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THE DEVELOPMENT AND CONFIRMATION OF THE RESTRUCTURING PLAN OF LEGAL ENTITIES: IMPACT OF EU LAW AND PROBLEMATIC ASPECTS

Master thesis

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LIST OF ABBREVIATIONS

AI	Artificial Intelligence
AI Framework Convention	Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law
Directive 2026/799	Directive (EU) 2026/799 of the European Parliament and of the Council of 30 March 2026 harmonising certain aspects of insolvency law
EIR	Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
EU	European Union
EU AI Act	Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 (Artificial Intelligence Act)
Member States	Member States of the European Union
MSEs	Microenterprises and small enterprises
Restructuring Directive	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
UNCITRAL	United Nations Commission on International Trade Law
US Chapter 11	Chapter 11 of the United States Bankruptcy Code

INTRODUCTION

The relevance of the final thesis. The thesis examines the challenges legal entities face in developing and confirming a restructuring plan and explores the impact of EU law on these stages. The relevance of the thesis stems from the need to design a sound and coherent EU legal framework governing restructuring proceedings to further develop the Capital Markets Union, making it more efficient for EU legal entities and promoting cross-border investments. The current fragmentation of restructuring laws across Member States weakens legal certainty for stakeholders involved in restructuring, reducing the efficiency of cross-border proceedings. In addition, the existing EU restructuring framework does not sufficiently address the specific needs of MSEs,[1] hindering their ability to achieve successful restructuring outcomes.

Every year in the EU, 200,000 companies declare bankruptcy, resulting in more than 1.7 million people losing their jobs.[2] The EU has therefore focused on harmonising and facilitating insolvency proceedings.[3] To boost jobs and growth in Europe, there is a need for a stronger rescue culture that helps viable businesses restructure and continue operating, directs enterprises with no chance of survival toward liquidation, and gives honest entrepreneurs in distress a second chance.[4] The need for efficient debt restructuring mechanisms and the continuation of viable businesses has become more evident in the aftermath of economic crises,[5] the pandemic,[6] and growing

[1] For the purposes of this thesis, a small enterprise is an enterprise that employs fewer than 50 persons and has an annual turnover and/or an annual balance sheet total not exceeding EUR 10 million. A microenterprise is an enterprise that employs fewer than 10 persons and has an annual turnover and/or an annual balance sheet total not exceeding EUR 2 million. "Commission Recommendation (EC) 2003/361 of 6 May 2003 Concerning the Definition of Micro, Small and Medium-Sized Enterprises," *Official Journal of the European Union*, 2003, accessed 21 February 2026, https://eur-lex.europa.eu/eli/reco/2003/361/oj/eng.
[2] Věra Jourová, *Early Restructuring and a Second Chance for Entrepreneurs: A Modern and Streamlined Approach to Business Insolvency* (Brussels: European Commission, June 2019), https://commission.europa.eu/system/files/2019-06/factsheet_-_a_modern_and_streamlined_approach_to_business_insolvency.pdf.
[3] European Commission, *Proposal for a Restructuring Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law* (Brussels: European Commission, 7 December 2022), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0702.
[4] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Action Plan on Building a Capital Markets Union* (Brussels: European Commission, 30 September 2015), 6, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0468.
[5] Jennifer L. Gant et al., "The EU Preventive Restructuring Framework: In Extra Time?," 8 October 2021, 1, https://ssrn.com/abstract=3938867.
[6] Yan Liu, José Garrido, and Chanda DeLong, *Private Debt Resolution Measures in the Wake of the Pandemic*, *Special Series on COVID-19* (Washington, DC: International Monetary Fund, 27 May 2020), https://www.imf.org/-/media/files/publications/covid19-special-notes/en-special-series-on-covid-19-private-debt-resolution-measures-in-the-wake-of-the-pandemic.pdf.

international market competition. Poor managerial choices, fiscal strains, and capital losses result in the financial inability of enterprises to meet creditors' obligations.[7]

Companies in financial distress face several options, including immediate liquidation, trading out of their difficulties, restructuring, or disposing of assets or the business.[8] Restructuring proceedings are the preferred method for resolving insolvency problems since they offer the opportunity to preserve businesses and safeguard jobs.[9] However, in practice, restructuring processes account for only a small share of all insolvency cases, and the success rate is even lower. For instance, in France, out of 67,830 insolvency proceedings, only 19,641 (29%) were commenced as restructuring proceedings.[10] A similar pattern can be observed in other European countries. For example, in Lithuania, of 1063 insolvency cases, only 50 (5%) were restructuring, of which 8 were later terminated.[11]

The successful implementation of corporate restructuring largely depends on the preparation and confirmation of an appropriate restructuring plan. The restructuring plan should demonstrate effectiveness in restoring the entity's viability and preserving economic and commercial activities. The question arises of how to develop a restructuring plan that truly ensures the company's continued operation. How to secure necessary support during the voting process and how to guarantee its confirmation by the court?

The Restructuring Directive leaves the Member States with a wide margin of discretion in implementing its provisions, leading to differences in national approaches to key issues such as the content and number of restructuring plans, the classification of creditors and voting rights, and the involvement of courts or administrative authorities in confirming the plan.[12] This lack of uniformity disrupts the functioning of the internal market and undermines the EU's main objective to establish a well-functioning Capital Markets Union.[13] The question arises as to the challenges

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[7] Alina Daniela Voda et al., "Corporate Bankruptcy and Insolvency Prediction Model," *Technological and Economic Development of Economy* 27, 5 (2021): 1039–40, doi:10.3846/tede.2021.15106.

[8] Jennifer Payne, "The Role of the Court in Debt Restructuring," *The Cambridge Law Journal* 77, 1 (2018): 124–125, doi:10.1017/S0008197318000016.

[9] European Commission, *Commission Staff Working Document Impact Assessment Accompanying the Document 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* (Strasbourg: European Commission, 22 November 2016), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016SC0357.

[10] INSOL Europe, *2024 Statistics for Insolvency Proceedings in France* (INSOL Europe, January 2025), https://www.insol-europe.org/technical-content/national-insolvency-statistics-france.

[11] Audito, apskaitos, turto vertinimo ir nemokumo valdymo tarnyba, *Nemokumo Procesų 2025 m. Apžvalga* (Vilnius, Audito, apskaitos, turto vertinimo ir nemokumo valdymo tarnyba, 27 March 2026).

[12] "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)," *Official Journal of the European Union* L 172/18 (2019).

[13] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Action Plan on Building a Capital*

legal entities face in developing and confirming the plan when the restructuring process involves multiple Member States.

The Restructuring Directive likewise fails to differentiate proceedings tailored to MSEs, even though such entities typically have a simple structure and limited financial resources. The question is whether the current EU regulation governing the development and confirmation of restructuring plans addresses the needs of MSEs or imposes additional burdens on them.

Hence, the topic is of great relevance in the fields of legislation and academic research, as the challenges encountered during the development and confirmation of a restructuring plan directly influence how effectively viable businesses are rescued and how fairly stakeholders' rights are protected. It underscores the need to critically examine the current EU legal framework governing these stages, identify problematic aspects, and propose viable solutions to improve legal clarity, predictability, and effectiveness of restructuring proceedings.

Scientific research problem. The restructuring plan is the central tool for addressing financial difficulties and restoring the stability of the legal entities, making its development and confirmation the main stages in restructuring proceedings. Legal entities are required to prepare a restructuring plan that simultaneously meets detailed legal requirements and addresses the conflicting interests of all affected parties. To provide the debtor with the time and content necessary to develop the plan, the Restructuring Directive provides for a stay of individual enforcement actions by creditors and mandatory elements of the plan. However, the broad discretion granted to Member States to implement the Restructuring Directive results in fragmented approaches governing essential elements of restructuring proceedings across the EU. **The question is whether the current EU restructuring framework enhances the effectiveness of EU restructuring proceedings and whether legal entities face practical obstacles in developing a restructuring plan.**

Furthermore, significant divergences in national restructuring proceedings create additional challenges to developing a restructuring plan that involves cross-border elements. MSEs also face particular difficulties in preparing the plan due to their limited financial resources and capacities. **This raises concerns about whether the Restructuring Directive establishes provisions that address the needs of MSEs and cross-border restructuring proceedings.**

Finally, the confirmation of the restructuring plan by a judicial or administrative authority introduces its own level of complexity with a lack of clarity on how to assess the legal correctness and financial feasibility of the plan. The Restructuring Directive governing the development and confirmation of the restructuring plan may contain aspects that hinder rather than facilitate the

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Markets Union, (Brussels: European Commission, 30 September 2015), 24, https://finance.ec.europa.eu/publications/action-plan-building-capital-markets-union_en.

effective rescue of legal entities. **This raises questions about the challenges at this stage and possible solutions to improve the number of successful restructuring proceedings within the EU.**

The level of the analysis of the research problem. The academic discussion on the restructuring framework has been addressed by Eidenmüller and Zwieten,[14] McNamara, Mott, Gupta, Salil and Metrick,[15] Gerard McCormack,[16] and Kristin van Zwieten.[17] In addition, Prof Em Bob Wessels, Prof Stephan Madaus from Martin, and Gert-Jan Boon analysed the issues concerning the rescue of businesses in insolvency law.[18] Moreover, studies conducted by institutions such as INSOL Europe and the UNCITRAL offer a valuable assessment of the practical challenges of the topic. Although the listed scholars and institutions have made significant contributions to the field of restructuring proceedings, there remains a lack of comprehensive legal research on the practical challenges involved in developing and confirming restructuring plans for legal entities, particularly in cross-border proceedings and those involving MSEs.

Scientific novelty of the master thesis. Although procedural inconsistencies in restructuring proceedings within the EU have been examined in academic literature, the specific legal and practical obstacles that arise during the development and confirmation of restructuring plans remain insufficiently analysed.

The scientific novelty of this thesis lies in its targeted analysis of these stages of restructuring proceedings and their influence on achieving successful restructuring outcomes. The research examines how the existing EU legal framework impacts procedural fairness, predictability and the protection of stakeholders' rights, with particular attention to the challenges faced by MSEs and EU legal entities in cross-border proceedings. Furthermore, the research aims to provide significant conclusions and recommendations to improve the procedural framework for restructuring plans in the EU.

The practical significance of the master thesis. The research is of assistance to EU scholars and academics who conduct studies on corporate restructuring and cross-border insolvency proceedings within the EU. The thesis will be useful to legal practitioners involved in

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[14] Horst Eidenmüller and Kristin Van Zwieten, "Restructuring the European Business Enterprise: The European Commission's Recommendation on a New Approach to Business Failure and Insolvency," *European Business Organization Law Review* 16, 4 (December 2015): 625–67, doi:10.1007/s40804-016-0042-2.

[15] Christian M. McNamara et al., "Survey of Resolution and Restructuring in Europe: Pre- and Post Survey of Resolution and Restructuring in Europe: Pre- and Post BRRD," *Journal of Financial Crises,* 6, 1 (28 March 2024): 1–34.

[16] Gerard McCormack, *EU Insolvency Law: Cross Border Insolvency Law in Comparative Focus* (Cheltenham, UK: Edward Elgar Publishing, 2022), doi:10.4337/9781800376137.

[17] Royston Miles Goode and Kristin van Zwieten, *Goode on Principles of Corporate Insolvency Law*, Fifth edition (London: Sweet & Maxwell/Thomson Reuters, 2018).

[18] European Law Institute, *Instrument of the European Law Institute Rescue of Business in Insolvency Law* (Vienna, Austria: European Law Institute, 2017), accessed 18 February 2026, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.

drafting restructuring plans and advising companies in financial distress. The study will also be helpful to students of insolvency and corporate law in gaining a better understanding of the procedural challenges involved in developing and confirming restructuring plans. Most importantly, the research aims to make significant contributions to legislators by offering practical recommendations to improve the EU restructuring framework. For EU policymakers, this research is valuable for possible amendments to the existing EU insolvency legislation.

The aim of the master thesis is to determine the major legal and procedural problems related to the development and confirmation of restructuring plans for legal entities within the EU and to propose possible solutions for improving the effectiveness and legal certainty of the relevant EU regulatory framework.

The objectives of the master thesis. To achieve the aim of the current scientific research, the following objectives are set out:

1) To determine why a sound legal framework for development and confirmation of the restructuring plan that addresses the competing interests of the stakeholders is important for the overall effectiveness of the proceedings.

2) To identify the main challenges arising during the development of restructuring plans and provide practical recommendations for addressing them.

3) To assess the main obstacles that legal entities face during the stage of confirmation of restructuring plans and develop practical recommendations for improving them.

Methods used in the master thesis. The current research includes several scientific methods:

1) Data collection and analysis methods were used to examine the relevant legal resources, mainly EU regulations, Member States' legislation, and academic literature. The collected data was structured, analysed, and interpreted to determine the current state of development and confirm the restructuring plans for legal entities.

2) The comparative method was used to identify and compare the legal frameworks and practices of the development and confirmation of restructuring plans. This method was used to reveal differences between the restructuring frameworks in Member States and the US insolvency system.

3) The linguistic method was applied to interpret specific legal terminology used in relevant EU restructuring regulations and national laws of Member States. It ensured clarity when interpreting concepts across different jurisdictions.

4) Systematic and logical methods facilitated the structuring of the analysis, identification of main challenges encountered in the development and confirmation of restructuring plans within the EU, and the proposal of viable solutions to address them.

The structure of the master thesis. The thesis consists of three chapters.

