency practitioner from office.[164] While this provision is framed in terms of a sanction rather than a positive duty, it implicitly establishes accuracy and honesty as affirmative obligations binding on the insolvency practitioner at all stages of the procedure.

The insolvency practitioner's transparency obligations extend beyond financial data. The insolvency practitioner is required to inform the commercial court immediately upon detecting any grounds for closing the preventive restructuring procedure.[165] This proactive notification duty places the insolvency practitioner in the role of an institutional watchdog, responsible for ensuring that the procedure is not maintained artificially beyond the point at which its objectives can realistically be achieved.

Effective monitoring of restructuring procedures (including systematic data collection on procedural parameters and outcomes) is an indispensable tool for identifying weaknesses in crisis management and for improving the legislative framework over time.[166] Ukraine's implementing legislation, however, falls short of this vision: the early warning mechanism has been reduced in practice to the publication of a list of early-warning instruments on the website of the state insolvency authority, which does not constitute a genuine, systemic monitoring architecture.[167] However, Ukrainian legislation does not provide a detailed and systematic reporting framework comparable to that of the US, which may limit the effectiveness of oversight in practice.

Obligation to Safeguard Creditor Interests

A fundamental duty of insolvency practitioners is to protect the interests of creditors as a collective body.

In the US, this obligation arises from the trustee’s fiduciary duty to the bankruptcy estate and creditors. The trustee must act in the best interests of creditors, ensuring preservation and maximization of the estate’s value and equitable distribution. This duty is closely connected to the statutory functions defined in §§ 704 and 1106.

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[164] *Ibid.*

[165] *Ibid.,* 44-45.

[166] Y. Hrynchyshyn, “Preventive Restructuring as a New Trend of Insolvency Legislation,” *Accounting and Finance* 2, 92 (2021): 51–52, https://doi.org/10.33146/2307-9878-2021-2(92)-51-60.

[167] V. Krykun and V. Derliuk, “Preventive Restructuring as a Legal Mechanism for Preventing Financial Insolvency,” *New Ukrainian Law* (2025), accessed 13 May 2026, 95, https://newukrainianlaw.in.ua/index.php/journal/article/view/752.

Where appointed ex officio, the restructuring practitioner serves above all as a protective mechanism for creditors' interests, particularly those of vulnerable groups such as consumers and SMEs. This is explicitly stated in § 73(1) StaRUG and reinforced by the framework of the Restructuring Directive, which requires Member States to ensure that practitioners exercise their functions impartially and in the interest of all parties.[168]

The duty to protect creditor's interests, however, does not transform the practitioner into a representative of creditors in the legal sense. The practitioner remains a court-appointed officer whose overarching loyalty is to the correct functioning of the restructuring procedure and the integrity of the process, not to any individual stakeholder.

In Ukraine, the protection of creditor interests is also recognised as a central objective of restructuring proceedings. The duty to protect creditor interests is the most complex of the three because the insolvency practitioner must deal with creditors whose interests and expectations can vary widely and may even conflict. The primary task of the insolvency practitioner in preventive restructuring is to mediate between the debtor and creditors and to prepare the restructuring plan.[169] This framing casts the insolvency practitioner not as an advocate for any single constituency but as a balanced facilitator whose legitimacy depends on equitable treatment of all affected parties.

One concrete expression of this obligation is the insolvency practitioner's power and duty to provide an opinion on the number of creditors' monetary claims where either the debtor or a creditor has raised objections.[170]This quasi-adjudicative function positions the insolvency practitioner as a neutral arbiter of disputed claims, whose conclusions carry significant weight in the subsequent creditor approval process. The insolvency practitioner must also check that the debtor follows the protective measures, such as the ban on enforcement actions and act if there are any violations.[171] In this capacity, the insolvency practitioner functions as an enforcement mechanism for the interim protections that insulate creditors from unilateral debtor action during the restructuring period. The creditor-protection function also encompasses a prospective dimension. The insolvency practitioner must assess whether the restructuring plan satisfies the best-interests-of-creditors test, that is, whether no creditor would be worse off under the plan than it would be in a liquidation scenario.[172].

[168] "Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG)," Section 73(1).
[169] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 43, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.
[170] *Ibid.,* 44-45.
[171] *Ibid.*
[172] *Ibid.,* 43.

The creditor-protection function also operates through the class formation process. Ukrainian law divides involved creditors into at least four classes: secured creditors; unsecured creditors; unsecured creditors with a connection of interest to the debtor; and founders, participants or shareholders of the debtor.[173] Where an insolvency practitioner has been appointed, he is required to verify the formation of those classes and the soundness of the monetary claims of involved creditors, and to notify both the involved parties and the court of the results. An error in class formation could distort voting outcomes and expose an approved plan to subsequent judicial challenge, making rigorous verification a core function of creditor protection.

The protective mandate extends beyond the immediate circle of financial creditors. The purpose of preventive restructuring is to protect the rights of third parties, including employees and business partners.[174] This broader view of who should be protected aligns with the Restructuring Directive's view that insolvency affects the whole economy, not just the debtor and creditors, by impacting jobs, supply chains, and overall market confidence.[175] Indeed, a key advantage of preventive restructuring is precisely the preservation of the business and its continued operation, which positively affects economic stability.[176]

A significant structural limitation on the creditor-protection function is the risk of procedural abuse by debtors. Because only the debtor holds the right to initiate preventive restructuring in Ukraine, there is an inherent risk that the procedure may be used not for genuine financial rehabilitation but to delay enforcement, avoid liability, or impose unfavourable conditions on creditors.[177] The insolvency practitioner's duty to safeguard creditor interests must therefore include vigilance against such abuse, the obligation to inform the court of grounds for closing the procedure is the primary legal instrument through which this vigilance is operationalised. The current system places most of the burden on creditors, who are expected to make concessions and accept restructuring, while it does not clearly require the debtor to meet strong duties on transparency, good faith, and following the plan..[178] This imbalance, combined with the procedure's resemblance to a 'mini-bankruptcy' with associated procedural rigidity and stigma, may deter early recourse to the

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[173] Code of Ukraine on Bankruptcy Procedures, Art.33[18].

[174] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 44-45, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

[175] Y. Hrynchyshyn, "Preventive Restructuring as a New Trend of Insolvency Legislation," *Accounting and Finance*2, 92 (2021): 51–52, https://doi.org/10.33146/2307-9878-2021-2(92)-51-60.

[176]V. Krykun and V. Derliuk, "Preventive Restructuring as a Legal Mechanism for Preventing Financial Insolvency," *New Ukrainian Law* (2025), accessed 13 May 2026, 94, https://newukrainianlaw.in.ua/index.php/journal/article/view/752.

[177] *Ibid.,* 94-95.

[178] *Ibid.*

procedure by financially distressed but viable companies, thereby undermining its preventive purpose.[179]

Finally, there is a structural gap that affects creditor protection: unlike the Restructuring Directive, the Ukrainian Bankruptcy Code does not protect new or interim financing provided during restructuring negotiations.[180] In the absence of priority rights or immunity from avoidance actions for creditors who invest in distressed businesses, the incentive structure for providing the fresh capital that viable restructurings typically require is materially weakened. Strengthening the insolvency practitioner's creditor-protection mandate and addressing these legislative gaps, therefore, remain critical priorities for the further development of preventive restructuring law in Ukraine.

Despite differences in national regulation, insolvency practitioners across jurisdictions share several core duties, including acting independently, impartially and professionally while safeguarding the interests of all stakeholders involved in restructuring proceedings. These duties reflect the practitioner's unique position as both a procedural supervisor and a balancing actor between competing creditor and debtor interests. Accordingly, professional integrity and competence remain central to the effective performance of insolvency practitioners' functions.

2.4. Legal Status and Liability

The liability of the DIP and US Chapter 11Trustee is one of the most contested areas of American bankruptcy law. Both figures owe fiduciary duties and are subject to personal liability for breaches, but the standard of care has been inconsistently defined across federal circuits.

The case law of the US courts establishes that a trustee or receiver in bankruptcy is not liable for mistakes in judgment or ordinary negligence but is liable for willful misconduct or gross negligence[181]. However, subsequent circuit court decisions have fluctuated. As was observed, some courts in the USA have held the trustee to a simple negligence standard, while others have adopted a more protective approach under which "acts of the fiduciary are to be treated with indulgence and mistaken judgment is not enough to impose liability".[182] The result is a fragmented liability regime without a uniform national standard.

[179] *Ibid.,* 95.
[180] Y. Hrynchyshyn, "Preventive Restructuring as a New Trend of Insolvency Legislation," *Accounting and Finance*2, 92 (2021): 57, https://doi.org/10.33146/2307-9878-2021-2(92)-51-60.
[181] "Mosser v. Darrow," 341 U.S. 267 (1951), https://supreme.justia.com/cases/federal/us/341/267.
[182] David P. Primack, "Confusion and Solution: US Chapter 11Bankruptcy Trustee's Standard of Care for Personal Liability," *William & Mary Law Review* 43 (2002): 1297, https://scholarship.law.wm.edu/wmlr/vol43/iss3/8.

Where the DIP engages in self-dealing, preferential treatment of insiders, or bad faith conduct, creditors may seek a surcharge against the DIP, conversion to Chapter 7, or appointment of a trustee to displace the DIP. The US Trustee may also investigate and move for appropriate relief. Professional advisers employed by the DIP or trustee under § 327 carry their own liability under applicable state professional conduct rules and the Bankruptcy Code's compensation regulation framework.

The legal status of the insolvency practitioner under restructuring proceedings is unclear German law. Unlike the insolvency insolvency practitioner, who is firmly established as an officer of the court with a well-developed body of case law governing liability, the commissioner is a new creature of statute without the benefit of decades of interpretive guidance.[183]

Section 75(4) StaRUG makes the commissioner liable for culpable breaches of duty, but does not define the applicable standard of care.[184] This creates uncertainty that may deter qualified professionals from accepting appointments. Company directors face civil and criminal liability for breaching §§ 32 and 42 StaRUG, yet the commissioner's own liability threshold remains undefined.[185]

The criminal aspect of the StaRUG liability system is something mostly missing in other Member States' preventive restructuring laws, and it also shows a continuing concern in German law about debtor misconduct and the lasting influence of the stigma around insolvency.[186] For theinsolvency practitioner, this environment creates a particular professional risk: any association with a debtor who is subsequently found to have withheld material information or concealed an insolvency ground expose the insolvency practitioner to reputational and legal risks, even absent personal fault.[187]

Under Article 75 abs. 1 StaRUG, the practitioner acts as a court officer and remains under court supervision throughout the proceedings. The court may remove the practitioner ex officio for serious breaches of duty or loss of independence under § 75 Abs. 2 StaRUG. The debtor and creditors may apply for removal only on grounds of lack of independence under § 75 Abs. 3 StaRUG.

Where the restructuring practitioner intentionally breaches their duties and thereby causes damage to a party to the proceedings, they may be personally liable for such damage.[188] This liability

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[183] Eidenmüller Horst, "What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws," *European Business Organization Law Review* 24 (2023), 237- 238, https://doi.org/10.1007/s40804-023-00271-9.

[184] Christoph G. Paulus, "The New German Preventive Restructuring Framework," *Orizzonti del Diritto Commerciale*(2021): 23, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.

[185] *Ibid.,* 22.

[186] *Ibid.,* 10.

[187] Eidenmüller, Horst, "What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws," *European Business Organization Law Review* 24 (2023), 237-238, https://doi.org/10.1007/s40804-023-00271-9.

[188] "Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG)," Section 75(1).

regime, while not codified with the same explicitness as the insolvency practitioner's liability under § 60 InsO, operates through general principles of civil law and is modelled on the liability framework applicable to court-appointed officers. At the same time, excessive liability rules run the danger of discouraging trained professionals from accepting appointments, and the required standard of care should be adjusted to the challenging conditions in which the practitioner operates[189]. The practitioner can reduce liability risk by ensuring that all significant assessments and decisions are properly documented, by seeking advance court approval for controversial measures, and by promptly reporting any circumstances that could affect their position.

The insolvency practitioner in Ukraine occupies a hybrid position: Article 10 of the Code of Ukraine on Bankruptcy Procedures classifies the role as independent professional activity, yet the practitioner simultaneously exercises state-delegated public functions.[190] From a public law perspective, the insolvency practitioner provides public services by exercising state-delegated functions and exerts influence over the rights and interests not only of the debtor but of all participants in the bankruptcy procedure.[191]

The proper performance of the insolvency practitioner’s rights and duties is secured by a complex of measures, including legal regulation, court supervision, supervision by participants in the bankruptcy case, liability for non-performance or improper performance of functions, and requirements of professional preparation and adherence to ethical principles.[192] This system of accountability is, in formal terms, similar to the rules applied to insolvency practitioners in other countries. However, how well it works in practice depends on strong court supervision and effective professional discipline, both of which are still underdeveloped in Ukraine.

The commercial court can remove the insolvency practitioner in several situations: if the insolvency practitioner asks to step down; if they fail to perform their duties properly or provide false information (based on a request from the debtor or creditors’ meeting) or if their professional activity is stopped or suspended (at the request of the debtor, creditors or on the court’s own initiative).[193]

The law does not clearly and fully set out the rules on the practitioner’s liability in preventive restructuring. This gap was already highlighted as a major weakness of the proposed system before

[189] Pepels, “Group Concerns and Communication and Cooperation between Practitioners under the European Insolvency Regulation (Part II),” *International Insolvency Review* 33 (2024): 141-142, https://doi.org/10.1002/iir.1525.
[190] V. Derliuk, “Rights and Duties of the Insolvency Practitioner,” *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 41, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.
[191] *Ibid.*
[192] *Ibid.,* 42.
[193] *Ibid.,* 44.

the legislation was adopted.[194] The lack of a clear liability standard, similar to the "orderly and conscientious professional" standard used in German law, creates uncertainty about what happens if the insolvency practitioner fails in their duties, and what remedies are available to creditors and the debtor.

A further structural peculiarity of the Ukrainian model concerns liability in the context of the procedure's quasi-voluntary character. In Ukrainian preventive restructuring, the right to initiate is exclusively held by the debtor. This exclusive right creates a risk of abuse. The procedure may be used not for genuine financial rehabilitation but to gain time, avoid liability, or impose unfavourable terms on creditors.[195] The insolvency practitioner's liability framework should address the insolvency practitioner's responsibility when the insolvency practitioner fails to identify or report a debtor's abuse of the procedure to the court.

Despite mechanisms, the effectiveness of the liability framework remains limited in practice. The relatively recent introduction of preventive restructuring procedures and the absence of consistent judicial practice create uncertainty regarding the scope of duties and standards of professional conduct. As a result, the current model demonstrates a tension between limited practitioner powers and the existence of formal liability, which may hinder the effective functioning of restructuring proceedings.

2.5. Remuneration of Restructuring Practitioner

The remuneration of insolvency practitioners is an important element of restructuring proceedings, as it directly affects their independence, efficiency, and incentives. The approaches to remuneration in the US, Germany, and Ukraine differ significantly, reflecting broader differences in the roles and functions of practitioners.

In the US, the remuneration of a trustee or other insolvency professional in US Chapter 11proceedings is subject to strict judicial control. Under § 330 of US Chapter 11of the US Code, the court may award "reasonable compensation" for actual, necessary services rendered, as well as reimbursement for expenses. The determination of remuneration is based on several factors, including the time spent, the complexity of the case, the level of expertise required, and the results achieved.

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[194] *Ibid.,* 46.

[195] V. Krykun and V. Derliuk, "Preventive Restructuring as a Legal Mechanism for Preventing Financial Insolvency," *New Ukrainian Law* (2025), accessed 13 May 2026, 94, https://newukrainianlaw.in.ua/index.php/journal/article/view/752.

In addition, § 326 of US Chapter 11establishes statutory limits on trustees' compensation, setting a percentage-based cap tied to the amount disbursed to parties in interest. This ensures that remuneration remains proportionate and prevents excessive fees. Importantly, all compensation must be approved by the bankruptcy court, which evaluates whether the services provided were necessary and beneficial to the estate. The US model, therefore, combines flexibility and strict oversight, aiming to balance fair compensation with the protection of creditor interests. At the same time, performance-based elements of remuneration may incentivise efficient case administration and maximisation of estate value.

In Germany, the remuneration of the restructuring commissioner is governed by Sections 80-83 of the StaRUG and is structured on a time-spent basis.[196] This contrasts with the asset-value-based remuneration of insolvency insolvency practitioners under the Insolvenzrechtliche Vergütungsverordnung (InsVV) and reflects the legislature's formal acknowledgement that the commissioner's role is supervisory rather than administrative. However, this formal acknowledgement sits uneasily with the broad scope of mandatory appointment conditions and the extensive duties imposed by the statute.[197]

The time-based remuneration model has significant practical implications. It is financially rational primarily in large and complex restructuring cases involving sophisticated creditors and substantial professional input. For SMEs, which are key targets of the preventive restructuring framework and whose interests the mandatory appointment rules are meant to protect, the cost of hiring a commissioner based on time spent may be too high, discouraging them from using the StaRUG at all.[198]

The remuneration provisions have been described as heavily disputed among practitioners.[199] The lobbying dynamics of the legislative process, in which insolvency insolvency practitioners pushed for remuneration structures aligned with traditional InsO practice, while restructuring professionals in law and accounting firms advocated for DIP-oriented proceedings minimising commissioner

[196] Christoph G. Paulus, "The New German Preventive Restructuring Framework," *Orizzonti del Diritto Commerciale*(2021): 16, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[197] Eidenmüller, Horst, "What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws," *European Business Organization Law Review* 24 (2023), 236-237, https://doi.org/10.1007/s40804-023-00271-9.
[198] Christoph G. Paulus, "The New German Preventive Restructuring Framework," *Orizzonti del Diritto Commerciale*(2021): 27, https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.
[199] *Ibid.,* 22.

involvement, produced a compromise that serves neither set of professional interests clearly and fails to provide the pricing transparency that SMEs require to assess affordability in advance.[200]

In Ukraine, the remuneration of the insolvency practitioner in restructuring proceedings is regulated by the Code of Ukraine on Bankruptcy Procedures and is generally more rigid. The practitioner's remuneration typically consists of a fixed basic fee, and, in certain cases, an additional component linked to the procedure's results.[201] The amount and procedure of payment of remuneration may be determined by law, by agreement, or by the court, depending on the specific stage and type of proceedings.