The first chapter examines the role of a sound EU legal framework in ensuring effective development and confirmation of restructuring plans. It analyses the competing interests of stakeholders in financial distress and explains how a well-structured restructuring plan addresses them. The chapter highlights that clear, harmonised regulation of the development and confirmation of a restructuring plan increases the likelihood of successful restructuring.

The second part identifies the main legal and procedural challenges that arise during the development of restructuring plans, particularly those related to the content of the plan and the stay of enforcement actions. The chapter then analyses obstacles to cross-border restructuring at this stage of proceedings, including the participation of foreign creditors and divergences among national laws. Finally, it addresses the specific difficulties faced by MSEs during this stage.

The third part focuses on the main problems that arise during the confirmation of the restructuring plans.

Defence statements.

1) The current EU restructuring framework fails to adequately address the practical challenges that arise during the development and confirmation of the restructuring plan, particularly in cross-border restructuring proceedings and those involving MSEs, undermining legal certainty, procedural fairness, and the effective protection of all stakeholders.

2) The complexity of the mandatory plan content, the absence of a mandatory automatic stay mechanism, fragmented national implementations, and unclear standards for confirming the plan contribute to restructuring failures.

3) There is a need for targeted reforms, including the introduction of an automatic stay mechanism, the absolute priority rule as the default rule, and mandatory confirmation of the plans with cross-border elements to enhance the stages of development and confirmation of the restructuring plan.

CHAPTER 1. THE IMPORTANCE OF A SOUND LEGAL FRAMEWORK FOR RESTRUCTURING PLANS

The consequences of a company's financial distress extend beyond the debtor itself. Financial difficulties threaten employees' jobs, prompt creditors to withdraw financial support, disrupt suppliers' operations due to breached contracts, and ultimately undermine market confidence. Restructuring proceedings aim to save viable businesses that face financial constraints to comply with credit obligations, minimise employment losses, reduce losses to creditors, and maintain market stability.[19] The effectiveness of restructuring depends on the quality of the legal framework that governs the process.

This chapter examines what a sound, well-designed restructuring framework should address to enhance the effectiveness of restructuring proceedings. It first analyses the nature of restructuring proceedings, focusing on the diverse and often competing interests of stakeholders involved. The chapter then examines the role and functions of the restructuring plan as the central instrument of proceedings. Finally, it identifies which stages of the restructuring proceedings require clear regulation to remove practical and legal obstacles that hinder their successful completion.

1.1. The Collective Nature of the Restructuring Proceedings

When a legal entity faces financial difficulties in continuing its business operations and satisfying creditors' claims, it may address them through restructuring proceedings if the business is still viable, or through a piecemeal liquidation.[20] The latter results in lower recoveries for the creditors and reduces the business's organisational capital. Restructuring is therefore considered the more economically beneficial option, as it preserves the going-concern value and maintains employment.

Restructuring refers to the process of restoring the financial well-being and viability of a debtor [21] through a restructuring plan that modifies or terminates existing legal relationships and includes operational and composition changes.[22] The restructuring proceedings are regulated by

[19] Gerard McCormack, "Chapter 1: Introduction," in *The European Restructuring Directive* (Cheltenham, UK: Edward Elgar Publishing, 2021) 4, para. 1.09. https://doi.org/10.4337/9781789908817.00008.
[20] The Restructuring Directive, recital 2.
[21] United Nations Commission on International Trade Law, ed., *Legislative Guide on Insolvency Law* (New York: United Nations, 2005), 7, https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/05-80722_ebook.pdf.
[22] Lorenzo Stanghellini et al., "Best Practices in European Restructuring - Contractualised Distress Resolution in the Shadow of the Law," *SSRN Electronic Journal*, 2018, 31, doi:10.2139/ssrn.3271790.

the EIR and the Restructuring Directive within the EU. The scope of the EIR extends to proceedings that promote the rescue of economically viable but distressed businesses and are listed in Annex A.[23] By contrast, the Restructuring Directive establishes the minimum harmonisation rules for restructuring proceedings within the EU[24] and aims to be fully compatible with and complementary to the EIR.[25] Although the detailed rules governing restructuring proceedings are mainly set out in the national laws of Member States, the Restructuring Directive remains the main instrument at the EU level that shapes their core structure and operation.

The EU has recently introduced pre-pack proceedings through Directive 2026/799, an alternative rescue regime for the debtors in the vicinity of insolvency.[26] Pre-pack proceedings enable the sale of the debtor's business, in whole or in part, as a going concern to the best bidder during insolvency proceedings.[27] The Restructuring Directive and Directive 2026/799 introduce different forms of rescue regimes, restructuring, and going-concern transfers.

While the Restructuring Directive remains the central EU instrument governing restructuring proceedings, its practical application may be affected by the implementation of Directive 2026/799 across Member States. The latter establishes detailed rules for the establishment of creditors' committees[28] and new and interim financing, which may be extended to apply in restructuring proceedings.[29] For example, safe harbour protections for interim financing may prompt Member States to extend similar protections during restructuring. While Directive 2026/799 does not amend the substantive provisions of the Restructuring Directive regarding restructuring plans, it introduces a parallel rescue mechanism that may compete with restructuring. The interaction of these Directives will shape future national reforms, creditors' strategies, and the timing of directors' decisions to file for insolvency.

In the evolving restructuring framework, the collective nature of restructuring proceedings remains the main feature of the process.[30] Although only those parties whose rights are directly affected by the plan shall participate in its negotiations and vote on it, restructuring affects a much wider range of stakeholders.[31] Restructuring proceedings involve a wide range of measures that change the composition, conditions, structure of assets and liabilities, as well as

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[23] EIR, art. 1.
[24] European Union. "Types of legislation". https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en.
[25] The Restructuring Directive, recital 13.
[26] "Directive (EU) 2026/799 of the European Parliament and of the Council of 30 March 2026 harmonising certain aspects of insolvency law," *Official Journal of the European Union* (2026).
[27] *Ibid.*, art. 2(1)(k).
[28] *Ibid.*, recital 64.
[29] *Ibid.*, recital 15.
[30] United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (New York: United Nations, 2005), 5.
[31] The Restructuring Directive, art.s 2(2), 4(5), 4(6), 8, 9.

other parts of the debtor's capital structure and that introduce necessary operational changes or combine those elements.[32]

For example, debt restructuring is a vital financial strategy that involves adjusting or rearranging a debtor's obligations to allow the debtor to manage and fulfil their financial responsibilities.[33] Measures targeting composition may include converting short-term liabilities into long-term liabilities, exchanging unsecured debt for secured debt, or implementing debt-for-equity swaps.[34] Restructuring may involve modifying the terms of existing liabilities, such as renegotiating to renew on less onerous terms, extending repayment periods, or reducing interest rates.[35] Alterations to the structure go further, including debt subordination, the transfer of business units, and the reorganisation of asset holdings. Each of these measures directly influences the value, priority, and enforceability of creditors' claims. Tax authorities and other public creditors may likewise be impacted where statutory claims are rescheduled or subordinated. Suppliers may face revised payment terms or altered priorities, which may influence their commercial expectations.

Restructuring proceedings may require changes to the capital structure. These may involve issuing new shares, converting debt to equity or otherwise altering ownership rights.[36] Liquidity may be generated through the sale of business units and assets. Such measures affect the shareholders whose equity may be diluted or whose control rights may shift.

Operational changes frequently accompany financial restructuring, which may require reducing the debtor's workforce and may be necessary in view of declining demand for the debtor's product or the liabilities associated with continued employment. Employees, therefore, experience the consequences of restructuring even when their formal legal rights remain untouched.

In practice, these methods are often combined to provide a customised solution that addresses the debtor's unique situation. A debtor may extend debt terms, convert unsecured debts into secured debts, and sell its business units simultaneously to restore financial well-being, affecting a broader range of stakeholders whose interests may clash. Debtors, creditors, employees, shareholders, and suppliers have their own priorities, risks and expectations regarding the outcome of the restructuring proceedings.

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[32] *Ibid.*, art. 2(1)(1).
[33] Fonds monétaire international, ed., *Law and Financial Stability* (Washington: International Monetary Fund, 2020), 126.
[34] Stuart C. Gilson, "Transactions Costs and Capital Structure Choice: Evidence from Financially Distressed Firms," *The Journal of Finance* 52, 1 (1997): 162.
[35] Zhongnan Xiang, Wei Wang, and Sudipta Basu, "Long-Run Performance of Debt Renegotiations: Large-Sample Evidence," *SSRN Electronic Journal*, (2021): 2, 15, 16, doi:10.2139/ssrn.3955519.
[36] Woojin Kim et al., "Debt Restructuring through Equity Issues," *Journal of Banking & Finance* 106 (September 2019): 341–344, https://doi.org/10.1016/j.jbankfin.2019.07.002.

Hence, the debtor may address financial constraints through restructuring, pre-packaged proceedings, or a piecemeal liquidation. The restructuring is a more preferable method to deal with financial difficulties. The restructuring proceedings are primarily regulated by the Restructuring Directive at the EU level; however, Directive 2026/799 will indirectly affect the practical application of the latter. Restructuring proceedings are collective in nature, as they require coordinated action from all stakeholders. Unlike individual enforcement actions, which allow each creditor to pursue their claims independently, restructuring subordinate individual interests to the common goal of restoring the debtor's financial stability. To design a legal framework that strikes a proper balance between the interests and achieves needed coordination, a careful assessment of the competing interests at stake is required.

1.1.1. Competing Interests of the Stakeholders

Restructuring is framed as an economic and social policy that seeks to rehabilitate viable firms in the interests of the company itself, its creditors, employees, communities, and the wider economy.[37] The success of restructuring depends on taking early action, developing a well-coordinated and realistic plan, and effectively negotiating with affected parties while keeping the long-term sustainability of the business.[38] The complexity of restructuring proceedings is complicated by the need for debtors and stakeholders to reach a mutual agreement regarding restructuring measures, which demands significant sacrifices from all parties.

Competing interests cause great difficulties by fragmenting negotiations, prolonging decision-making, and undermining the coordinated collective action needed to rescue the business. When stakeholders' interests are not adequately addressed and reflected in the restructuring plan, they may resist cooperating and impede the process. Several issues contribute to delays in negotiating a restructuring plan, increasing the risk of holdouts and untimely intervention, which may lead to the company's liquidation.[39]

Shareholder resistance can block measures that eliminate equity, slowing the restructuring process. Similarly, dissenting creditor minorities may unfairly obstruct the restructuring. Unequal

[37] Jennifer L. L. Gant, "Studies in Convergence? Post-Crisis Effects on Corporate Rescue and the Influence of Social Policy: The EU and the USA," 25, 1 (23 December 2015): 73, doi:10.13140/RG.2.1.4410.5760.
[38] Frédéric Closset et al., 'Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms', *Journal of Banking & Finance* 149 (April 2023): 106756, doi:10.1016/j.jbankfin.2022.106756.
[39] The Restructuring Directive, recital 2.

bargaining power further burdens negotiations, as major creditors may focus solely on their own interests, leaving minority creditors with no choice but to accept unfavourable terms.[40]

Individual creditors may rush to enforce their claims by seizing the debtor's assets as soon as the debtor is in financial distress, thereby reducing recovery for other creditors and lowering the prospects for successful restructuring.[41] Information asymmetry also undermines trust because creditors cannot fully assess the debtor's true financial position.[42] A lack of stakeholders' confidence discourages cooperation and may lead to support withdrawal. These difficulties are exacerbated by complex and costly proceedings, which increase uncertainty and reduce the likelihood of timely intervention.

Hence, a thorough analysis of the interests of all stakeholders involved is necessary to understand when they align and conflict. This will help develop a sound restructuring framework to support the preparation of the restructuring plan, reduce unnecessary holdouts, and improve negotiation efficiency. The likelihood of successful restructuring proceedings would be significantly increased if competing interests were addressed early and effectively.

1.1.1.1. The Debtor's Interests

A central feature of restructuring proceedings is the debtor-in-possession model, which allows the debtor to remain in control of its business throughout the process[43] and initiate proceedings promptly, which is beneficial for the debtor's prospects of rescue.[44] Since the debtor continues to run a business, its interests extend beyond simply negotiating with creditors. They are motivated by personal ties to the business, seeking to preserve jobs, maintain reputation, save long-standing commercial relationships, and ensure long-term viability.

Firstly, the primary interest of the debtor is to restore financial stability. Its immediate priority is therefore to obtain breathing space,[45] a pause in the enforcement of individual actions and financial pressures to restore profitability.[46] This temporary relief is essential for stabilising

[40] Elie Worenklein and Mitchell Carlson, "Minority Lenders Beware: How Majority Holders in Distressed Financings Are Leveraging Their Rights at the Expense of Minority Holders," *The Review of Banking & Financial Services*, 39, 6 (June 2023): 75–76.
[41] *Current Developments in Monetary and Financial Law*, vol. 3 (International Monetary Fund, 2005), ch. 9, box 1, doi:10.5089/9781589063341.072.
[42] François Derrien et al., "Information Asymmetry, the Cost of Debt, and Credit Events: Evidence from Quasi-Random Analyst Disappearances," *Journal of Corporate Finance* 39 (August 2016): 295–298, https://doi.org/10.1016/j.jcorpfin.2016.05.002.
[43] The Restructuring Directive, art. 5.
[44] Jennifer Payne, "Debt Restructuring in English Law: Lessons from the United States and the Need for Reform" (2014) 130 LQR 282.
[45] Wai Yee Wan, Casey Watters, and Gerard McCormack, "Schemes of Arrangement in Singapore: Empirical and Comparative Analyses" *American Bankruptcy Law Journal* (2020):463, 471.
[46] The Restructuring Directive, art. 6(1).

the business and preparing the necessary measures for recovery. However, when this period is overly long or fails to support effective negotiations, it ultimately contradicts the interests of creditors, suppliers, and employees, who generally prefer immediate and full payments.