Unlike the U.S. system, the Ukrainian model does not rely on a detailed judicial assessment of the necessity and reasonableness of each service provided. The remuneration structure leaves the quantum to judicial determination and introduces a degree of flexibility that may assist in calibrating fees to the complexity and duration of individual cases. At the same time, this creates uncertainty: insolvency practitioners cannot accurately predict their pay in advance, and debtors, especially SMEs, cannot clearly estimate the cost of the procedure before deciding to use it**.** This uncertainty is compounded by the fact that the procedure is new, lacks an established body of judicial practice on remuneration levels, and operates in an environment where professional infrastructure for preventive restructuring is only beginning to develop.

Although the commercial court exercises some control over remuneration, the system lacks a comprehensive framework for evaluating performance and efficiency. For example, the question of who bears the burden of remuneration in cases where the creditors' meeting fails to submit a candidacy for an insolvency practitioner, despite the mandatory appointment being required, is addressed in a notably pragmatic way by the legislative framework. Failure by the creditors' meeting to submit a candidacy cannot constitute a basis for refusing to confirm the restructuring plan.[202] In such cases, the procedure continues without an insolvency practitioner. While this rule helps avoid delays caused by uncooperative creditors, it creates another problem: if no insolvency practitioner is appointed when one would normally be required, important safeguards are missing. Claims are not properly checked, protective measures are not monitored, and the court does not receive an independent assessment of the plan is viability.

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[200] Eidenmüller Horst, "What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws," *European Business Organization Law Review* 24 (2023), 238 https://doi.org/10.1007/s40804-023-00271-9.

[201] Restructuring Directive, Art. 30.

[202] V. Derliuk, "Rights and Duties of the Insolvency Practitioner," *Ekonomika i Pravo* (Economics and Law), no. 3 (2024): 44, https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

Furthermore, In preventive restructuring proceedings, the practitioner has a limited role. This reduces the range of paid activities, which can influence incentives and make the profession less attractive.

Thus, while the US employs a court-controlled, performance-oriented remuneration system, Ukraine maintains a more normalised and less flexible approach, which may not fully reflect the complexity and demands of restructuring proceedings. This difference highlights the importance of remuneration mechanisms in shaping the effectiveness and professional quality of insolvency practitioners.

Remuneration of an insolvency practitioner is one of the main rights of insolvency practitioner. The Restructuring Directive required in Art. 26(4) that the remuneration of an insolvency practitioner should be consistent with the objective of an efficient resolution of proceedings. These rates may be exceeded in three exceptional circumstances: (i) where all parties agree on a higher rate; (ii) where no suitable person would accept appointment at the standard rate; or (iii) where the case is of exceptional complexity.[203]

All in all, adequate remuneration of insolvency practitioners is essential to attract qualified professionals and ensure high-quality performance of restructuring functions. Nevertheless, remuneration may also increase the financial burden of restructuring proceedings and potentially reduce accessibility for financially distressed debtors, particularly SMEs. Consequently, remuneration mechanisms should be proportionate and reflect the complexity of each restructuring case.

It can be summarised, that comparative examination of appointment mechanisms, powers, duties, liability, and remuneration demonstrates that insolvency practitioners occupy a legally and functionally significant role in restructuring proceedings.

Although the extent of their involvement varies across jurisdictions, insolvency practitioners consistently serve as supervisory, protective, and balancing actors within restructuring frameworks. Nevertheless, the degree of their participation remains closely linked to the underlying policy balance between debtor autonomy, creditor protection, and procedural efficiency. This finding forms the basis for the subsequent analysis in Chapter 3, which examines whether such participation ultimately contributes to the efficiency of restructuring proceedings.

[203] "Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG)," Section 83(1).

CHAPTER 3. THE IMPACT OF AN INSOLVENCY PRACTITIONER APPOINTMENT ON THE EFFECTIVENESS OF RESTRUCTURING PROCEEDINGS

After examining of the legal framework governing the appointment, rights, duties, liability, and remuneration of insolvency practitioners in restructuring proceedings across three representative jurisdictions (the US, Germany, and Ukraine), the analysis now turns to a question of deeper normative significance. Does the participation of an insolvency practitioner in restructuring proceedings actually make them effective, and if so, under what conditions and to what degree? The answer to this question is not as straightforward as it might initially appear. The existence of a legal power or duty does not by itself establish that its exercise produces beneficial outcomes. An insolvency practitioner may be ineffective if they lack sufficient powers, are not independent, are poorly incentivised, or are appointed too late. In such cases, they may only add costs and procedures without providing real benefits. The link between appointing a practitioner and the effectiveness of restructuring is debatable. It depends on many factors, such as the complexity of the case, the parties' experience are, the quality of available professionals, the national legal system, and the timing of the restructuring process.

The Restructuring Directive, as the principal harmonising instrument governing preventive restructuring across the European Union, resolves this question ambiguously. Article 5 of the Restructuring Directive establishes a default preference for debtor-in-possession control while simultaneously permitting Member States to allow appointment of a practitioner in every case. Recitals 29 and 30 support a flexible, case-by-case approach calibrated to the needs and complexity of individual proceedings. Yet Article 5(3) enumerates the minimum scenarios in which an appointment is required. Specifically, it provides that a practitioner shall be appointed where a general stay is granted, a restructuring plan is to be confirmed by a cross-class cram-down, or any party so requests.[204] However, the provision remains silent on the content or intensity of the practitioner's role in those scenarios. As evidenced by the comparative implementation of the Restructuring Directive across jurisdictions, Member States have diverged dramatically in their approaches, ranging from Germany's broad mandatory appointment regime under StaRUG to Ireland's universal examiner appointment under the examinership procedure.

This chapter examines the consequences of these divergent choices. First, what are the advantages of participation of an insolvency practitioner in restructuring proceedings, and how does

[204] Restructuring Directive, Art. 5(3).

such participation contribute to the overall effectiveness of the restructuring process? Second, what are the disadvantages and risks that such participation entails, and when do those risks outweigh the benefits to the point of undermining successful restructuring outcomes? Third, and most importantly, how should we evaluate the key design choice between mandatory and flexible appointment, drawing on the experience of different countries, and what reforms to the current Restructuring Directive would better ensure that the practitioner's role, whether required or optional, genuinely serves the goal of effective restructuring in practice?

3.1 Advantages of Appointment of an Insolvency Practitioner in Restructuring Proceedings

Participation of an insolvency practitioner in preventive restructuring proceedings offers several distinct benefits that can materially improve the effectiveness of restructuring.

The most fundamental benefit of an insolvency practitioner's participation lies in the effective use of their expertise and independence to advise and guide managers, shareholders, and creditors in navigating an inherently complex process. In EU insolvency law, the practitioner's role is defined as encompassing, among other tasks, assisting the debtor and creditors in drafting or negotiating a restructuring plan, supervising debtor's activities during negotiations, and taking partial control over the debtor's assets or affairs where necessary.[205] This multi-faceted function reflects the recognition that a debtor facing financial distress may lack the objectivity, technical capacity, or negotiating leverage necessary to achieve a viable plan without independent guidance.

The effectiveness of restructuring proceedings depends on the individuals responsible for administering them. The proper functioning of the system requires insolvency practitioners to maintain the trust and confidence of courts, creditors and debtors. Where such confidence is absent, the credibility of the insolvency system may be undermined, reducing its practical effectiveness and discouraging its use.[206] What matters above all is not merely the practitioner's own sense of professional integrity but the perception that third parties in the market have of the insolvency office holder's trustworthiness, competence, and impartiality.[207]

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[205]Restructuring Directive, Art 2(1),(12).
[206] Cork Report, *Insolvency Law and Practice: Report of the Review Committee* (June 1982, Cmnd. 8558), para. 732, cited in Bob Wessels and Stefan Madaus, *Rescue of Business in Insolvency Law: Instrument of the European Law Institute*(Vienna: European Law Institute, 2017), 149, para. 154, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
[207] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para. 165, 153, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

One significant advantage of practitioner participation is the increased credibility it brings to the restructuring process. In cases where restructuring is conducted under a debtor-in-possession model without external supervision, creditors may question the reliability of the debtor's disclosures and be unwilling to accept compromises. The involvement of a qualified and independent professional helps reduce these concerns by overseeing the proceedings and verifying the restructuring plan, thereby addressing the informational imbalance between the debtor and creditors. The Italian legal framework provides a useful example of this approach. Under the "*concordato preventivo*", the insolvency practitioner is tasked with informing the court of any misconduct by the debtor and providing creditors with independent information to facilitate their assessment of the proposal.[208] This function directly enhances creditor confidence and reduces the risk that a plan will be rejected on grounds of distrust rather than genuine economic disagreement. In line with this approach, it is recommended that national legal frameworks require professionals involved in restructuring proceedings to meet standards of independence, impartiality, and professional competence. At the same time, professional qualifications in related fields, such as law or accounting, should not in themselves be regarded as sufficient to ensure that an individual possesses the practical skills and expertise necessary to effectively perform restructuring-related functions.[209]

Practitioner involvement also supports procedural integrity and fairness. Preventive restructuring frameworks operate on the premise that a plan confirmed by a judicial or administrative authority becomes binding upon all affected parties, including those who voted against it.[210] The legitimacy of this coercive mechanism depends upon the procedural safeguards surrounding plan negotiation and adoption. The participation of a practitioner helps ensure that safeguards are observed, namely that class formation is conducted properly, that voting processes are transparent, and that the interests of minority creditors and other vulnerable parties are taken into account. This is particularly significant when a cross-class cram-down is applied, as in circumstances where the risk of unfair treatment of dissenting classes may be acute. In this context, insolvency practitioners perform a fundamental role in ensuring the effective and efficient functioning of insolvency proceedings[211]. Given the significance of their responsibilities, it is essential that they possess the necessary

[208] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 152, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.
[209] European Law Institute,*Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para. 1.11, 153, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
[210] Restructuring Directive, Art 15(1).
[211] Restructuring Directive, Art. 10.

qualifications, professional knowledge, practical experience, and personal qualities required not only to administer proceedings effectively but also to maintain trust and confidence in the overall insolvency framework.[212]

Practitioner participation can also facilitate access to new financing for the debtor. A credible insolvency professional overseeing the restructuring process provides prospective lenders with assurance that the debtor's affairs are being managed responsibly and that new funds will be applied appropriately. This is particularly relevant given that the Restructuring Directive establishes the protection of interim and new financing as an essential element of successful restructuring and that several Member States have struggled in practice to attract new capital to distressed companies without some form of professional governance structure.[213]

The analysis of foreign jurisdictions demonstrates that practitioner involvement can decisively contribute to the rescue of the company. In Ireland, the mandatory appointment of an examiner under the examinership procedure has historically been associated with relatively high rates of successful rescue, a fact recognised in the JCOERE project as making Ireland a useful benchmark for other Member States now implementing the Restructuring Directive.[214] In Denmark, the restructuring insolvency practitioner performs an active supervisory function while the debtor formally remains in possession, preventing transactions of material significance from being concluded without professional scrutiny.[215] A comparative review of European jurisdictions that have implemented the Restructuring Directive shows that insolvency practitioners play an essential role in restructuring and insolvency proceedings across all systems. Although the exact scope of their authority varies depending on the type of procedure, their powers are generally extensive and commonly include involvement in the management of the debtor’s business, entering into new contracts, making decisions concerning ongoing contractual obligations, and taking measures to preserve the value of the debtor’s estate.[216]

[212] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para. 145, 144, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
[213] Gert-Jan Boon and Emilie Ghio, “An EU Preventive Restructuring Framework: A Hole in One?,” *International Insolvency Review* 28 (2019): 22, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3689002.
[214] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 10, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.
[215] *Ibid.,* 155.
[216] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para. 130, 138, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

Moreover, the participation of a practitioner may mitigate the risk of abusive use of preventive restructuring frameworks. The broad access to stays, the ability to restrain creditor enforcement, and the prioritisation of new financing create significant tools that could, without adequate oversight, be exploited by debtors whose businesses are not genuinely viable.[217] A qualified practitioner can perform a gatekeeping function, remarking cases where the prospects for a successful restructuring are objectively poor and where continuation of the procedure would serve only to delay an inevitable insolvency at the expense of creditors. The effective performance of insolvency practitioners' functions also depends heavily on the existence of a clear regulatory framework that ensures their independence and professional competence. This includes transparent and predictable procedures for appointment and removal, adequate supervisory mechanisms, and fair and timely remuneration, all of which are essential for enabling practitioners to carry out their responsibilities effectively.[218]

To sum up, this analysis shows that involving insolvency practitioners in preventive restructuring is more than just a formal step. When used well, their participation can meaningfully improve restructuring results. Five principal benefits emerge from the comparative examination. First, the practitioner's professional expertise and independence address the inherent informational asymmetry between a financially distressed debtor and its creditors, providing the technical capacity and neutral guidance that debtors in possession frequently lack. Second, practitioner participation enhances the overall credibility of the restructuring process, as demonstrated by the Italian *concordato preventivo* model, reducing the risk that plans are rejected on grounds of distrust rather than genuine economic objection. Third, the practitioner safeguards procedural integrity and fairness, particularly in cross-class cram-down scenarios where the coercive binding of dissenting creditors demands the highest standard of procedural legitimacy.

Fourth, the presence of a credible professional overseer facilitates access to new financing, providing prospective lenders with assurance that funds will be applied responsibly - a function of direct relevance given the Restructuring Directive's own recognition of interim financing protection as essential to successful restructuring. Fifth, the practitioner performs a gatekeeping function to prevent the abusive use of the framework, identifying cases in which continuing the procedure serves

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[217] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 161, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.

[218] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), Recommendation 1.13, 153, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

only to delay an inevitable insolvency at creditors' expense. The experience of France, Ireland, and Denmark consistently supports these conclusions.

The advantages identified in the preceding analysis may be summarised as follows:

- **Professional expertise and independence.** The practitioner provides technical capacity and neutral guidance that financially distressed debtors often lack, addressing the informational asymmetry between debtors and their creditors in navigating an inherently complex process.
- **Enhanced credibility of the restructuring process.** The involvement of a qualified and independent professional reduces creditor concerns about the reliability of the debtor's disclosures, thereby increasing the likelihood that creditors will agree to compromises rather than rejecting the plan on grounds of distrust.
- **Procedural integrity and fairness.** The practitioner contributes to ensuring that class formation is conducted properly, voting processes are transparent, and the interests of minority creditors and other vulnerable parties are taken into account, particularly in cross-class cram-down scenarios.
- **Facilitation of access to new financing.** A credible professional overseeing the restructuring provides prospective lenders with assurance that the debtor's affairs are managed responsibly and that new funds will be applied appropriately, thereby attracting interim and new financing.
- **Gatekeeping against abusive use of the framework.** The practitioner identifies cases in which the prospects for a successful restructuring are objectively poor and in wich continuing the procedure would only delay an inevitable insolvency at the expense of creditors.

However, these advantages are not unconditional, they depend critically on the quality and independence of the available professional pool, the clarity of the regulatory framework governing appointment and remuneration, and the proportionality of the practitioner's involvement to the needs of the individual case. Where these conditions are not met, the benefits identified above may fail to materialise, and practitioner participation may instead generate costs and formality without corresponding substantive value - a risk that the following sub-section examines in detail.

3.2 Disadvantages and Risks of Insolvency Practitioner Participation

While the involvement of an insolvency practitioner in preventive restructuring can offer benefits, it also entails notable drawbacks, which explains the broader policy reluctance to impose it as a universal requirement.

One of the disadvantages of appointing of an insolvency practitioner is the necessary costs. The appointment of a qualified professional invariably generates fees that constitute a burden on the debtor's estate. This concern is particularly acute for small and medium-sized enterprises, which represent the overwhelming majority of economically distressed businesses in the EU and for which the costs of a formal restructuring process, including practitioner remuneration, may render the procedure economically irrational.[219] It has been recognised that the appointment of an insolvency practitioner should not be required in every restructuring case, particularly in order to avoid unnecessary procedural costs and to preserve the flexible and early-stage nature of preventive restructuring proceedings.[220] Denmark's experience provides a practical example of this issue. In particular, the mandatory appointment of both a restructuring insolvency practitioner and a restructuring accountant in all restructuring proceedings has contributed to the limited use of the procedure, as the associated costs create a significant financial burden, especially for smaller debtors.[221] A similar approach has been proposed in relation to micro and small business insolvencies, where it has been suggested that Member States should consider allowing the postponement of procedural costs, including insolvency practitioner remuneration, in order to ensure that financial barriers do not restrict access to formal restructuring proceedings.[222] Comparative analysis demonstrates that remuneration systems for insolvency practitioners vary significantly across Member States and are often subject to detailed regulation. At the same time, practical difficulties most frequently arise when the debtor's estate contains limited or insufficient assets, a circumstance particularly common among small and medium-sized enterprises experiencing financial distress.[223]

A further concern specific to the mandatory appointment of a practitioner, as distinct from voluntary engagement with restructuring professionals, is that such a requirement may discourage

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[219] Restructuring Directive, Recital 10.

[220] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 151, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.

[221] David Christoph Ehmke, Jennifer L.L. Gant, Gert-Jan Boon, Line Langkjaer, and Emilie Ghio, "The European Union Preventive Restructuring Framework: A Hole in One?" *International Insolvency Review* (2021): 5, https://doi.org/10.1002/iir.1344.

[222] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), Recommendation 10.03, 36, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

[223] *Ibid.,* para 135-137, 140.

debtors from having early recourse to restructuring frameworks. One of the central policy objectives of the Restructuring Directive is to ensure that debtors seek assistance at an early stage of financial difficulty, before their situation has deteriorated to the point where rescue becomes impossible. However, if a debtor perceives that initiating a restructuring procedure necessarily entails ceding some control to an outside professional, the stigma and reputational consequences of that step may induce delay. Across multiple jurisdictions, including Germany and France, debtors have historically been reluctant to file for restructuring procedures due to the fear of losing managerial autonomy and the reputational damage that can accompany it.[224] Any expansion of mandatory practitioner involvement may further increase such reluctance. Particular emphasis has also been placed on the importance of early warning mechanisms and timely guidance for directors, including advice from restructuring professionals, before the commencement of formal proceedings. Such measures are intended to encourage debtors to seek assistance at an earlier stage and to lower the practical barriers to engaging with restructuring-related mechanisms.[225]

There is also a risk that practitioner involvement may distort the debtor-in-possession model that is central to the Restructuring Directive's design philosophy. Article 5(1) of the Restructuring Directive provides that debtors accessing preventive restructuring procedures shall remain totally, or at least partially, in control of their assets and the day-to-day operation of their business.[226] Where the practitioner is vested with broad supervisory or co-administrative powers, the practical effect may be to undermine this guarantee, transforming what is nominally a debtor-in-possession procedure into something closer to a supervised administration. The German approach illustrates this tension since practitioners are always appointed in German insolvency proceedings even where the debtor remains nominally in possession, and practitioners are often authorised to co-sign or approve the debtor's acts, which conflicts to some extent with the debtor-in-possession concept.[227] This tension is particularly evident in standard restructuring proceedings where no insolvency practitioner is appointed, leaving existing management in control of the process despite the company's financial failure, an arrangement that may undermine stakeholder confidence in the integrity and impartiality of the restructuring. For

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[224] David Christoph Ehmke, Jennifer L.L. Gant, Gert-Jan Boon, Line Langkjaer, and Emilie Ghio, "The European Union Preventive Restructuring Framework: A Hole in One?" *International Insolvency Review* (2021): 7-8 (France) 11-12 (Germany), https://doi.org/10.1002/iir.1344.