Secondly, the debtor's goal is to leave the business with viable long-term prospects to cover its costs and operate independently in the market without state or creditor support after undergoing restructuring proceedings.[47] At the same time, the debtor shall address creditors' claims to secure necessary support for the adoption of a restructuring plan. The treatment of creditors in financial distress is a major factor in a debtor's ex ante access to financing, making it essential for the debtor to accommodate creditor interests to the extent possible.[48] Accordingly, restructuring measures chosen by the debtor should not focus solely on the creditor's full and immediate satisfaction, but shall support the debtor's sustainable recovery and future competitiveness, which may not be in the interests of stakeholders whose payments or schedules are adjusted.

Thirdly, the debtor aims to ensure that the restructuring process is both cost-efficient and effective. The measures necessary to ensure this may encompass asset sales, employee dismissals, and modifications to supply contracts. Such steps may not necessarily align with the interests of stakeholders who focus primarily on the immediate and full satisfaction of claims rather than the sustainable and successful recovery of the debtor.

Hence, the debtor prioritises preservation of the business, reputation, and current market position. To restore its financial stability, the debtor seeks a period free from obligations to negotiate and develop a cost-efficient, expedient strategy. Its interests also encompass the efficient allocation of the company's assets in the market and the avoidance of deadweight losses from relational and technical knowledge, aiming for the long-term restoration of the business rather than merely satisfying creditors' claims.

1.1.1.2. The Creditors' Interests

Creditors are concerned with recovering their claims, regardless of whether the business is preserved or sold.[49] Their focus on immediate, full repayment conflicts with broader restructuring goals, such as maintaining employment and the long-term restoration of the business. The creditors either do not form a uniform group. Their interests depend on the nature of their

[47] European Commission, *Guidelines on State Aid for Rescuing and Restructuring Non-Financial Undertakings in Difficulty (2014/C 249/01)*, *Information from European Union Institutions, Bodies, Offices and Agencies* (European Commission, 31 July 2014), para. 52.
[48] Sophie Vermeille and Adrien Bézert, "Sortir de l'impasse grâce à l'analyse économique du droit : Comment rendre à la fois le droit des sûretés réelles et le droit des entreprises en difficulté efficaces ?," RTDF, 1 (2014): 166.
[49] Alan Schwartz, "A Normative Theory of Business Bankruptcy," *Virginia Law Review* 91, 5 (2005): 1201.

claims, the existence of security rights, and their positions, and may conflict with each other.[50] Creditors may push measures to pursue their individual interests even when these run counter to collective restructuring goals.

For example, secured creditors prioritise protecting collateral, since, in the event of default, they retain the right to satisfy the claim from the pledged asset.[51] Unsecured creditors lack that protection and generally seek the highest possible distribution and prefer strategies that maximise the residual pool.[52]

Unsecured or minority creditors may seek appointment to the creditors' committee to gain insight into the debtor's finances and to participate in negotiations.[53] Such committees are intended to enhance transparency and collective decision-making. Trade creditors in a weakened position because of inadequate bargaining power to secure reasonable terms also seek protection.[54] However, the controlling creditors who hold the largest share of the company's debt can control voting on the reorganisation plan and align the outcome with their own interests without participating in the committees. This creates significant power imbalances, in which dominant creditors pursue strategies that serve only their interests, ignoring the interests of the minority or the company.

Hence, the primary objective of creditors is full and immediate satisfaction of their claims. At the same time, creditors do not have a uniform interest, they differ depending on their rank in the order of claim satisfaction or the nature of the claim. Creditors often struggle to agree on restructuring measures acceptable to all parties that avoid discrimination against minority or unsecured creditors.

1.1.1.3. Interests of Other Stakeholders

Employees are not concerned only with possible financial compensation, such as unpaid wages and holiday pay. Their primary interests lie in maintaining job security, working conditions, social rights, and protecting their job positions, which shall be taken into account during the

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[50] European Law Institute, *Instrument of the European Law Institute Rescue of Business in Insolvency Law*, (Vienna: European Law Institute, 2017), para. 402.
[51] Inquesta, "Four Types of Creditors in Insolvency," accessed 23 March 2026, https://inquesta.co.uk/blog/four-types-of-creditors-in-insolvency/.
[52] United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, 6.
[53] George J. Schultze, *The Art of Vulture Investing: Adventures in Distressed Securities Management*, Wiley Finance Series (Hoboken, New Jersey: Wiley, 2012), 121.
[54] Andrew Keay, "Directors' Duties to Creditors: Contractarian Concerns Relating to Efficiency and Over-Protection of Creditors," *The Modern Law Review* 66, 5 (September 2003): 665, 696–98, doi:10.1111/1468-2230.6605001.

restructuring.[55] Where the restructuring plan includes measures leading to changes in the work organisation or contractual relations with workers, those measures shall be approved by them.[56] Workforce operational change is one of the most difficult measures to negotiate.[57] For example, in large businesses, political pressure may discourage extensive layoffs. In MSEs, personal ties may also make this measure difficult to implement. However, these political and human considerations contradict the economic side of the restructuring, which prioritises restoring business by reducing costs and making operational adjustments.

Equity holders may genuinely care about the business's continued operation, but their primary concern is preserving the value of their investment.[58] No equity holder wants their investment to be wiped out and transferred to creditors. A successful restructuring that keeps the company going leaves the equity intact. This provides some incentives for shareholders to continue acting in the debtor firm's interests rather than their own by seeking to gain time. However, shareholders' interests are generally ranked last.[59] This can lead to strategic behaviour, opposing measures that dilute or eliminate their equity. By opposing debt-for-equity swaps,[60] equity holders can slow down the restructuring to preserve the value of their investments.

Suppliers are concerned about payment certainty and are unwilling to continue providing goods or services without adequate assurances of payment. However, the restoration of the company's operations frequently depends on the continued performance of executory contracts, sometimes with delayed payments. For this reason, restructuring proceedings necessitate safeguarding executory contracts to preserve value, ensure continuity of operations, and maintain stakeholder confidence.[61] This requires modification of the terms of the debtor's obligations, such as extending repayment periods, reducing interest rates, or altering covenants.[62] While these measures aim to keep suppliers engaged, they conflict with the interests of unsecured creditors, who may see their claims diluted by the preferential treatment afforded to suppliers.

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[55] "Case C-431/23, Wibra België: Judgment of the Court (Third Chamber) of 3 April 2025," EUR-Lex, accessed 18 May 2026, https://eur-lex.europa.eu/eli/C/2025/3016/oj/eng.
[56] The Restructuring Directive, art. 13.
[57] Yury Y. Karaleu, "European Milestones in the Protection of Workers' Claims in the Case of Insolvency," *Financial Sciences* 26, 1 (2021): 22–23, doi:10.15611/fins.2021.1.02.
[58] Lorenzo Benedetti, "The Position of Shareholders in the Restructuring Proceedings of Distressed Companies: From a Shareholders' Veto Power to Their Duty to Enforce (*Aufopferungs-* or *Duldungspflicht*) a Restructuring Plan," *International Insolvency Review* 29, 3 (2020): 322–45, https://doi.org/10.1002/iir.1391.
[59] Inquesta, "Four Types of Creditors in Insolvency," accessed 23 March 2026, https://inquesta.co.uk/blog/four-types-of-creditors-in-insolvency/.
[60] Tomáš Richter and Adrian Thery, *INSOL Europe Guidance Note on the Implementation of Preventive Restructuring Frameworks under EU Restructuring Directive 2019/1023 Claims, Classes, Voting, Confirmation and the Cross-Class Cram-Down*, (Nottingham: INSOL Europe 2020), 30.
[61] Anne Epaulard and Chloé Zapha, "Bankruptcy Costs and the Design of Preventive Restructuring Procedures," *Journal of Economic Behavior & Organization* 196 (April 2022): 229–30, doi:10.1016/j.jebo.2022.02.001.
[62] International Monetary Fund, *External Debt Statistics: Guide for Compilers and Users*, Manuals & Guides (Washington, D.C: International Monetary Fund, 2014), ch. 8, doi:10.5089/9781484366622.069.

Hence, employees prioritise job security, better working conditions, social rights, and the protection of their positions in the event of structural changes in the company. Equity holders are primarily concerned with preserving the value of their investments and retaining influence over the company. Suppliers are focused on maintaining the continuity of their commercial relationships and receiving timely payment for their goods and services.

1.1.2. Addressing the Challenges Arising from Competing Interests of Stakeholders

The debtor's interests do not necessarily align with those of the stakeholders. The benefits to the debtor, such as additional time, greater operational flexibility, and long-term viability, may delay or reduce the immediate returns creditors seek, which runs counter to their primary objectives. The debtor's concern with achieving sustainable and cost-efficient recovery is again at odds with creditors and suppliers whose payments or schedules are adjusted, employees who lose their jobs or contracts, and shareholders who lose their investment and control in the company.

Stakeholders may have conflicting interests even within the same group. Secured creditors may favour the liquidation of the debtor's assets to recover the full value of their security. In contrast, unsecured creditors will opt for at least partial repayment guaranteed under a restructuring plan. The majority of creditors, given their sufficient voting power, may prioritise measures that seek their own financial interests even if they are not beneficial to the minority.

Financial distress affects different parties, whose interests and self-perception may clash but cannot be ignored.[63] The success of restructuring proceedings depends not only on the cooperation between the debtor and creditors but also on the ability to address the interests of employees, suppliers, and shareholders, whose support is essential for restoring the company's viability. Effective restructuring requires coordination between all parties involved, ensuring transparent communication and continuous support.

When competing interests are not effectively managed, restructuring processes fail due to the absence of coordinated actions necessary to rescue the business promptly. The challenges posed by such interests may be addressed through a range of legal and procedural mechanisms that require robust, well-designed regulation.[64] A restructuring framework shall set clear rules for

[63] Donald R. Korobkin, "Rehabilitating Values: A Jurisprudence of Bankruptcy," *Columbia Law Review* 91, 4 (May 1991): 766–68, doi:10.2307/1122945.
[64] Jose Garrido et al., "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Restructuring Directive," *IMF Working Papers* 2021, no. 152 (May 2021): 1, doi:10.5089/9781513573595.001.

initiating, developing, and confirming the restructuring plan, ensuring timely, coordinated actions when the likelihood of a successful restructuring is higher.

The creditors should have ex ante certainty that their interests will be effectively protected, reducing the risk of withholding their investment and lowering the company's financing costs.[65] Clear regulation of class formation is important to ensure that creditors with similar interests vote together, reducing the risk of unequal bargaining power.[66] Well-designed voting rules, including cross-class-cram-down mechanisms, further strengthen the process. In jurisdictions with effective restructuring regimes, creditors recover, on average, 83% of their claims, compared to just 57% in liquidation.[67] Sound regulation of development and the approval of restructuring plans prevent holdout creditors from blocking viable solutions that benefit the majority. Judicial oversight further ensures that the plan is feasible, fair, and complies with legal standards, and that there is no abuse among the creditors.[68] By well-designed regulation of restructuring proceedings, the objective of the restructuring proceedings, not to sacrifice one stakeholder for the betterment of the others, is achieved, and all interests are addressed.[69]

Hence, establishing a sound restructuring framework for restructuring plans should align with market realities and bring together the diverse interests of all stakeholders. The sound design and well-structured framework support restructuring proceedings and increase the likelihood of their success.

1.2. The Role of the Restructuring Plan

Restructuring proceedings are plan-based[70] because the plan sets out the complete strategy for preventing the debtor's insolvency and ensuring the viability of the business.[71] It is an agreement between a debtor and its creditors that sets out how the company will reorganise its capital and organisational structure, allowing the debtor to rescue the business with the creditors'

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[65] Philipp Paech, "The Value of Financial Market Insolvency Safe Harbours," *Oxford Journal of Legal Studies* 36, 4 (December 2016): 857–68, doi:10.1093/ojls/gqv041.
[66] Brian Barry and Brian Barry, *Justice as Impartiality*, Oxford Political Theory, v. 2 (Oxford, New York: Clarendon Press; Oxford University Press, 1995), 51.
[67] European Commission, *Proposal for a Restructuring Directive on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedures* COM(2016) 723 Final, (Brussels: European Commission, 2016).
[68] The Restructuring Directive, recital 65.
[69] Michael B. Dorff and Kimberly Kessler Ferzan, "Is There a Method to the Madness? Why Creative and Counterintuitive Proposals Are Counterproductive," in *Theoretical Foundations of Law and Economics*, ed. Mark D. White, 1st edn (Cambridge: Cambridge University Press, 2008), 21–40, doi:10.1017/CBO9780511575488.004.
[70] Horst Eidenmüller, "Contracting for a European Insolvency Regime," *European Business Organization Law Review* 18, 2 (June 2017): 273–76, doi:10.1007/s40804-017-0067-1.
[71] The Restructuring Directive, recital 24.

help.[72] The plan allocates creditors to their claims, specifies the distribution amount and date, and sets out all restructuring measures to be implemented, as well as the mechanism for monitoring and implementing the plan.[73] The plan aims to maximise the eventual return to creditors and to provide a better result than if the debtor were liquidated.[74]

The success of the proceedings depends on how well the parties coordinate the many complex tasks involved, including keeping a struggling business running, protecting and maximising its assets, and ensuring it remains valuable and able to continue operating.[75] The restructuring plan integrates these numerous processes into a single framework that addresses the debtor's financial difficulties in a structured manner.