[225] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), Recommendation 1.21-1.22, 23-24 https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

[226] Restructuring Directive, Art 5(1).

[227] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 153, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.

this reason, national insolvency laws adopting a debtor-in-possession model must strike an appropriate balance between preserving debtor control and ensuring sufficient safeguards to maintain stakeholder trust.[228] At the same time, the debtor-in-possession model offers important practical advantages, as it allows the debtor's existing management to retain control of the business and continue using its knowledge, experience, and expertise, as well as its established business relationships without interruption. Moreover, preserving managerial control may encourage debtors to initiate restructuring proceedings voluntarily and at an earlier stage, thereby increasing the likelihood of timely intervention.[229]

A further risk relates to the quality and competence of practitioners. In some jurisdictions, particularly those with less developed insolvency professional markets, the appointment of a mandatory practitioner may involve persons who lack the business expertise necessary to guide a complex restructuring. The Romanian experience provides a useful example in this regard. Although an expert or insolvency practitioner must be appointed in all Romanian restructuring proceedings, concerns have been raised about the level of practical training and managerial expertise of these professionals. In particular, it has been observed that practitioners often possess less knowledge of business management than the debtor's former management, which may contribute to ineffective restructuring efforts and, in some cases, lead to the eventual failure of the reorganisation process and the commencement of insolvency proceedings.[230] Although certain similarities exist among Member States regarding the professional standards applicable to insolvency practitioners, substantial differences and diversity remain across many regulatory details. These divergences extend to areas such as licensing, regulation and supervision, qualification and training requirements, appointment mechanisms, professional and ethical standards, legal powers and responsibilities, and remuneration frameworks.[231] Many jurisdictions lack an adequate disciplinary framework for insolvency practitioners, often due to unclear grounds for disciplinary liability or a limited range of sanctions for misconduct.[232] A gap that directly undermines the protective function that mandatory practitioner appointment is intended to serve.

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[228] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para 167, 154-155 https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
[229] *Ibid.,* para 167, 154.
[230] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 152-153, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.
[231] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para 155, 149, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
[232] *Ibid.,* para 160, 151.

Additionally, the involvement of an insolvency practitioner introduces procedural formalities that may slow down the restructuring process. Modern insolvency laws aspire to reduce court involvement and procedural complexity, particularly in straightforward cases involving a small number of sophisticated creditors.[233] Where a practitioner must be appointed, their involvement will typically require compliance of regulatory requirements, execution of engagement agreements, and ongoing supervision obligations. All these obligations add time and procedural steps to the process the Restructuring Directive envisions as rapid and flexible. This is particularly problematic when the restructuring proceedings should be accelerated, as it can be decisive. For example, a company that can quickly reach an agreement with its main financial creditors without the overhead of formal proceedings may maximise the going-concern value that would otherwise erode over time. Appointment of practitioners may generate costs disproportionate to the scale of the restructuring process. Within workout situations, practitioner involvement should not be automatic but rather determined in light of the specific circumstances and needs of the individual case.[234]

In conclusion, the analysis shows that the benefits of involving an insolvency practitioner are not guaranteed. Mandatory or broad appointment brings real drawbacks. It can be costly, especially for SMEs, discourage debtors due to loss of control and stigma, and turn a flexible process into something closer to formal insolvency. In weaker professional markets, it may add little real oversight, and it can also slow down the process, which is critical in restructuring. Overall, the key issue is not whether practitioners should be involved, but when and how they should be involved.

3.3 Critical Assessment: Mandatory versus Flexible Appointment

The question of whether the appointment of an insolvency practitioner should be mandatory or determined on a case-by-case basis is one of the most contested issues in restructuring proceedings, and attempts to resolve this tension in favour of either approach have attracted considerable scholarly criticism.

Article 5(2) of the Restructuring Directive provides that where necessary, the appointment of a practitioner shall be decided on a case-by-case basis, except in certain circumstances where Member States may require mandatory appointment in every case. Article 5(3) then establishes three minimum scenarios in which Member States shall provide for the appointment of a practitioner: where a general stay is granted and the authority determines such appointment is necessary to safeguard

[233] Restructuring Directive, recital 29.
[234] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para 125, 136 https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

interests; where the plan requires a cross-class cram-down for confirmation; or where appointment is requested by the debtor or a majority of creditors.[235]

The structure of Article 5 reflects a deliberate legislative ambiguity. A central issue in restructuring proceedings concerns the conditions under which an insolvency practitioner should be appointed, as the choice between mandatory and case-by-case appointment has significant implications for both efficiency and stakeholder protection. In this context, different regulatory approaches reflect competing priorities between debtor autonomy and creditor oversight. This tension is clearly illustrated in the European framework, where the European Parliament had advocated mandatory appointment in at least some cases, while the debtor-in-possession model embedded in the Commission's original proposal was opposed by Member States with strong traditions of creditor control and professional oversight.[236] The resulting provision reflects a formally flexible approach to appointment, while still allowing Member States to require practitioner involvement in all cases.

This ambiguity has attracted well-founded criticism. The JCOERE Report notes that the Restructuring Directive could limit the extent of such derogation, potentially preventing a domestic rule that requires the appointment of an insolvency practitioner in every case, though the article's wording leaves this point ambiguous.[237] Had the EU legislator intended to permit a general exception to the case-by-case approach for practitioner appointment, such an intention would likely have been expressly reflected in the legislative text, as is the case with other optional elements of the regulatory framework.[238] The absence of such clarity is a significant drafting failure, as it effectively permits Member States to implement full mandatory appointment regimes that may be contrary to both the letter and the spirit of the compromise set out in Article 5.

The recitals of the Restructuring Directive clearly support a flexible approach. Recital 30 states that the appointment of a practitioner "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."[239] Recital 29 similarly calls for flexible procedures in which the involvement of practitioners and courts should be limited to situations where it is "necessary and proportionate."[240] These recitals support the

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[235] Restructuring Directive, Art 5(2) - (3).
[236] David Christoph Ehmke, Jennifer L.L. Gant, Gert-Jan Boon, Line Langkjaer, and Emilie Ghio, "The European Union Preventive Restructuring Framework: A Hole in One?" *International Insolvency Review* (2021): 3-4, https://doi.org/10.1002/iir.1344.
[237] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 151, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.
[238] *Ibid.,* 151.
[239] Restructuring Directive, recital 30.
[240] *Ibid.*, recital 29.

view that Member States which blanket-require practitioner appointment in all preventive restructuring cases are not acting in conformity with the Restructuring Directive's underlying intentions, even if they may not technically violate its operational provisions.

From a comparative perspective, the diversity of existing approaches among Member States underscores the difficulty of achieving harmonization under the current formulation. Although a mandatory appointment requirement may formally comply with the Restructuring Directive, it has been observed that this approach does not fully align with the underlying rationale of the compromise reflected in Article 5(2).[241] The Netherlands, by contrast, has adopted, through the WHOA a procedure that, in principle, requires no practitioner involvement, providing only for the optional appointment of a plan expert or observer in specified circumstances aligned with Article 5(3).[242] France occupies an intermediate position: the insolvency practitioner's (conciliateur's) role under the conciliation procedure is largely facilitative and non-controlling, while the *administrateur judiciaire* under *sauvegarde* has broader supervisory powers.[243] Ireland's examinership mandates the appointment of an examiner in all cases. However, this approach may be justified on the grounds that the robust procedural features involved, including a mandatory stay and the possibility of cross-class cram-down, would likely lead any case-by-case assessment to conclude that the appointment of a practitioner is necessary.[244]

Further insight into this issue may be drawn from comparative pre-legislative and normative analyses of appointment models across thirteen EU Member States, which identify five principal approaches: selection and appointment by the court; appointment influenced by creditors; appointment influenced by the debtor; selection without court or creditor involvement, such as through random allocation or electronic systems; and appointment by a state authority.[245] This diversity illustrates that there is no European consensus on even the basic architecture of practitioner appointment on the question of when it should be mandatory. A notable normative position advocates that both European and national legislators establish comprehensive professional and ethical standards for insolvency practitioners. At a minimum, such standards should regulate licensing and registration, supervision and disciplinary mechanisms, qualification and training requirements, appointment

[241] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 153, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.
[242] *Ibid.,* 153-154.
[243] *Ibid.,* 153.
[244] *Ibid.,* 152.
[245] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para 129, 137 https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

procedures, professional standards during administration, legal powers and duties, remuneration, reporting and communication obligations, as well as ethical rules, including provisions addressing conflicts of interest.[246] Importantly, the proposed framework does not support the mandatory appointment of practitioners in every case; instead, it focuses on ensuring the quality and proper regulation of practitioners where they are appointed, thereby implicitly favouring a model of flexible yet well-regulated participation.