The restructuring plan also serves as a mechanism for fairly and transparently reconciling stakeholders' conflicting interests. It ensures that no party is in a worse position than under the relevant alternative scenario. The alternative is bankruptcy, which results in lower recoveries for all creditors and employment losses.[76] The restructuring plan provides a structured process for balancing competing claims and achieving a collectively favourable solution.

The restructuring plan performs several interconnected functions, such as information, regulatory, and coordinating functions. Firstly, a restructuring plan ensures that creditors and other stakeholders receive all necessary information, reducing financial asymmetry. The plan includes information on the debtor's current economic situation, the causes of the crisis, and methods to correct erroneous decisions and limit their negative impact.[77] All stakeholders may assess the coherence of the debtor's recovery and the feasibility of the proposed measures.[78]

Secondly, the restructuring plan performs a regulatory function by modifying the legal relationships between the debtor and its creditors in a binding manner.[79] It operates as a mechanism that can alter contractual rights, repayment schedules, security interests, or even ownership rights. The plan imposes changes even on dissenting creditors[80] and restructures obligations more

[72] *Ibid.*, art. 2(1).
[73] Ibid, art. 8.
[74] European Law Institute, *Instrument of the European Law Institute Rescue of Business in Insolvency Law*, (Vienna: European Law Institute, 2017), 71–72.
[75] Frédéric Closset et al., "Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms," *Journal of Banking & Finance* 149 (April 2023): 106756, doi:10.1016/j.jbankfin.2022.106756.
[76] World Bank Groupe, *World Development Report 2022: Finance for an Equitable Recovery* (Washington, DC: World Bank, 2022), 135.
[77] Krzysztof Gawron, "Analysis of the Feasibility of the Restructuring Plan: A Case Study of Poland," *Krakow Review of Economics and Management/Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie*, 1 (2025): 107, doi:10.15678/krem.18175.
[78] United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (New York: United Nations, 2005), 13.
[79] The Restructuring Directive, art. 15.
[80] *Ibid.*, art. 11.

effectively than private negotiations. This helps ensure the effective implementation of the restructuring measures outlined in the plan.

Finally, the restructuring plan is the central coordinating mechanism which provides the roadmap for managing financial distress. The plan provides a structured framework for negotiation and voting. It establishes creditor classes, voting procedures, and aligns stakeholder behaviour, increasing the likelihood of successful restructuring outcomes.

Hence, the plan is the mechanism the company uses to manage its financial distress in a transparent and structured manner. Through information, regulatory, and coordinating functions, the plan reduces uncertainty among stakeholders, balances their competing interests, and provides a solution that maximises a positive outcome for all parties. The quality and feasibility of the restructuring plan determine the overall effectiveness of the proceedings and the prospects for the debtor's successful recovery.

1.3. Development and Confirmation of the Restructuring Plan: Determine the Outcome of Restructuring Proceedings

The success of restructuring proceedings depends on early action, comprehensive planning, and the ability to negotiate with creditors while considering the business's long-term viability.[81] The proceedings may be divided into three stages: the development of the plan, its confirmation, and its implementation. Among these, the development and confirmation of the plan are particularly decisive for the outcome of the proceedings, as they determine whether the proposed plan is economically feasible, legally sound, and capable of securing the necessary stakeholder support.

The development of the restructuring plan is the primary stage of proceedings. This stage encompasses financial analysis, plan initiation, negotiation, drafting, and adoption. Since the restructuring proceedings are plan-driven, their effectiveness depends on the quality and coherence of the plan. At this stage, it is necessary to create a plan that is not overly optimistic, satisfies the needs of the affected parties so they can vote on it, and serves the broader goals of restructuring.[82] The key aspects for developing a restructuring plan are identifying appropriate measures and estimating their financial outcomes. Negotiation is another fundamental aspect of the plan's development. The plan is not just a technical document but the product of stakeholder interactions

[81] *Ibid.*, recital 2.
[82] Lorenzo Stanghellini et al., "Best Practices in European Restructuring - Contractualised Distress Resolution in the Shadow of the Law," (Florence: European University Institute, 2018), 91–94.

with divergent interests. Effective communication and transparent negotiation increase the likelihood of consensus among stakeholders.

The development of the plan determines the outcome of the proceedings since everything depends on its quality. When assessing the grounds for non-approval of a restructuring plan, it can be stated that they relate to compliance with the procedure for preparing the restructuring plan, ensuring a balance of interests among interested parties, and the feasibility of restructuring the company.[83] A well-drafted, realistic, and legally sound restructuring framework provides a structured foundation for the entire proceedings.

Proper class formation and transparent voting requirements are essential to securing approval of the plan and ensuring its subsequent confirmation by the court. The Restructuring Directive establishes that, as a general rule, the affected parties shall adopt the designed plan to provide the debtor with the necessary support for restructuring measures. Pursuant to Art. 9 of the Restructuring Directive, affected parties shall vote for or against the adoption of the restructuring plan[84] in separate classes which reflect sufficient commonality of interest based on verifiable criteria.[85] The restructuring plan shall be adopted, provided that a majority of not more than 75% of the amount of the claims or interests in each class is obtained.[86] However, the majority figures are different across EU countries. In France and the Netherlands, the decision shall be taken by each class by a two-thirds majority of the votes cast by the members.[87] In Germany and the Czech Republic, for a restructuring plan to be adopted, at least three-quarters of the voting rights in each group must be held by the group members who approve the plan.[88] If a restructuring plan is not approved by affected parties in each voting class, it may be confirmed by a judicial or administrative authority and become binding on dissenting voting classes, provided that it meets at least the conditions set out in Article 11 of the Restructuring Directive.

Confirmation is the court's approval of a previously adopted restructuring plan by the affected creditors.[89] The confirmation makes the plan binding on both the affected creditors that

[83] Remigijus Jokubauskas, *Juridinių asmenų nemokumo procesas: monografija.* (Kraków: Ksiegarnia Akademicka, 2021), 320.
[84] The Restructuring Directive, art. 9(2).
[85] *Ibid.*, art. 9(4).
[86] *Ibid.*, art. 9(6).
[87] Code de commerce, 2026, Livre VI, Titre II, Chapitre VI, Section 3, Art. L626-30-2; Wet homologatie onderhands akkoord, 2021, Artikel 381.
[88] Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG) Artikel 1 G. v. 22.12.2020 BGBl. I S. 3256 (Nr. 66), Teil 2, Kapitel 1, Abschnitt 3, Unterabschnitt 2, § 25; Zákon o preventivní restrukturalizaci 284/2023 Sb, Díl 4, Section 36.
[89] William W. McBryde, Axel Flessner, and Sebastianus Constantinus Johannes Josephus Kortmann, eds, *Principles of European Insolvency Law*, Series Law of Business and Finance, vol. 4 (Deventer: Kluwer Legal Publishers, 2003), para. 11.3.; European Commission, *Proposal for a Restructuring 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 and Amending Restructuring Directive 2012/30/EU*,

approved the restructuring plan and those that dissented from it.[90] Confirmation may be granted only if the plan satisfies all requirements, including proper class formation, a voting procedure, adequate notification of all affected parties,[91] and the inclusion of all mandatory parts of the plan.[92] The court must also verify whether the proposed measures are feasible,[93] whether the reduction of the rights of creditors or the interests of equity holders is proportionate to the benefits of the restructuring, and whether they have access to an effective remedy.[94] In addition, the court assesses the impact of the measures specified in the restructuring plan on the company's viability.[95]

Confirmation of the plan functions as the procedural safeguard in the restructuring proceedings, determining whether the plan is lawful, feasible, and capable of restoring the debtor's viability while ensuring that all affected parties are adequately protected.[96] By providing the legal certainty, creditor alignment, and enforceability necessary for the restructuring to proceed, confirmation increases the chances of success.

Hence, during the development stage, the debtor prepares a plan outlining the measures necessary to restore the company's viability. Approval of the plan by the affected parties demonstrates their willingness to cooperate to achieve the common goal. Judicial confirmation provides an external assessment, ensuring that the measures proposed are realistic and capable of achieving the intended outcomes. These stages ensure that the plan is legally sound and supported by stakeholders, ultimately determining the success of the restructuring proceedings.

Summarising this Chapter, financial distress affects a wide circle of stakeholders, whose interests conflict. While the debtor seeks to preserve business continuity, creditors prioritise maximising and accelerating recovery, shareholders want to retain the value of their investments, and employees depend on job security. Given the collective nature of restructuring proceedings, which require coordinated actions by all stakeholders, a sound legal restructuring framework is a fundamental aspect of their effectiveness. The restructuring plan is the central tool for balancing these competing interests, as it outlines measures to address financial distress and align stakeholders around a common goal. The quality of the plan is determined during its development and confirmation stages. Clear regulation of these stages is crucial to ensure that stakeholders'

COM(2016) 723 final (Brussels: European Commission, 2016), art. 10, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016PC0723.

[90] The Restructuring Directive, art. 15(1).

[91] *Ibid.*, recital 51.

[92] *Ibid.*, art. 8.

[93] *Ibid.*, art. 10(3).

[94] *Ibid.*, art. 10(2), recital 48; G. McCormack, *European Insolvency Law: Reform and Harmonization* (Cheltenham, UK: Edward Elgar Publishing, 2017), 448.

[95] Remigijus Jokubauskas, "Gyvybingumo Samprata Ir Vertinimas Juridinių Asmenų Nemokumo Procese," *Jurisprudence* 27 (2020): 270–71, doi:10.13165/JUR-20-27-2-16.

[96] The Restructuring Directive, recital 48.

competing interests are properly balanced, increasing the number of successful restructuring outcomes.

CHAPTER 2. DEVELOPMENT OF THE RESTRUCTURING PLAN

The development of a restructuring plan is a continuous process that requires consistent, coordinated action by stakeholders.[97] Chapters II and III of the Restructuring Directive establish the framework for facilitating negotiations on preventive restructuring plans and for the rules governing them. The main feature of restructuring proceedings across the EU is that the debtor retains control of its assets and business operations while negotiating with creditors on the content of the restructuring plan.[98] The debtor is granted a stay of individual enforcement actions from creditors to create the necessary breathing space for those negotiations.[99]

To identify difficulties that may arise during the development of the restructuring plan, the Chapter first analyses the content of the restructuring plan to be designed. It further examines which elements of the stay of individual enforcement actions are harmonised under the Restructuring Directive and assesses their effectiveness in facilitating negotiations to develop the plan. It then identifies the specific problems that arise in cross-border restructuring proceedings during the development of the plan, particularly those stemming from multiple creditors' involvement and divergent national laws. Finally, the Chapter highlights the challenges MSEs face during this stage, given their limited capital and simple organisational structures. It also proposes possible solutions to address the challenges raised during the development of the restructuring plans.

2.1. The Content of the Restructuring Plan

The restructuring plan serves as a basis for the debtor to monitor the company's business operations and implement measures to restore solvency. The plan should allow creditors to assess the proposed restructuring measures and to monitor developments in the debtor's operational restructuring. The content of the restructuring plan varies depending on the types of issues the enterprise faces, its size, the country's environment, creditors' willingness to cooperate, the types of proceedings and access to new financing.

[97] Remigijus Jokubauskas, *Juridinių Asmenų Nemokumo Procesas: Monografija* (Ksiegarnia Akademicka Publishing, 2021), 297, 313–15, doi:10.12797/9788381386364.
[98] United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (New York: United Nations, 2005): 5.
[99] European Law Institute, *Instrument of the European Law Institute Rescue of Business in Insolvency Law*, (Vienna: European Law Institute, 2017): 73.

The Restructuring Directive lays down minimum standards for the content of a restructuring plan.[100] Pursuant to Article 8 of the Restructuring Directive, the plan should include at least the following: the financial situation of the debtor; the affected parties and their class formation; the restructuring measures to be implemented; and the prospects of success of those measures.[101]

Member States should be able to require additional explanations in the restructuring plan, for example, regarding the criteria used to group creditors, which may be relevant in cases where a debt is only partially secured.[102] However, an expert opinion regarding the value of assets that need to be indicated in the plan is not required.[103] The question is whether the required content of the plan ensures the efficiency of restructuring proceedings, whether other elements should be harmonised under the Restructuring Directive or another instrument, or if some elements should be omitted. To determine this, it is necessary to compare the elements of the restructuring plan established in the national laws of Member States and in other jurisdictions.

The Restructuring Directive adopts a minimum standard approach, leaving considerable discretion to Member States to expand on those requirements. Most Member States implemented the minimum requirements of the Restructuring Directive without introducing any others. For example, Germany introduced mandatory requirements for restructuring plans similar to those in Article 8 of the Restructuring Directive, noting that such plans may contain additional information.[104] France and the Netherlands have taken the same approach.[105] The minimum standard approach was necessary, as it would be impossible to compile an exhaustive, identical list of information to be included in the restructuring plan across all Member States. The exhaustive nature of the plan would undermine its effectiveness, as it shall correspond to different economies and debtor profiles.