The broader normative discourse on restructuring governance is reflected in international standards, particularly the World Bank Principles and the UNCITRAL Legislative Guide. These instruments identify three principal approaches to governance in reorganisation proceedings: exclusive administration by an independent insolvency representative; retention of control by the debtor's management; and a hybrid model in which management remains in place but is subject to supervision by an independent and impartial practitioner.[247]

The prevailing normative position adopts a nuanced and flexible approach. While recognising the advantages of the debtor-in-possession model in facilitating rescue-oriented proceedings, it also emphasises that, where restructuring efforts prove ineffective or creditor interests are jeopardised, control should be capable of being transferred to an insolvency representative.[248] This graduated model, which combines initial flexibility with the possibility of mandatory intervention as a corrective mechanism, provides a principled framework for assessing specific legislative solutions, including the approach adopted in the Restructuring Directive.

The timing issue highlighted in Article 5(3) warrants consideration as well. At the moment when a restructuring plan is being negotiated and drafted, it may not yet be apparent that a cross-class cram-down will be required. The mandatory nature of the practitioner appointment in that scenario may therefore not become apparent until after negotiations have already progressed significantly, creating uncertainty and potentially disrupting the process.[249] A more workable approach would be for the Restructuring Directive to require Member States to establish a clear mechanism for prompt practitioner appointment triggered by creditor or debtor request at any stage of proceedings, rather than linking mandatory appointment to specific procedural outcomes that may not be foreseeable at the outset.

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[246] *Ibid.,* 1.12, 153.
[247] *Ibid.,* para 179, 159.
[248] *Ibid.,* para 213-215, 169-170.
[249] Irene Lynch Fannon, Jennifer Gant, Aoife Finnerty, and Molly O'Connor, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 2: Report on Judicial Cooperation and European Harmonisation and Integration in Preventive Restructuring* (DG Justice Programme Project No. 800807, September 21, 2020), 151, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855398.

Critically, the Restructuring Directive's failure to establish a uniform standard for the mandatory or flexible appointment of practitioners is a missed opportunity for genuine harmonisation. Schmidt has shown that the Restructuring Directive has created significant regulatory competition among Member States, each seeking to make itself the most attractive jurisdiction for corporate restructuring.[250] This competition operates not only at the level of substantive plan provisions, such as cram-down rules and moratorium conditions, but also at the procedural level, including the extent of practitioner involvement. A jurisdiction that offers a purely debtor-driven, practitioner-free restructuring process may attract debtors seeking maximum flexibility and minimum cost, regardless of whether such a process is actually conducive to fair outcomes for creditors and other stakeholders.

However, it should be acknowledged that, given the significant divergence in professional and ethical requirements governing restructuring practitioners across Member States, the question arises as to whether a more far-reaching harmonisation of this profession at the EU level would have been either feasible or appropriate.

Furthermore, the Restructuring Directive's treatment of practitioner appointment interacts problematically with its provisions on recognition and applicable law. Schmidt argues that preventive restructuring frameworks not covered by the European Insolvency Regulation 2015 (EIR 2015) should be qualified as matters of company law and governed accordingly by the lex societatis of the Member State of the company's registered office.[251] If this analysis is correct, a company incorporated in a Member State with a mandatory practitioner appointment regime could not avoid that requirement by conducting its restructuring proceedings in a more permissive jurisdiction, since the applicable substantive law would remain that of the state of incorporation.[252]

A more coherent approach to practitioner appointment in a revised Restructuring Directive would entail several improvements. First, the Restructuring Directive should explicitly state whether a uniformly imposed mandatory appointment is compatible with its provisions. Second, in response to the identified divergence in professional standards across Member States, the Restructuring Directive should establish minimum EU-wide qualification and ethical requirements for restructuring practitioners. These standards should encompass the core benchmarks recognised in comparative analyses, including licensing and registration, regulation, supervision and disciplinary mechanisms, qualification and training, appointment procedures, professional and ethical standards of work, legal

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[250] Jessica Schmidt, "Preventive Restructuring Frameworks: Jurisdiction, Recognition and Applicable Law,"*International Insolvency Review* 31 (2022): 81-82, https://onlinelibrary.wiley.com/doi/full/10.1002/iir.1447.
[251] *Ibid.,* 87-88.
[252] *Ibid.,* 88.

powers and duties, and remuneration.[253] The absence of such minimum standards means that the practical value of mandatory appointment in low-capacity jurisdictions may be negligible or even counterproductive, as demonstrated by the Romanian experience. Third, in line with the graduated approach reflected in international comparative frameworks, the Restructuring Directive should adopt a tiered model of practitioner involvement, proportionate to the complexity and scale of the restructuring process. This model should permit a more limited and facilitative role in smaller cases, while providing for enhanced supervisory or co-administrative involvement in larger and more complex restructurings.

Finally, the question of when a practitioner should be appointed cannot be separated from the broader question of what the practitioner's role should be. The Restructuring Directive definition of the practitioner's tasks is notably broad and internally diverse: assisting in plan drafting and negotiation is a facilitative function; supervising the debtor's activity is a monitoring function; and taking partial control over assets is a managerial function.[254] These are qualitatively different types of involvement, with different costs, implications for the debtor-in-possession model, and impacts on creditor confidence. A Restructuring Directive that aspires to genuine harmonisation should define these roles more precisely and allocate them more deliberately to the different scenarios in which practitioner appointment is triggered. The conceptualisation of the supervisor as a distinct role positioned between the pure debtor-in-possession model and full practitioner control provides a valuable framework for this purpose. However, the current formulation of the Restructuring Directive fails to elaborate this approach with sufficient clarity.[255]

The analysis in this chapter demonstrates that insolvency practitioner involvement in preventive restructuring is neither uniformly beneficial nor indispensable, but a context-sensitive intervention whose value depends on the design of the appointment regime, the complexity of the case, and the broader balance struck between debtor autonomy and creditor protection. Where involvement is properly calibrated, limited to cases where it is genuinely needed, backed by clear professional standards and transparent remuneration rules, it enhances the credibility and fairness of the process. Where it is mandated indiscriminately, it risks replicating the procedural burden and stigma of formal insolvency, deterring early intervention, and imposing disproportionate costs on

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[253] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para 155, 149, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

[254] Restructuring Directive, Art 2(1)(12).

[255] European Law Institute, *Rescue of Business in Insolvency Law* (Vienna: European Law Institute, 2017), para. 1.1.3.3–1.1.3.4, 135–136, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

SMEs. The Restructuring Directive failure to resolve the mandatory/flexible dichotomy with sufficient clarity has led to implementation divergence across Member States, undermining harmonisation and calling for legislative reform to establish a uniform, proportionate, and complexity-sensitive standard for practitioner involvement at the EU level.

CONCLUSIONS

1. Preventive restructuring has undergone a fundamental transformation within the EU from a minor alternative to liquidation into a central instrument of modern insolvency system of the EU. This change, led in the EU by adoption of the Restructuring Directive, shows the intentions to save businesses, protect jobs, and keep a company running than to close it down. The US experience played a big role in shaping this view in the EU. US Chapter 11of the US Bankruptcy Code had already shown that letting a debtor stay in control and act early, instead of waiting for a court-supervised liquidation, usually leads to better outcomes for everyone. This model was the main inspiration for the European approach of restructuring proceedings.

2. The role of insolvency practitioners in restructuring proceedings varies widely depending on the country's legal system. Their duties might include the assistance to the parties to communicate, supervise the process, review restructuring plans, or even taking on some management tasks. This variety shows how different countries balance keeping the debtor in control with allowing Member States to give practitioners more responsibility. Because of these differences, the term "insolvency practitioner in restructuring" can mean very different things in different places, which makes it hard to compare how effective these professionals are internationally.

3. The conditions for appointment of an insolvency practitioner across three examined jurisdictions, namely the US, Germany and Ukraine reveal three distinct positions on the spectrum of involvement of an insolvency practitioner. The law of the US preserves debtor's autonomy by limiting trustee appointments to exceptional cases involving demonstrated management failure or creditor interests. In this context, the debtor-in-possession is regarded not as a default arrangement but as a constructive mechanism for facilitating successful reorganization.

4. In January 2025, Ukraine updated its Code on Bankruptcy Procedures which introduced restructuring proceedings. The new rules include several key features from the Restructuring Directive. For example, the debtor stays in control during the process, creditors vote on the restructuring plan, courts can approve the plan even if some creditor groups disagree, and there is a temporary freeze on creditor claims. Despite these changes, the Ukrainian system works more like a simplified bankruptcy than a true preventive measure. This is mainly because the entry requirements are too strict and the need for a mandatory practitioner makes it hard for struggling but still viable businesses to access the process early.

5. In the selected jurisdictions (the US, Germany and Ukraine), an insolvency practitioner's rights fall into five main categories: managing and protecting the estate, investigating

and reviewing matters, reporting and disclosure, providing advice and support, and meeting legal duties. These rights show how each jurisdiction tries to balance the debtor's independence with protecting creditors. In the US, the practitioner's rights are comprehensive and possessory. In Germany and Ukraine, these roles are mainly supervisory, advisory, and focused on monitoring. This is not just about how the laws are written; it also shows the strong cultural and institutional views on how the state, courts, and independent professionals should handle private financial problems.