In contrast, the US Chapter 11 states that the plan shall designate classes of claims and classes of interest, specify any class of claims or interests that is not impaired under the plan, specify the treatment of classes of claims or interest and ensure that treatment is uniform within each class, and provide means for implementation, such as retention of property by the debtor, sale or transfer of property, merger, consolidation, curing of defaults, satisfaction or modification of any lien.[106] The reorganisation plan focuses on the future of the debtor's property and liabilities,

[100] The Restructuring Directive, recital 42.
[101] *Ibid.*, art. 8(1).
[102] *Ibid.*, recital 42.
[103] *Ibid.*
[104] Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG), Art. 1 G v. 22.12.2020, BGBl. I S. 3256 (Nr. 66), Teil 2, Kapitel 1, Abschnitt 2, § 5.
[105] Faillissementswet, 2021, Tweede Afdelig, Artikel 375; Code de commerce, Livre VI, Titre II, Chapitre VI, Section 3, Art. L626-2.
[106] United States Bankruptcy Code, 2018, Chapter 11, Section 1123.

but does not provide the necessary financial and organisational context to assess its feasibility. Unlike the plan under Article 8 of the Restructuring Directive, all information necessary for creditors under Chapter 11 must be provided in a separate document called the disclosure statement, which is regulated separately.[107] This document explains the financial projections, liquidation analysis, risk, and alternatives. The plan itself remains a focused document with legal measures, while the analytical and financial prospects are established in the disclosure statement.

Another distinct feature of the US Chapter 11 is the separate regulation of the restructuring plan for small-business debtors.[108] The plan should include a brief history of the business's operations, a liquidation analysis, and projections demonstrating the debtor's ability to make payments under the plan.[109] The plan should also provide that a trustee will administer a portion of the debtor's future income to ensure the plan is carried out.[110] However, a separate disclosure statement is not required. This approach spares small debtors from the disproportionate burden of preparing two separate complex documents while ensuring that creditors receive the substantial information.

However, a similar approach should not be established in the Restructuring Directive. The latter, by consolidating both the operative terms of the restructuring and the information for affected parties into a single document, provides a unified picture for them, but creates a significant burden for a debtor and a risk of information asymmetry. Firstly, the requirement to include a statement of reasons explaining why the restructuring plan has a reasonable prospect of preventing the debtor's insolvency and ensuring the business's viability, including the necessary pre-conditions for the plan's success, is too broad.[111] The Restructuring Directive does not provide for a methodology, a standard of evidence, or a minimum analytical depth. Secondly, the restructuring plan under the Restructuring Directive is a legally and analytically complex instrument that requires the debtor to address simultaneously all measures and parties involved in the restructuring proceedings, as well as the expected outcomes. In practice, this level of complexity makes it very difficult to draft the plan without external professional help.[112] Drafting a restructuring plan becomes costly and time-consuming, undermining the success of the proceedings. Thirdly, the issue arises regarding information opacity. The single, complex, and sophisticated restructuring plan creates the possibility of hiding the financial information necessary for affected parties to assess. Even when this information is included in the plan, because of its complexity, creditors

[107] United States Bankruptcy Code, 2018, Chapter 11, Section 1125.
[108] United States Bankruptcy Code, 2018, Chapter 11, Subchapter V.
[109] *Ibid.*, Section 1190.
[110] *Ibid.*
[111] The Restructuring Directive, art. 8(1)(h).
[112] Stanghellini et al., "Best Practices in European Restructuring - Contractualised Distress Resolution in the Shadow of the Law", (2018): 80 - 81.

may vote without a full understanding of the plan's prospects or look for legal assistance to interpret it.

Separating financial disclosure information into a distinct document, as required under US Chapter 11, may address all of these risks. In this way, information about the parties and legal measures will be consolidated in the restructuring plan. The financial and viability analysis will be in a separate document, subject to its own standards, to strengthen the integrity of the vote for affected parties and reduce the cost of preparing the plan. Nevertheless, a simple formal separation does not automatically ease the drafting of the restructuring plan. It may increase costs and administrative complexity, particularly for MSEs. To enhance the development of restructuring plans, substantive criteria and operational guidelines are needed to assess the reasonable prospects of restructuring measures for preventing debtor insolvency and securing long-term viability.

Hence, separating financial disclosure from the restructuring plan risks adding procedural complexity and increasing the cost of preparation. A coherent set of rules and methods for evaluating the prospects of restructuring measures to prevent the debtor's insolvency and restore long-term viability would reduce the administrative burden during plan development.

Digital Templates for MSEs

MSEs have limited financial and human resources to develop a feasible and viable restructuring plan. To reduce unnecessary burdens on MSEs during the development of restructuring plans, the Restructuring Directive mandates the online availability of a comprehensive checklist, including practical guidelines for drafting them in accordance with national legislation.[113] Lithuania has already advanced towards streamlining the preparation process by creating an official digital template for restructuring plans for MSEs.[114] This development streamlines the process by guiding companies to provide the required information and financial projections. Consequently, the plan is generated, with provisions for subsequent supplementation.[115] Nonetheless, these practical measures are not yet supported by statutory reforms that enhance the accessibility or effectiveness of the plan preparation process for MSEs. The question remains whether they genuinely improve the efficiency and quality of restructuring outcomes for MSEs.

The use of digital templates to facilitate the drafting of restructuring plans may diminish procedural burdens, enabling resource-constrained MSEs to design restructuring plans quickly without incurring high costs or complexity. Nonetheless, the standardised format fails to adequately reflect the specific financial and operational requirements of individual businesses,

[113] The Restructuring Directive, art. 8(2).
[114] "Nemokumo Vedlys," Audito, apskaitos, turto vertinimo ir nemokumo valdymo tarnyba prie Lietuvos Respublikos finansų ministerijos, accessed 31 March 2026, https://nemokumovedlys.lrv.lt.
[115] *Ibid.*

potentially resulting in insufficient justification of proposed measures. Furthermore, this approach may diminish active creditor engagement during negotiations, which is vital to securing the support required for plan approval. Additionally, concerns about data security arise, as restructuring plans contain sensitive financial information that could be leaked. Digital templates are, therefore, a welcome but insufficient measure unless they are accompanied by statutory reforms to ensure data security and the creation of more individual plans.

Hence, the uniform content of the restructuring plan cannot be prescribed by the Restructuring Directive, as it varies depending on factors such as the type of proceedings, the size of the enterprise, and the types of problems faced by the debtor. A more proportionate approach would be to introduce a structural division within the framework. The content of restructuring plans can be limited to information about the parties and the operative legal measures. At the same time, a separate disclosure document, regulated independently, would set out the feasibility assessment, financial projections, and viability analysis that are currently lacking regulation. As regards MSEs, digitalisation offers an opportunity to reduce procedural burdens by providing digital templates for restructuring plans, which are less costly and faster than engaging an insolvency practitioner. However, these templates will work only when accompanied by statutory reforms.

2.2. Stay of Individual Enforcement Actions

The creditors' rush to enforce their claims may lead to the quick deprivation of a debtor of assets, the inability to continue its operations, and the creditors' inability to fully satisfy their claims.[116] The stay of individual enforcement actions is a key feature of international insolvency instruments, providing the debtor with the time to negotiate a restructuring plan free from the threat of creditors' hostile actions.[117] It is one of the fundamental debtor protections provided by the bankruptcy laws, giving the debtor a breathing spell from the creditors. Creditors may rush to seize assets essential to the debtor's ongoing business, jeopardising the success of restructuring proceedings. Without this period, the debtor will be unable to negotiate and develop an effective restructuring plan. Analysing the aspects of the stay of individual enforcement actions helps

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[116] Remigijus Jokubauskas, Marek Świerczyński, and Audronė Balsiukienė, "A Stay of Individual Enforcement Actions as a Basis for Effective Restructuring Proceedings," *International Comparative Jurisprudence* 7, 1 (2021): 116.

[117] Paterson, Sarah. "Rethinking Corporate Bankruptcy Theory in the Twenty-First Century," *Oxford Journal of Legal Studies* 36, 4 (2016): 697–723. http://www.jstor.org/stable/26363440. In her view, one should distinguish between liquidation law, where creditors face a "prisoners' dilemma" justifying a stay and restructuring law. The latter concerns providing a deadlock-resolution procedure that can discipline holdouts without necessarily requiring a stay.

identify practical and legal challenges, since it directly influences the debtor's ability to negotiate and develop a restructuring plan without the creditors' pressure.

The Restructuring Directive establishes that a stay is a temporary suspension of a creditor's right to enforce a claim against a debtor. It is granted by a judicial or administrative authority or imposed by law.[118] The Member States shall ensure that debtors can benefit from such a stay[119] to facilitate negotiations on a restructuring plan, safeguard the debtor's assets and day-to-day operations, and protect creditors' rights.[120]

The main concern during the stay is achieving a fair balance between the debtor's need for temporary protection and creditors' interests in avoiding undue prejudice. An important aspect of balancing stakeholders' interests concerns the time and scope of the stay itself. The question is whether the Restructuring Directive shall establish the automatic stay as the default for all Member States and whether the creditors should have the power to decide whether to extend the stay, as this directly affects their enforcement rights. Another issue is the conditions under which the stay may be lifted, particularly in relation to the broad concept of unfair prejudice as a reason for lifting the stay. Finally, the question is how to protect secured creditors' interests during the stay.

2.2.1. Automatic Stay of Individual Enforcement Actions

The Restructuring Directive gives Member States discretion as to how a Stay will be granted, either automatically or at the discretion of a judicial or administrative authority.[121] The majority of Member States do not grant an automatic stay and rely instead on a judicial decision granting it. For example, in Germany, insofar as this is necessary to preserve the prospects of realising the restructuring objective, the court, at the request of the debtor, shall order that enforcement measures against the debtor are prohibited or temporarily suspended.[122] In Spain, the automatic stay is granted for assets necessary to the continuity of the business or professional activity, and a court-approved stay is granted for other assets.[123]

The Restructuring Directive does not provide for an obligatory automatic stay of individual enforcement actions since it may undermine the fairness of the proceedings. The automatic stay without prior judicial scrutiny allows the debtor's abusive behaviour. For instance,

[118] The Restructuring Directive, art. 2(1)(4).
[119] *Ibid.*, art. 6.
[120] *Ibid.*, recital 32.
[121] *Ibid.*, art. 2(1)(4).
[122] Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG), Art. 1 G v. 22.12.2020, BGBl. I S. 3256 (Nr. 66), Teil 2, Kapitel 2, Abschnitt 4, § 49.
[123] Art. 601-602 Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal

the debtor may initiate proceedings solely to obtain temporary relief without any genuine intention to negotiate the restructuring plan. Even when the creditors retain the right to challenge the stay, the deterioration of asset value or erosion of liquidity is irreversible. In addition, knowing that obligations are temporarily frozen, a debtor may take excessive risks or postpone necessary operational decisions if judicial oversight is not in place. While the stay of individual enforcement actions offers the debtor valuable time to stabilise operations and preserve the conditions necessary for restructuring, it does not eliminate the need for external supervision to prevent the debtor's abusive behaviour, which inevitably generates costs. An automatic stay of individual enforcement actions poses the risks of strategic filings and unnecessary delays.

In contrast, the US Chapter 11 includes a mandatory automatic stay that freezes proceedings or executions against the debtor and its assets, and has a worldwide effect.[124] Such a stay may be granted automatically upon the filing of a petition to open a Chapter 11 proceeding.[125] An automatic stay enhances the efficiency of restructuring proceedings by avoiding procedural delays associated with court applications, ensuring timely intervention when the debtor's liquidity is fragile, and allowing management to focus immediately on the measures necessary to preserve the business. An automatic stay prevents creditors' hostile actions and supports the main idea of the restructuring by enabling debtors to restructure effectively at an early stage and avoid insolvency.

The Restructuring Directive should provide for a similar automatic stay of individual enforcement actions. Firstly, the stay under the Restructuring Directive is currently conditioned on the prior judicial assessment, which may be implemented too late to protect the debtor's essential operating assets. The creditors may push to enforce the claims, destroying the going-concern value before negotiations even begin. An automatic stay provides that creditors are left with no viable alternative but to engage constructively in negotiations. To balance the competing interests between the debtor and creditors, an automatic stay may be designed as a short, initial period of protection sufficient to preserve the debtor's business. During this period, the debtor may seek judicial extension only when continued protection is necessary for the development of the plan, and creditors have the right to apply to have the stay lifted. This approach will allow a stay only when necessary, ensuring a balance between the debtor's need for breathing space and the creditor's interests.

Hence, an automatic stay of individual enforcement actions may improve the effectiveness of the development stage while balancing the interests of the debtor and creditors. It provides the debtor with immediate protection from the enforcement of the claims, ensuring

[124] United States Bankruptcy Code, 2018, Chapter 11, Section 362.
[125] *Ibid.*

stability and sufficient time for negotiations of the plan, while simultaneously preventing individual creditors from undermining the success of the proceedings.

2.2.2. Extension of the Stay

The Restructuring Directive provides that the initial duration of the stay is limited to 4 months, with the possibility of extension or renewal by judicial or administrative authorities upon justification.[126] The extension or a new stay shall be granted only if justified when relevant progress has been made in the negotiations on the restructuring plan, the continuation of the stay does not unfairly prejudice the rights or interests of any affected parties, or insolvency proceedings which could end in the liquidation of the debtor under national law have not yet been opened in respect of the debtor.[127] Another ground for extension or renewal may be the suspensive effect of an appeal against the decision to confirm a restructuring plan. The total duration of the stay, including extensions, cannot exceed 12 months, ensuring a balance between debtor protection and creditor interests.[128] The extension of the stay is necessary when preparing a viable restructuring plan that requires additional time beyond the initial stay period. However, the debtor's protection shall remain balanced with creditors' interests by establishing a maximum duration of the stay.

The decision to extend the stay is entrusted to judicial or administrative authorities. This model ensures an independent assessment of whether negotiations are progressing and of the prospects for developing and approving the restructuring plan.[129] It also prevents strategic holdouts by creditors who may block an extension to force liquidation. At the same time, comparative practice from the UK demonstrates that creditor involvement is feasible. In the UK, a moratorium may be extended for more than 20 business days with the consent of creditors.[130] This concept ensures creditors' participation in the matters that directly affect their enforcement rights and the value of their claims. However, extensive creditors' involvement in prolonging the stay may undermine the debtor's ability to secure the time needed to negotiate a feasible restructuring plan.

While creditor consent may be considered by the court when assessing an application for an extension, it should not be a precondition for granting the extension. The extension of the stay is ultimately a court-supervised process, subject to the debtor demonstrating justified grounds for the additional time. Crucially, one of the circumstances justifying the extension is the lack of meaningful progress in negotiations, which reflects the creditors' unwillingness to engage

[126] The Restructuring Directive, art. 6(6), art. 6(7).
[127] *Ibid.*, art. 6(7).
[128] *Ibid.*, art. 6(8).
[129] *Ibid.*, art. 6(7).
[130] Insolvency Act 1986, 2020, Part A1, Chapter 3, Section A10.

constructively. When creditors are granted a decisive vote on extending the stay, they will never genuinely cooperate in negotiations.

Hence, the Restructuring Directive provides a balanced approach by extending the stay of individual enforcement actions only when justified and within the maximum negotiation period, without requiring creditors' consent to prolong that stay. This ensures procedural efficiency by preventing individual creditors from strategically prolonging negotiations while limiting the extension of the stay through temporal and substantive limits that safeguard creditors' rights.

2.2.3. The Scope and Lifting of the Stay

The scope of the decision to stay may include all types of claims, such as secured and preferential claims, and can either be broad, covering all creditors, or restricted to specific creditors or groups.[131] Member States may exclude certain claims from the stay under specific conditions, such as when enforcement would not hinder the restructuring process or when exclusion is necessary to prevent unfair harm to creditors.[132] Workers' claims are generally excluded from the stay.[133]

The Restructuring Directive explicitly acknowledges the vulnerability of secured creditors,[134] but does not cover provisions on compensation or guarantees for creditors, whose value is likely to decrease during the stay.[135] This approach differs from that established in the UNCITRAL Guide on Insolvency, which suggests that a secured creditor is entitled to protection of the value of the asset in which it holds a security interest during the stay.[136] In addition, in the US, secured creditors may apply to have the stay lifted if adequate protection of an interest in property is lacking.[137]

Hence, the Restructuring Directive's silence on compensation mechanisms creates the great risk that secured creditors may be exposed to uncompensated losses. While collateral may be necessary for the company's use during the reorganisation process, secured creditors' interests should be protected during the stay, particularly from depreciation. A more explicit framework for protecting the interests of secured creditors would enhance legal certainty and overall fairness of the proceedings.

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[131] The Restructuring Directive, art. 6(9).
[132] *Ibid.*, art. 6(4).
[133] *Ibid.*, art. 6(5).
[134] *Ibid.*, recital 35.
[135] *Ibid.*, recital 37.
[136] United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (New York: United Nations, 2005), 103, recommendation 50.
[137] United States Bankruptcy Code, 2018, Chapter 11, Section 362(d).

The Restructuring Directive allows termination of the stay where its continuation would unfairly prejudice the rights or interests of any creditors.[138] However, the Restructuring Directive contains no definition of what constitutes unfair prejudice. This provides greater flexibility for Member States to apply this criterion on a case-by-case basis, but also creates the risk of legal uncertainty and inconsistent application across Member States.

For example, in Germany, the stay may be lifted if the debtor is not willing and able to align its management with the interests of the creditors as a whole, in particular because the restructuring plan is based on incorrect facts in material respects, or the debtor's accounting is so incomplete or inadequate that they do not allow an assessment of the restructuring plan.[139] However, in France, the concept of unfair prejudice is not defined. The only reference in the Restructuring Directive to unfair prejudice is when the stay jeopardises creditors' rights by causing an uncompensated loss or depreciation of collateral.[140] A more structured approach, in the form of a non-exhaustive list of indicative circumstances, could enhance the predictability of restructuring frameworks.

Hence, the issues of time initiation of the stay, extension mechanisms, creditor involvement, and the undefined concept of unfair prejudice reveal the complexity of balancing debtor and creditor interests during the development of the restructuring plan. While the Restructuring Directive establishes a structured and flexible framework for granting and extending stays, further clarification and harmonisation of creditor participation and the protection of secured creditors are needed. The Restructuring Directive should introduce an automatic short-term stay upon the opening of restructuring proceedings to prevent the rapid loss of the debtor's assets and funds. The extension of the stay should not depend on the creditors' approval, as this would allow individual creditors to obstruct the stay to their own benefit. The Restructuring Directive should establish clear protections for secured creditors to prevent any loss in the value of their secured assets during the stay. Finally, the concept of unfair prejudice remains insufficiently defined, undermining consistent application across Member States. The inclusion of a non-exhaustive list of indicative circumstances would offer much-needed clarity while preserving judicial discretion.

[138] The Restructuring Directive, art. 6(9).

[139] Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG), Art. 1 G v. 22.12.2020, BGBl. I S. 3256 (Nr. 66), Teil 2, Kapitel 2, Abschnitt 4, §59.

[140] The Restructuring Directive., recital 34.

2.3. Specific Problematic Aspects in Cross-Border Restructuring Proceedings

The increasing integration of the EU internal market has fundamentally changed the landscape in which European businesses operate.[141] The free circulation of goods, services, capital, and workers, and the rapid digitalisation of economic activity, mean that very few enterprises are purely national, given factors such as their client base, supply chain, scope of activities, and investor and capital base. Even purely national insolvencies can affect the functioning of the internal market through the domino effect, in which a debtor's insolvency may trigger further insolvencies in the supply chain.[142]

Many businesses that fall into insolvency are corporations with creditors and assets across multiple jurisdictions worldwide, which exposes the limitations of the existing EU framework. The EIR deals with issues of jurisdiction,[143] recognition and enforcement,[144] applicable law[145] and cooperation in cross-border insolvency proceedings,[146] as well as with the interconnection of insolvency registers.[147] However, the EIR would not remove all obstacles to free movement, which necessitates going beyond matters of judicial cooperation and establishing substantive minimum standards for preventive restructuring procedures.[148] The EIR does not address the disparities among national laws governing restructuring procedures, which create legal uncertainty, increase transaction costs, and discourage cross-border investment.[149]

Cross-border restructuring proceedings involve multi-party negotiations, a significant number of creditors with diverse interests, and the simultaneous application of different national laws. Creating a feasible restructuring plan requires effective coordination and cooperation among all stakeholders while balancing competing expectations. The question is how to engage all affected creditors in negotiations over the plan genuinely and how to address the divergence in national laws across Member States to develop a sound and realistic restructuring plan.

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141 Pavol Jozef Safarik University Kosice et al., "European Union Internal Market and Its Barriers: Mission Accomplished or Never Ending Story?", *On-Line Journal Modelling the New Europe*, 29 (2018): 26, doi:10.24193/OJMNE.2019.29.02.
142 The Restructuring Directive, recital 11.
143 The EIR, arts 3, 4, 5, 6.
144 *Ibid.*, Chapter II.
145 *Ibid.*, art. 35.
146 *Ibid.*, art. 41-44.
147 *Ibid.*, art. 87.
148 The Restructuring Directive, recitals 12, 13.
149 European Commission, *Proposal for a Restructuring Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law*, COM2022 702 final (Brussels: European Commission, 2022), 1-2.

2.3.1. Barriers for Effective Creditors' Participation

Cross-border restructuring proceedings may involve creditor groups across multiple jurisdictions and assets located in different Member States. The increasing internationalisation of corporate business reveals procedural gaps in the regulation of restructuring plans within the EU framework. Concerns arise regarding the duty to inform foreign creditors, the language used in communications, the applicable time limits for negotiations, and the location and method of creditors' meetings.

Duty to inform foreign creditors

EIR imposes the duty to immediately inform known foreign creditors of the opening of insolvency proceedings and to provide information on the time limits, the penalties laid down for those time limits, the body or authority empowered to accept the lodgement of claims, and any other measures laid down.[150] However, this safeguard applies only to proceedings listed in Annex A of the EIR and does not address the specifics of developing a restructuring plan in cross-border proceedings.

The Restructuring Directive establishes that notification to all affected and non-affected parties about the restructuring plan, including creditors, should be a condition for its confirmation.[151] Member States define the form of the notification, specify the time at which it is to be made, and lay down provisions for the treatment of unknowns.[152] While the Restructuring Directive seeks to facilitate cross-border restructuring[153], it does not specify who is responsible or how to inform foreign creditors.

As a general rule, the debtor remains in possession during restructuring proceedings and is responsible for organising negotiations to develop the plan.[154] In accordance with this principle, the notification to foreign creditors falls within the competence of the managerial bodies. The question arises as to whether the debtor's central management or local management in each jurisdiction shall notify foreign creditors in cross-border proceedings. The debtor's central management may lack sufficient information about the affected parties from its subsidiaries and is not in the best position to be bound by the duty to notify the parties.

However, even better-informed local management may face challenges during the notification. The Restructuring Directive provides no guidance on situations in which creditors are unknown, difficult to identify or dispersed within decentralised group structures. If local

[150] The EIR, art. 54.
[151] The Restructuring Directive, recital 51.
[152] *Ibid.*, recital 51.
[153] *Ibid.*, recital 13.
[154] *Ibid.*, art. 5(1).

management in one Member State lacks knowledge of creditors based in another Member State, there is no mechanism to ensure that all affected creditors are properly informed and engaged in the development of the restructuring plan.

When the insolvency practitioners are appointed,[155] notification of foreign creditors may fall within their duties. In the absence of explicit procedural regulations, the debtor may lack neutrality, administrative competence, or incentives to ensure effective and prompt communication with all affected foreign creditors, leading to information asymmetry and procedural injustice. Insolvency practitioners bound by professional obligations will ensure that the notification process is conducted impartially. In addition, the communication between insolvency practitioners is more structured, which may guarantee a smoother notification process.

Language of communication

When foreign creditors are identified and notified, further problems arise regarding their effective participation in the development of the restructuring plan. The creditors shall be provided with sufficient information to assess the plan, including the restructuring measures to be implemented, financial projections, and valuation reports.[156] The issue arises regarding the language in which the information is provided and, if a translation is needed, who bears the cost. For debtors already in financial distress, additional translation costs may place an even greater burden. Following the approach established in EIR, the language for communications may be agreed upon between the parties,[157] but this approach still fails to address translation costs. These costs should be treated as procedural costs of the restructuring proceedings and be included in the debtor's estate, rather than imposed on the affected parties. This would ensure that financial constraints do not compromise the effective notification to affected parties.

The time to review the draft of the restructuring plan

The Restructuring Directive does not harmonise the minimum time that must be given to foreign creditors to review the draft of the restructuring plan and formulate objections to it. Delays caused by translation, cross-border communication, and logistical difficulties affect their ability to participate effectively in negotiations. Moreover, there is no harmonised solution on whether meetings for negotiations should be held in person or online. In-person meetings raise questions about the appropriate location, travel arrangements, and the time required for foreign creditors to prepare. Online meetings pose technological barriers, transparency issues, and the potential need for simultaneous interpretation. All these difficulties regarding creditors' participation in negotiations to develop a restructuring plan in cross-border proceedings affect the quality, fairness,

[155] *Ibid.*, arts 5(2), 5(3).
[156] *Ibid.*, art. 8.
[157] The EIR, art. 73.

and efficiency of this stage. A harmonised framework implemented in the Restructuring Directive would enhance the efficiency of cross-border restructuring by ensuring that all creditors can participate effectively in the preparation of the plan.

Hence, the identification of creditors and the organisation of negotiation determine the viability of the entire restructuring proceedings, particularly in cross-border cases where the foreign creditors may be dispersed. Clearer, harmonised rules are needed to ensure the effectiveness of cross-border restructuring proceedings and to reduce costs and potential delays. The Restructuring Directive should establish that the language for communications is to be agreed upon between the parties, and that translation costs are to be included in the debtor's estate. It should also specify the minimum time period for foreign creditors, no shorter than 30 days, to review the restructuring plan and submit objections, as well as the format of the meeting to negotiate the plan.