6. The main duties of the insolvency practitioner are to act independently and fairly, show professional care and competence, ensure transparency by reporting to the court and relevant parties, and protect the collective interests of creditors while balancing the interests of all stakeholders. These responsibilities are functionally similar in all three jurisdictions, even though the laws express them differently. This agreement points to a shared foundation for a harmonized European standard for practitioner conduct. However, the way this standard is implementedstill varies enough to cause uncertainty about job expectations, liability, and accountability across different countries.

7. In the United States, courts apply different standards of liability depending on the circuit, including negligence, gross negligence, or willful misconduct standards, while in Germany the StaRUG establishes the role of the restructuring practitioner without clearly defining the applicable standard of care. At the same time, in Ukraine, the restructuring law does not address this issue at all. Restructuring proceedings remain underdeveloped, and none of the examined systems has yet introduced sufficiently detailed legislation to clarify the practitioner's role and ensure proper professional accountability.

8. Participation of an insolvency practitioner in restructuring proceedings enhances credibility, supports procedural fairness, and help to ensure fairness, and reduce the risk of abuse. However, an insolvency practitioner should only be involved in restructuring proceedings when the case is complex enough or the parties truly need it. For example, in cases of broad stay measures, vulnerable creditors, or unequal access of parties in restructuring proceedings to information. Making their appointment mandatory in every case raises costs, discourages debtors from seeking help early, and goes against the debtor-in-possession principle set by the Restructuring Directive.

9. The Restructuring Directive does not resolve the question when the appointment of an insolvency practitioner should be mandatory or optional. Article 5, along with Recitals 29 and 30, suggests that this decision should depend on factors like how complex the case is, the size of the debtor, and whether there are vulnerable creditors. However, these same rules let Member States require appointment in every case, and many have chosen to do so. As a result, the rules are now inconsistent across countries, which goes against aim of the Restructuring Directive to harmonise

restructuring proceedings in th EU. This inconsistency has real effects, namely making appointment mandatory can increase costs and make it harder for small and medium-sized businesses to restructure, while different national rules create uncertainty in cross-border cases

RECOMMENDATIONS

1. Article 5 of the Restructuring Directive should be amended to clarify that appointing a insolvency practitioner in preventive restructuring proceedings must follow the principle of proportionality and respect the Restructuring Directive's debtor-in-possession rule, under which the debtor should remain fully or at least partly in control of the business during restructuring proceedings. Germany should revise §§ 73-77 StaRUG to ensure that the appointment of an insolvency practitioner follows the principle of proportionality and respects the debtor-in-possession principle. Ukraine should revise Articles 33^2 and 33^3 of the Code of Ukraine on Bankruptcy Procedures concerning the mandatory involvement and powers of an insolvency practitioner in restructuring proceedings. At the same time, national courts in Germany and Ukraine should assess the necessity and scope of practitioner involvement on a case-by-case basis to avoid disproportionate costs and excessive procedural formality that may discourage financially distressed but viable businesses from seeking restructuring at an early stage.

2. When appointing an insolvency practitioner, debtors and creditors should treat it as a meaningful strategic decision, not just a procedural formality. They should verify that the chosen practitioner has the right qualifications, practical restructuring experience, and genuine independence. Where national law allows, creditors should actively participate in the selection rather than simply accepting whoever the court designates. Clear criteria for selection, ongoing reporting obligations, and the possibility of replacement should be agreed at the outset to ensure the practitioner genuinely contributes to a successful outcome rather than adding cost without value.

3. A revised Restructuring Directive should set different levels of practitioner involvement based on how complex the case is. For simple consensual restructurings, the practitioner would have a limited coordinating role. In cases with broad stay measures, vulnerable creditors, or unequal access to information, the practitioner would take on a supervisory role. For contested cross-class cram-downs or cases where the debtor's conduct is questionable, the practitioner would have a stronger co-administrative role. A graduated framework would offer a practical and principled alternative to the current either-or approach of appointment or non-appointment.

LIST OF BIBLIOGRAPHY

LEGAL ACTS

1. “Code of Ukraine on Bankruptcy Procedure.” Accessed 12 May 2026. https://zakon.rada.gov.ua/laws/show/2597-19#Text.
2. “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).” EUR-Lex, accessed 12 May 2026. https://eur-lex.europa.eu/eli/dir/2019/1023/oj.
3. “Federal Rules of Bankruptcy Procedure.” US Courts. Accessed 12 May 2026. https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-bankruptcy-procedure.
4. “Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen (Unternehmensstabilisierungs- und -restrukturierungsgesetz - StaRUG).” Accessed 12 May 2026. https://www.gesetze-im-internet.de/StaRUG/BJNR325610020.html.
5. “US Bankruptcy Code, Chapter 11.” Legal Information Institute, Cornell Law School. Accessed 12 May 2026. https://www.law.cornell.edu/uscode/text/11/chapter-11.

SOFT LAW

1. Cork Report. *Insolvency Law and Practice: Report of the Review Committee*.June 1982, Cmnd. 8558). Cited in Bob Wessels and Stefan Madaus, *Rescue of Business in Insolvency Law: Instrument of the European Law Institute*.Vienna: European Law Institute, 2017. https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
2. European Law Institute. *Rescue of Business in Insolvency Law*. Vienna: European Law Institute, 2017. https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

3. European Systemic Risk Board. *Restructuring and Insolvency – Opportunities for Reform in Europe*. ASC Insight №. 4. May 2025. https://www.esrb.europa.eu/pub/asc/insights/shared/pdf/esrb.ascinsight4.es.pdf.

4. Irene Lynch Fannon, Jennifer Gant, and Aoife Finnerty, *JCOERE Judicial Cooperation Supporting Economic Recovery in Europe Report 1: Identifying Substantive Rules in Preventive Restructuring Frameworks Including the Preventive Restructuring Directive which May Be Incompatible with Judicial Cooperation Obligations*. January 14, 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855380.

5. *Judicial Co-operation Supporting Economic Recovery in Europe: Report 1 - Identifying Substantive Rules in Preventive Restructuring Frameworks Including the Preventive Restructuring Directive Which May Be Incompatible with Judicial Cooperation Obligations*, research report. 2020. https://www.researchgate.net/publication/351443191_Research_Report_Judicial_Co-operation_Supporting_Economic_Recovery_in_Europe_Report_1_Identifying_Substantive_Rules_in_Preventive_Restructuring_Frameworks_Including_the_Preventive_Restructuring_Direct.

6. United Nations Commission on International Trade Law. *UNCITRAL Legislative Guide on Insolvency Law, Part Three*. New York: United Nations, 2010. https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/leg-guide-insol-part3-ebook-e.pdf.

CASE LAW

1. "Mosser v. Darrow." 341. U.S. 267. 1951. https://supreme.justia.com/cases/federal/us/341/267.

ACADEMIC RESOURCES

1. Bazinas, Ioannis. "Preventive Restructuring Frameworks and the Separate Domain of Cross-Border Restructuring Law." *SSRN Electronic Journal* (December 2, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4087668.

2. Becker, Bo, and Martin Oehmke. "Restructuring and Insolvency - Opportunities for Reform in Europe." *ASC Insight*, №. 4 (May 2025), https://www.esrb.europa.eu/pub/asc/insights/shared/pdf/esrb.ascinsight4.es.pdf.

3. Bharath, Sreedhar T., Venkatesh Panchapagesan, and Ingrid M. Werner. "The Changing Nature of Chapter 11." *Fisher College of Business Working Paper*, November 1, 2010. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1102366.

4. Bienenstock, Martin J. "Conflicts between Management and the Debtor in Possession's Fiduciary Duties." *University of Cincinnati Law Review* 61 (1992): 543.

5. Boon, Gert-Jan, and Emilie Ghio. "An EU Preventive Restructuring Framework: A Hole in One?." *International Insolvency Review* 28 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3689002.

6. Bork, Reinhard. "Pre-Insolvency Frameworks: Developments in the European Union." *International Insolvency Review*33, №. 1 (2024), https://onlinelibrary.wiley.com/doi/epdf/10.1002/iir.1515.

7. Derliuk, V. "Rights and Duties of the Insolvency Practitioner." *Ekonomika i Pravo* (*Economics and Law*). no. 3 (2024). https://nasu-periodicals.org.ua/index.php/economiclaw/article/view/10996/10148.

8. Eidenmüller, Horst. "What Can Restructuring Laws Do? Geopolitical Shocks, the New German Restructuring Regime, and the Limits of Restructuring Laws." *European Business Organization Law Review* 24 (2023). https://doi.org/10.1007/s40804-023-00271-9.

9. Epaulard, Anne, and Chloé Zapha. "Bankruptcy Costs and the Design of Preventive Restructuring Procedures." (Banque de France Working Paper №. 810; Université Paris-Dauphine Research Paper No. 3840236, April 2021). https://ssrn.com/abstract=3840236.

10. Garrido, José M., Cynthia M. DeLong, Ali Rasekh, and Andrea Rosha. "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive," *IMF Working Papers* 2021, no. 152 (2021). https://doi.org/10.5089/9781513573595.001.A001.

11. Hrynchyshyn, Y. "Preventive Restructuring as a New Trend of Insolvency Legislation." *Accounting and Finance*, no. 2 (92) (2021), https://doi.org/10.33146/2307-9878-2021-2(92)-51-60.