2.3.2. Divergence of National Laws

Significant differences in restructuring mechanisms across Member States create uncertainty for businesses operating across borders. The diversity of substantive insolvency laws impacts the functioning of consumer, labour, and capital markets, restricting firms' ability to operate seamlessly across Member States and hindering EU businesses from fully realising the advantages of the Single Market.[158] The variation across EU national insolvency frameworks prompted repeated calls for further harmonisation, as the discrepancies were recognised as barriers to the establishment of a well-functioning Capital Markets Union.[159]

The insolvency proceedings in the EU are regulated by the EIR and the Restructuring Directive. The scope of the EIR extends to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs,[160] but only those listed in Annex A.[161] By contrast, the Restructuring Directive establishes the minimum harmonisation rules for the restructuring proceedings within the EU[162] and aims to be fully

[158] Mario Draghi, *The Future of European Competitiveness Part B | In-Depth Analysis and Recommendations* (European Commission, 2024), 254.
[159] "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Action Plan on Building a Capital Markets Union COM(2015) 468 final" (Brussels: European Commission, 2015), 24.
[160] The EIR, recital 10.
[161] *Ibid.*, art. 1.
[162] "Types of legislation," European Union, accessed 25 March 2026, https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en.

compatible with and complementary to the EIR.[163] These two EU instruments have not yet provided for a fully coherent and harmonised restructuring framework.

Restructuring proceedings are mainly governed by the national laws of Member States, which vary in how they implement the provisions of the Restructuring Directive, where discretion is permitted. The "pick-and-mix" approach of the Restructuring Directive provides too much flexibility in implementing restructuring frameworks, reducing the likelihood of establishing harmonised, clear restructuring rules.[164] The EIR's scope does not consistently capture all restructuring proceedings. For instance, Estonia, Ireland, and Slovenia observed that all their recently initiated restructuring proceedings qualified for inclusion in Annex A of the EIR 2015.[165] Conversely, Austria, Belgium, Czechia, France, Hungary, Italy, the Netherlands, Portugal, Spain, and Sweden noted that only a few of their recently implemented restructuring proceedings were eligible for inclusion.[166] The majority of Member States tend to introduce restructuring frameworks that fall outside the scope of the EIR, which is contrary to its objective of broadening its scope and better facilitating restructuring.[167] Thus, neither the EIR nor the Restructuring Directive provides sufficient clarity on cross-border restructuring frameworks, raising questions about how to better harmonise restructuring proceedings within the EU.

Clarity in cross-border restructuring proceedings, particularly during the development of a restructuring plan, may be achieved through two methods. The first is to include all the restructuring proceedings in Annex A of the EIR, ensuring that restructuring is uniformly regulated across Member States. This would reduce current inconsistencies arising from the incomplete or selective implementation of the Restructuring Directive and strengthen the role of the EIR as the central instrument governing cross-border insolvency law. However, the EIR governs public and collective proceedings that involve all creditors, not only those affected.[168] Many restructuring proceedings do not fit this model. Moreover, the EIR does not explicitly address the development of a restructuring plan, negotiations during preparation or the content of the plan. While uniform rules across the Member States will ensure clarity for cross-border restructuring, this cannot be achieved by including all restructuring proceedings within the scope of the EIR.

The second approach is the implementation of a new 28th regime, an optional EU-wide corporate and insolvency framework that serves as an alternative to the 27 national laws of the

[163] The Restructuring Directive, recital 13.
[164] Jay Venkatesh Mehta, *Conference Report of the Discussion at the CERIL 3rd International Conference on: Schuman 2.0: A New Horizon for European Restructuring and Insolvency Law* (CERIL, 2025), 15.
[165] Dr. Gert-Jan Boon and Prof. Reinout Vriesendorp, *CERIL Report 2025-2 on Reviewing the European Insolvency Regulation 2015* (CERIL, 2025), 16, https://www.ceril.eu/news/reviewing-the-eir-2015.
[166] *Ibid.*
[167] The EIR, recital 10.
[168] *Ibid.*, art. 1, recital 12.

Member States.[169] In 2024, Mario Draghi proposed the establishment of an Innovative European Company, whose legal status would provide companies with access to harmonised corporate law and insolvency procedures across Member States.[170] The 28th regime offers such companies a simpler, harmonised set of rules to help them set up and grow in Europe.[171] However, the question is whether the optional regime may incentivise forum shopping. Another concern is whether a harmonised framework should be available only to Innovative European companies or rather to all.

Professor Stephan Madaus questions whether the Member States are politically prepared to negotiate a truly unified insolvency regime.[172] If the EU fails to create an optional system that is fully aligned, universal, and exclusive, companies will still have room to forum shop, undermining the core objective of insolvency.[173] Without a genuinely unified optional regime, the EU risks entrenching existing fragmentation across the EU by adding another alternative regime.

Moreover, rather than establishing a single coherent system, parallel regimes would coexist, increasing costs and uncertainty for cross-border businesses. There is a greater risk of external pressure from international investors. Investors from the US, China, or India might soon demand their own bespoke regimes, fracturing rather than unifying the market.[174] In addition, concerns were raised about the scope of the possible optional regime, arguing that it should be available to all legal entities rather than limited to innovative firms.[175] At the same time, the question is whether there is a need at all in some Member States, such as Belgium, to introduce a new insolvency regime alongside the already existing thirteen.[176]

For businesses operating across multiple jurisdictions, harmonisation would reduce uncertainty about which law applies in the event of insolvency. This is particularly valuable for large enterprises that may opt for non-European regimes, such as US Chapter 11, where procedural

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[169] European Commission, P*roposal for a Regulation of the European Parliament and of the Council on the 28th Regime Corporate Legal Framework – "EU Inc.*", COM(2026) 321 final (Brussels: European Commission, 2026).
[170] Mario Draghi, *The Future of European Competitiveness Part B | In-Depth Analysis and Recommendations*, (European Commission, 2024).
[171] "Competitiveness Compass - European Commission", European Commission, accessed 20 March 2026, https://commission.europa.eu/topics/competitiveness/competitiveness-compass_en.
[172] J. Venkatesh Mehta, "Conference Report of the Discussion at the CERIL 3rd International Conference on: Schuman 2.0: A New Horizon for European Restructuring and Insolvency Law," Conference on European Restructuring and Insolvency Law (CERIL), Leiden, 8–9 May 2025, accessed 13 April 2026, https://www.ceril.eu/news/report-on-3rd-ceril-international-conference-schuman-2-0.
[173] The EIR, recital 5.
[174] Mehta, J. Venkatesh, "Conference Report of the Discussion at the CERIL 3rd International Conference on: Schuman 2.0: A New Horizon for European Restructuring and Insolvency Law," Conference on European Restructuring and Insolvency Law (CERIL), Leiden, 8–9 May 2025, accessed 13 April 2026, https://www.ceril.eu/news/report-on-3rd-ceril-international-conference-schuman-2-0.
[175] Bob Wessels, "Blog | EU's Working Agenda for Restructuring and Insolvency Revealed," accessed 24 April 2026, https://www.online-hero.nl/art/5274/eu-s-working-agenda-for-restructuring-and-insolvency-revealed.
[176] *Ibid.*

differences are considerable.[177] Furthermore, additional harmonisation would help to promote cross-border investment, which currently faces challenges due to unfamiliarity with insolvency frameworks in other jurisdictions.[178] The greater consistency and predictability of restructuring frameworks should facilitate deeper integration of financial markets across the EU. Better harmonisation may be achieved by introducing fewer discretionary provisions in the Restructuring Directive.

Hence, the current fragmentation of the national laws of Member States governing the restructuring framework undermines legal certainty, impedes cross-border investment, and limits the potential of the Single Market. There is broad support among practitioners, judges, and academics for maintaining the core structure of the EIR and avoiding a substantive overhaul, as it is generally suitable for cross-border cases.[179] However, the misalignment between national restructuring frameworks within the Member States and the EIR's scope indicates that reform is necessary to ensure the effectiveness of cross-border restructuring, particularly during the development stage. The question is whether this is best achieved through comprehensive inclusion of proceedings in Annex A of the EIR or through creation of an optional 28th regime. Harmonisation is better achieved by introducing clearer provisions in the Restructuring Directive governing restructuring proceedings across the EU, without granting the Member States such wide discretion in their implementation.

2.4. Specific Challenges Countered by MSEs

MSEs constitute the overwhelming majority of businesses in the EU and play a central role in its economy.[180] For example, in 2024, MSEs accounted for more than 36% of the EU's added value and 49.6% of jobs.[181] In addition, start-ups and young small firms are drivers of innovation, productivity growth, and market dynamism. A competitive and resilient Single Market depends on the ability of these enterprises to enter and re-enter the market efficiently after failures.

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[177] European Systemic Risk Board, *Restructuring and Insolvency: Opportunities for Reform in Europe.* (Luxembourg: Publications Office, 2025), 14, doi:10.2849/4271773.
[178] Yeejin Jang, Jenny Jihyun Tak, and Wei Wang, 'Global Insolvency and Cross-Border Capital Flows' (SSRN, 2024), 1, doi:10.2139/ssrn.4936763.
[179] Dr. Gert-Jan Boon and Prof. Reinout Vriesendorp, *CERIL Report 2025-2 on Reviewing the European Insolvency Regulation 2015* (CERIL, 2025), 25, https://www.ceril.eu/news/reviewing-the-eir-2015.
[180] Paula Schulze Brock et al., "Annual Report on European SMEs 2024/2025, SME Performance Review," *JRC Publications Repository* (2025): 4, 12, https://doi.org/10.2760/7714438.
[181] *Ibid.*

Timely insolvency procedures are therefore indispensable to sustaining a dynamic start-up environment.[182]

EU institutions have increasingly recognised that existing EU frameworks place a disproportionate burden on MSEs and do not meet their needs.[183] The European Commission is currently engaged in streamlining administrative burdens for MSEs by 35%.[184] Half of the initiatives in the 2026 operational program are dedicated to simplifying procedures to enhance the competitiveness of the Single Market.[185] Yet, there is no harmonised approach to simplify the restructuring process for MSEs.

Restructuring proceedings are designed for larger companies, making them too costly and complex for firms with limited resources.[186] The European Economic and Social Committee emphasised that the liquidation of asset-less MSEs accounts for approximately 90% of insolvencies in the EU and viewed the proposed special procedure for MSEs as highly significant.[187] In 2023, the European Commission presented the SME Relief Package,[188] which reiterated the importance of a second chance for SMEs and the Restructuring Directive Proposal, emphasising that the simplified procedure for winding up MSEs is its most innovative feature.[189] Moreover, the leading EU executives have a strong ambition to boost the competitiveness of the Single Market, simplify the full acquis of rules, and reduce administrative burdens for SMEs by at least 35% through simplification packages. Nevertheless, the restructuring area is exempt from simplification initiatives.[190]

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182 OECD, *No Country for Young Firms?: Start-up Dynamics and National Policies*, OECD Science, Technology and Industry Policy Papers, vol. 29, (1 April 2016), 24, doi:10.1787/5jm22p40c8mw-en.

183 "Simplification - European Commission," European Commission, accessed 3 April 2026, https://commission.europa.eu/law/law-making-process/better-regulation/simplification-and-implementation/simplification_en.

184 *Ibid.*

185 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission Work Programme 2026 — Europe's Independence Moment,* (2025), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025DC0870&qid=1761126156157.

186 M. Uttamchandani, S. Atkins and A.F. Martínez, "2021 World Bank & INSOL International's Legislative & Regulatory Group: COVID-19 response and the challenges ahead," *World Bank Blogs*, 2021; World Bank, *Principles for Effective Insolvency and Creditor and Debtor Regimes*, (Washington, DC: World Bank Group, 2021).

187 Sandra Parthie and Philip Von Brockdorff, *Opinion – Enhancing the Convergence of Insolvency Proceedings: Proposal for a Restructuring Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law COM(2022)702 Final – 2022/0408 (COD)* (European Economic and Social Committee, 2023), paras. 1.5, 4.5.

188 European Commission, *Commission Recommendation (EC) 2003/361 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, Official Journal of the European Union L124/36* (2003). SMEs refer to micro, small, and medium-sized enterprises that are composed of enterprises that employ fewer than 250 persons and have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

189 Emil Radev, *Report on the Proposal for a Restructuring Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law (A10-0126/2025),* European Parliament, https://www.europarl.europa.eu/doceo/document/A-10-2025-0126_EN.html.

190 Bob Wessels, "2026-01-26 EU Restructuring & Insolvency: What Awaits Us in 2026?," *Prof. Dr. Bob Wessels*, 26 January 2026, https://bobwessels.nl/blog/2026-01-26-eu-restructuring-insolvency-what-awaits-us-in-2026/.

The Restructuring Directive recognises the relatively simple capital structure of SMEs[191] and their limited resources.[192] It emphasises the need for a more coherent approach at the Union level, as SMEs are more likely to be liquidated due to disproportionate restructuring costs.[193] The Restructuring Directive therefore sets out several provisions to address challenges faced by SMEs during restructuring proceedings, particularly in developing the restructuring plan. It provides for the implementation of the comprehensive checklists for restructuring plans tailored to the needs and specificities of SMEs, along with practical guidelines on drafting such plans in accordance with national laws.[194] The Restructuring Directive also establishes that early warning tools should be in place to identify financial distress at an early stage, while accounting for SMEs' limited resources for hiring experts.[195] The debtor-in-possession model established in the Restructuring Directive is advantageous for SMEs, which often rely on intangible assets where familiarity with local suppliers and trust with local customers are essential.[196] In addition, SME equity holders can offer non-monetary restructuring assistance through their experience, reputation, or business contacts.[197]

However, the established approach to treating SMEs has several shortcomings. Firstly, the one-size-fits-all approach to medium, micro, and small-sized firms cannot meet everyone's needs. When micro and small-sized companies employ fewer than 50 people with an annual turnover not exceeding 10 million euros, medium-sized companies may have up to 250 employees and an annual turnover of up to 50 million euros. Thus, MSEs differ fundamentally by having minimal assets, limited administrative capacity, and only a few workers. Secondly, they are far more vulnerable to financial distress caused by internal factors, such as managerial constraints, entrepreneurs' ambitions for internal reorganisation, and limited financial or staffing resources to implement cost-cutting or efficiency measures. MSEs often struggle to complete insolvency procedures, which are lengthy, costly, and complex.