12. Kokorin, Ilya. "Insolvency of Significant Non-Financial Enterprises: Lessons from Bank Failures and Bank Resolution." *European Business Law Review* 32, №. 3 (2021). https://kluwerlawonline-com.skaitykla.mruni.eu/journalarticle/European+Business+Law+Review/32.3/EULR2021019.

13. Krykun, Viktor, and Vasyl Derliuk. "Preventive Restructuring as a Legal Mechanism for Preventing Insolvency." *New Ukrainian Law*, №. 2 (2025). https://doi.org/10.51989/NUL.2025.2.11.

14. Leake, Paul D. “US Chapter 11Transfer Tax Exemption Expanded by the Eleventh Circuit,” *Business Restructuring Review* 4. №. 1 (January/February 2005). https://www.jonesday.com/-/media/files/publications/2005/02/business-restructuring-review/files/brreview2005pdf/fileattachment/brreview2005.pdf.

15. McCormack, Gerard. “Chapter 1: Introduction,” in *The European Restructuring Directive* (Cheltenham, UK: Edward Elgar Publishing, 2021). https://doi.org/10.4337/9781789908817.00008.

16. Miller, Harvey R., and Shai Y. Waisman. “Is US Chapter 11Bankrupt?.” *Boston College Law Review* 47, . 1 (2025). https://bclawreview.bc.edu/articles/1029/files/63b7f2e9cd2ed.pdf.

17. Minervini, Vittorio. "Insolvency, Competition, and the Theory of the Firm." *European Business Law Review* 32. no. 4 (2021). https://kluwerlawonline-com.skaitykla.mruni.eu/journalarticle/European+Business+Law+Review/32.3/EULR2021026.

18. Paulus, Christoph G. “The New German Preventive Restructuring Framework.” *Orizzonti del Diritto Commerciale*(2021). https://images.rivistaodc.eu/f/articoli/171_articolo_ZtWGh_ORIZZONTI.pdf.

19. Pepels. “Group Concerns and Communication and Cooperation between Practitioners under the European Insolvency Regulation (Part II).” *International Insolvency Review* 33 (2024). https://doi.org/10.1002/iir.1525.

20. Primack, David P. “Confusion and Solution: US Chapter 11Bankruptcy Trustee's Standard of Care for Personal Liability.” *William & Mary Law Revie* 43 (2002). https://scholarship.law.wm.edu/wmlr/vol43/iss3/8.

21. Pugatch, Chad P., Craig A. Pugatch, and Travis Vaughan. “The Lost Art of US Chapter 11Reorganization.” *University of Florida Journal of Law & Public Policy* 19. no. 1 (2008). https://scholarship.law.ufl.edu/jlpp/vol19/iss1/4/.

22. Puneri, A. “Bankruptcy: A Legal Comparison.” *Journal of Legal, Ethical and Regulatory Issues* 26. S3 (2023). https://www.researchgate.net/publication/370057836_Bankruptcy_A_legal_comparison.

23. Schmidt, Jessica. “Preventive Restructuring Frameworks: Jurisdiction, Recognition and Applicable Law.” *International Insolvency Review* 31 (2022). https://onlinelibrary.wiley.com/doi/full/10.1002/iir.1447.

24. Syniehubov, V. “Preventive Restructuring in Ukraine: Legal Framework and Challenges.” *Yurydychnyi Visnyk*. №. 6 (2024). https://www.yurvisnyk.in.ua/v6_2024/6_2024.pdf#page=139.

25. Weijs, Roelf Jakob, and Bob Wessels. “Proposed Recommendations for the Reform of US Chapter 11 Bankruptcy Code” (Amsterdam Law School Research Paper No. 2015-14, Centre for the Study of European Contract Law Working Paper №. 2015-05.April 17. 2015), https://ssrn.com/abstract=2595577.

26. Wan, Wai Yee. “Public or Private Gatekeepers in Non-Consensual Debt Restructurings in Emerging Jurisdictions.” Forthcoming in *International Insolvency Review*, March 1, 2023. https://ssrn.com/abstract=4496161.

27. Zhang, Daoning. “Preventive Restructuring Frameworks: A Possible Solution for Financially Distressed Multinational Corporate Groups in the EU.” *European Business Organization Law Review* 20 (2019).

INTERNET RESOURCES

1. Bolinskyi, Serhii. “Introduction of Preventive Restructuring Procedures: Opportunities and Risks.” *Yurydychna Hazeta*(Legal Newspaper), February 17, 2025. Accessed April 18, 2026. https://yur-gazeta.com/publications/practice/bankrutstvo-i-restrukturizaciya/zaprovadzhennya-procedur-preventivnoyi-restrukturizaciyi-mozhlivosti-ta-riziki.html.

2. “US Chapter 11Bankruptcy Overview.” KPPB Law. Accessed March 30, 2026. https://www.kppblaw.com/chapter-11-bankruptcy-overview/.

3. European Central Bank. “Financial Stability Review.” May 2024. Accessed March 30, 2026. https://www.ecb.europa.eu/press/financial-stability-publications/fsr/html/ecb.fsr202405~7f212449c8.en.html.

4. “Great Depression.” Wikipedia. Accessed March 30, 2026. https://en.wikipedia.org/wiki/Great_Depression.

5. Hackbarth, Dirk. “Financial Distress, Stock Returns, and the 1978 Bankruptcy Reform Act,” LinkedIn, April 27, 2015. https://www.linkedin.com/pulse/financial-distress-stock-returns-1978-bankruptcy-reform-hackbarth/.

6. “Introduction of a Preventive Debt Restructuring Mechanism for Businesses: Supreme Court Judges Participated in the Discussion.” Supreme Court of Ukraine, July 17, 2024. Accessed 12 May 2026. https://supreme.court.gov.ua/supreme/pres-centr/news/1638680/.

7. Lehmann, Alexander. “Will Better Insolvency Standards Help Europe's Debt Deleveraging?.” Bruegel. January 23, 2017. https://www.bruegel.org/blog-post/will-better-insolvency-standards-help-europes-debt-deleveraging.

8. “Restructuring Events Databases.” European Restructuring Monitor (ERM). Accessed 27 March 2026. https://www.eurofound.europa.eu/en/surveys-and-data/european-restructuring-monitor.

9. “Special Issue Preventive Restructuring 4: Germany: Still Waiting for the Revolution in Restructuring to Come?.” HERO. June 28, 2022. Accessed 12 May 2026. https://www.online-hero.nl/art/4351/special-issue-preventive-restructuring-4-germany-still-waiting-for-the-revolution-in-restructuring-to-come.

ABSTRACT

This master's thesis examined the role and functions of insolvency practitioners in preventive restructuring proceedings under EU law, focusing on the tension between the debtor-in-possession principle in Restructuring Directive and the varying approaches taken by the EU Member States in practice. Through a comparative analysis of the US, Germany, and Ukraine, the research found that the insolvency practitioner is not a single clearly defined role but a flexible legal concept covering a wide range of functions, from passive facilitation to active co-management, whose exact scope is left to national law, producing significantly different outcomes across jurisdictions.

The research found that the main issue is not if practitioners should be involved in restructuring, but rather when, how, and under what conditions. A key legislative problem is that the Restructuring Directive is still unclear about whether appointing a practitioner under Article 5 should be mandatory or optional. This lack of clarity has led some Member States to require practitioners in all cases, which may go against the Directive's main goals and could prevent struggling but viable businesses from getting early access to restructuring.

Keywords: *insolvency practitioner, restructuring proceedings, debtor-in-possession, Restructuring Directive, appointment of insolvency practitioner.*

SUMMARY

This thesis examines the role, functions, and duties of the insolvency practitioner in preventive restructuring proceedings, with particular focus on the tension between the debtor-in-possession principle enshrined in Restructuring Directive and the diverse national approaches to practitioner appointment adopted by Member States.

The aim of the thesis is to critically analyze the appointment, functions, rights, duties, and legal status of insolvency practitioners in restructuring proceedings and to assess whether their participation contributes to the effectiveness of business rescue. To achieve this aim, the thesis examines the legal nature and objectives of restructuring proceedings, analyses the debtor-in-possession principle, compares the regulation of insolvency practitioners in the United States, Germany, and Ukraine, and evaluates the advantages and disadvantages of mandatory and flexible appointment models.

The thesis consists of three chapters. The first chapter explores restructuring as a modern insolvency mechanism that focuses on preserving viable businesses and restoring solvency rather than liquidation. Particular attention is paid to the effectiveness principle established by the Restructuring Directive and the debtor-in-possession model. The second chapter analyses the appointment, rights, duties, legal status, liability, and remuneration of insolvency practitioners in selected jurisdictions. It demonstrates that different legal systems adopt different balances between debtor autonomy and creditor protection. The third chapter evaluates the impact of insolvency practitioners on the effectiveness of restructuring proceedings and critically assesses whether their appointment should be mandatory or flexible.

The research concludes that insolvency practitioners play an important role in ensuring procedural fairness, transparency, creditor confidence, and supervision of restructuring proceedings. At the same time, mandatory appointment in every case may increase costs, discourage debtors from seeking early restructuring, and weaken the debtor-in-possession principle. Therefore, the thesis supports a flexible approach, under which insolvency practitioners should be appointed only when the complexity of the case or the need to protect creditors requires independent oversight. The thesis also identifies deficiencies in the regulation of insolvency practitioners' legal status and liability, and proposes clearer standards for their duties and level of responsibility.