Access to an effective and efficient legal recovery mechanism is crucial for ensuring MSEs' continuity and viability. Improving restructuring procedures to better meet their needs is vital not only for safeguarding individual businesses but also for supporting broader economic stability and social welfare. The question is how to strike a balance between implementing fast, low-cost procedures for MSEs and protecting the rights of all stakeholders.

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191 The Restructuring Directive, recital 54.
192 *Ibid.*, recital 7.
193 *Ibid.*, recital 17.
194 *Ibid.*, art. 8(2).
195 *Ibid.*, recital 17.
196 Rizwaan Jameel Mokal, *Corporate Insolvency Law* (Oxford: Oxford University Press, 2005), doi:10.1093/acprof:oso/9780199264872.001.0001.
197 The Restructuring Directive, recital 59.

2.4.1. Excessively Long Preparation Phase to Develop the Restructuring Plan

Neither the Restructuring Directive nor the EIR establishes any time limits for the preparation of a restructuring plan, leaving this matter to be regulated by the national laws of the Member States. This deadline varies significantly across the EU, depending on the type of proceedings, and in many cases extends over several months. For example, in France, restructuring proceedings commence with an observation period of up to six months, which may be extended for a maximum of eighteen months in total, to assess the company's financial position and prepare a draft plan.[198] In Spain, after the commencement of restructuring proceedings, a protected negotiation period of three months, extendable for another three months upon request,[199] begins, during which the debtor must prepare and obtain the affected parties' approval of a restructuring plan.[200] However, in general, Member States set a fixed period for the stay of individual enforcement actions during which the restructuring plan can be negotiated and drafted, but do not regulate the period for plan preparation if the stay is not triggered.

Although lengthy negotiation periods may be justified in complex restructuring proceedings, they are not aligned with the needs of MSEs. An excessively lengthy preparation phase substantially undermines the sustainability of MSEs, leading to rapid declines in their financial stability. These enterprises often possess more flexible organisational structures, fewer creditors, limited worker representation, and operate on a smaller scale. Such features facilitate negotiations and coordination during the planning stage, necessitating less time to develop the plan. Given these distinct characteristics of MSEs, scholars and policymakers are increasingly advocating for reducing the preparation periods for such enterprises. The World Bank[201] and the UNCITRAL have provided comprehensive guidance and policy recommendations to remove procedural barriers and minimise costs for distressed small businesses, particularly by shortening planning timelines.[202]

[198] Code de commerce, 2026, Titre II, Art. L621-3, L626-1.
[199] Texto Refundido de la Ley Concursal, aprobado por Real Decreto Legislativo 1/2020, de 5 de mayo, BOE-A-2020-4859, Capítulo III, Artículo 611.
[200] *Ibid.*, Artículo 601.
[201] World Bank Group, *Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency, Official Records of the General Assembly*, (2018), https://documents1.worldbank.org/curated/en/989581537265261393/pdf/Saving-Entrepreneurs-Saving-Enterprises-Proposals-on-the-Treatment-of-MSME-Insolvency.pdf.
[202] United Nations Commission on International Trade Law, *UNCITRAL Legislative Guide on Insolvency Law for Micro- and Small Enterprises* (United Nations, 2024), doi:10.18356/9789210015271.

The Restructuring Directive is closely built upon the core structure of the US Chapter 11.[203] If the EU aims to meet the specific needs of MSEs, it should not only reconsider the logic of US Chapter 11 but also analyse its response to the exclusion of MSEs. The shortened period for preparing restructuring plans for MSEs has already been established in Subchapter V of the US Chapter 11. The debtor is required to submit a restructuring plan within 90 days, rather than the standard 180 days, from the date the relief order is issued.[204] This accelerated deadline underscores the urgency of small-business restructurings, where limited resources and operational instability make extended procedures particularly harmful. Nevertheless, the court may extend this deadline only when the delay is attributable to circumstances beyond the debtor's control, thereby ensuring necessary flexibility.[205] Subchapter V cases have demonstrated approximately double the plan confirmation rate and about 20 per cent lower dismissal rate compared to ordinary restructuring plans.[206]

Spain has implemented a dedicated continuation procedure for microenterprises, entities employing fewer than ten staff members and with an annual turnover of less than seven hundred thousand euros or liabilities of less than three hundred and fifty thousand euros.[207] This process is fully digitalised, using standardised forms completed by debtors or creditors through internet platforms, thereby reducing preparation time. It is based on a non-extendable three-month negotiation phase during which the debtor is expected to prepare a continuation plan,[208] which must be submitted either with the application to initiate the special procedure or within ten working days thereafter.[209] During negotiations, the execution of claims may be suspended, facilitating the debtor's ability to negotiate and structure the plan.[210] Unlike the general regime, should the debtor's proposed plan be unsuccessful, an opportunity exists to analyse the creditors' plan and a settlement plan. The special procedure for microenterprises is expected to shorten proceedings and lower the costs of the restructuring proceedings for these enterprises.

This example illustrates procedural elements that could strengthen European restructuring frameworks for MSEs. Implementing mechanisms inspired by Subchapter V and Spain's special procedure for microenterprises may enhance the prospects of long-term solvency for MSEs. The lack of any deadline for plan preparation in the Restructuring Directive creates a structural gap

[203] Gerard McCormack, *The European Restructuring Restructuring Directive* (Cheltenham: Edward Elgar Publishing, 2021) para. 1.39ff.
[204] Small Business Reorganization Act, 2019, Section 1189 (b), Section 1121(e).
[205] *Ibid.*, Section 1189(b).
[206] U.S. Trustee Program, *Chapter 11 Subchapter V* (U.S. Department of Justice, Washington, D.C., USA, 2024) https://www.justice.gov/ust/subchapter-v.
[207] Texto Refundido de la Ley Concursal, aprobado por Real Decreto Legislativo 1/2020, de 5 de mayo, BOE-A-2020-4859, artículo 685.
[208] *Ibid.*
[209] *Ibid.*, artículo 697.
[210] *Ibid.*, artículo 690.

that weakens the efficiency and predictability of restructuring processes for MSEs. The Restructuring Directive emphasises the importance of timely and effective proceedings, a goal that cannot be achieved without a maximum limit for plan preparation.[211] The limited time for plan preparation will force the debtor to prepare a realistic restructuring plan promptly. Affected parties will engage constructively in negotiations rather than obstruct or delay, knowing that if an agreement is not reached, the remaining alternative is liquidation. A defined preparation deadline also enhances legal certainty for suppliers, customers, and employees, preventing further losses in business value. A mandatory preparation deadline would ensure that restructuring proceedings for MSEs are conducted in a timely, predictable and purposeful manner, thereby maximising the likelihood of a successful outcome.

Considering that the Restructuring Directive seeks to harmonise the national laws of the Member States, it would be appropriate to establish not a specific timeline but a maximum period for the preparation of restructuring plans within the context of MSE proceedings. The limit should not be strict, allowing for extensions. For instance, a single extension of up to 30 days could be permitted, but only in limited cases.[212]

Hence, the limited financial resources of MSEs underscore the urgency of restructuring proceedings, as further delays are likely to lead to liquidation. A short, defined deadline for MSEs to prepare their plans will improve the efficiency of proceedings by motivating creditors to negotiate effectively and encouraging the debtor to develop the plan quickly.

2.4.2. Lack of Resources to Develop a Feasible Restructuring Plan

Poorly drafted plans impede effective business recovery, particularly for MSEs that need swift, organised action. When debtors do not develop feasible plans, viable companies often undergo fragmented liquidation due to procedural delays. The liquidation undermines the objectives of preventive restructuring frameworks and destroys economic value that could otherwise be preserved.[213]

One reason for the low quality of plans is the limited financial and human resources available to MSEs. Many debtors lack the expertise to prepare a legally compliant and financially sound plan within the required timeframe. These drawbacks can be addressed by requiring the

[211] The Restructuring Directive, recital 6.
[212] United Nations Commission on International Trade Law, *UNCITRAL Legislative Guide on Insolvency Law for Micro- and Small Enterprises*, (United Nations, 2024), 23–24.
[213] Insolvency Service, *A Review of Company Rescue and Business Reconstruction Mechanisms*: *Report by the Review Group* (2000), 9, https://www.yumpu.com/en/document/view/49028138/a-review-of-company-rescue-and-business-reconstruction-.

involvement of an insolvency practitioner or a legal advisor, by using online templates, or by using AI tools to generate the restructuring plan.

Mandatory Involvement of Insolvency Practitioner or Legal Expert

MSE owners may exhibit overconfidence, underestimate associated risks, and often be resistant to external counsel, which impairs their ability to negotiate effectively with creditors and to design a feasible restructuring plan.[214] Early involvement of the independent legal expert[215] can mitigate foreseeable issues during negotiations and help create a legally sound, realistic plan. Given their expertise, early participation increases the likelihood that the plan will be confirmed and executed successfully, improving the overall efficiency of the restructuring framework for MSEs.

The Restructuring Directive provides that the appointment of an insolvency practitioner to supervise a debtor's activities need not be mandatory in every case. However, it should be made on a case-by-case basis, depending on the circumstances or the debtor's specific needs.[216] In cases such as judicial or administrative authority grants the debtor a general stay of individual enforcement actions, the restructuring plan needs to be confirmed by a judicial or administrative authority by means of a cross-class cram-down, the debtor requests it, or a majority of creditors request it, provided that the creditors cover the costs and fees of the practitioner, the appointment is mandatory.[217] The Restructuring Directive recognises that the involvement of an insolvency practitioner is sometimes essential to safeguard procedural fairness and efficiency. If appointed, the insolvency practitioner may assist in preparing the draft plan but is not obliged to take an active role.[218]

In contrast, in the US, a trustee shall be mandatorily appointed to facilitate plan negotiation for MSEs without displacing existing management.[219] The role of the trustee is to supervise and monitor the case and to participate in the development and confirmation of a plan.[220] The trustee has the duty to facilitate the development of a consensual plan of reorganisation.[221] As a result, the trustee’s role goes beyond supervision and entails proactive participation in negotiations, oversight of plan formulation and continuous communication with both the debtor and the creditors.

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[214] Michelle M. Harner, “Mitigating Financial Risk for Small Business Entrepreneurs,” *SSRN Scholarly Paper* (Rochester, NY: Social Science Research Network, 2011), 479–80, https://papers.ssrn.com/abstract=1968411.
[215] The Restructuring Directive, recital 87.
[216] *Ibid.*, recital 30.
[217] *Ibid.*, art. 5, recital 31.
[218] *Ibid.*, art. 5.
[219] Small Business Reorganisation Act, 2019, Section 1183(a), Section 4(a)(3).
[220] U.S. Department of Justice Executive Office for United States Trustees, *Handbook for Small Business Chapter 11 Subchapter V Trustees* (2020), II.
[221] Small Business Reorganization Act, 2019, Section 1183(b)(7).

The mandatory involvement of a qualified insolvency practitioner in an active role during the plan preparation phase for MSEs ensures compliance with legal standards and the development of financially viable plans within a short time frame. The question is whether this approach is financially advantageous for MSEs and contributes to the effectiveness of the restructuring. To assess whether the mandatory appointment of the practitioner is effective, the costs of their involvement must be balanced against the benefits. Early involvement of the expert enhances plan feasibility and reduces failure rates, but this must be weighed against the upfront burden imposed by practitioner fees on MSEs.

The Restructuring Directive acknowledges that MSEs have limited resources to hire experts.[222] To maintain cost proportionality, the insolvency practitioner may operate under a flat-fee model agreed in advance between the debtor and the practitioner during the preparation of a plan.[223] Further, the practitioner's compensation may be supplemented through a performance-based component, such as a percentage of disbursements made to creditors under the plan. This approach keeps proceedings less costly while enhancing transparency, as creditors would be informed of the proposed remuneration and required to consent during the voting process. Alternatively, public funding mechanisms may be introduced to subsidise professional assistance for financially distressed MSEs.[224]

Hence, the mandatory appointment of an insolvency practitioner for the preparation of the restructuring plan will help MSEs develop a realistic and sound plan within a short time frame. To reduce the financial burden on MSEs, practitioners could operate under a flat-fee model or through a public funding mechanism.

Online Tools for Plan Preparation

AI tools offer even more advanced support for MSEs in drafting the restructuring plan. AI is becoming an essential component of organisational operations, with an impact that extends beyond simple data processing.[225] Platforms such as Atena Finance demonstrate the potential of AI to assist in drafting restructuring plans, generating financial projections, and identifying restructuring measures tailored to the specific needs of MSEs.[226] Such systems can significantly reduce the time and cost associated with plan preparation. For example, in a large financial

[222] The Restructuring Directive., recital 17.

[223] Lorraine Conway, "Insolvency Practitioners' Fees," (2019) 4, 9, https://researchbriefings.files.parliament.uk/documents/CBP-7402/CBP-7402.pdf; European Law Institute, *Instrument of the European Law Institute Rescue of Business in Insolvency Law* (2017), 140–41.

[224] Federico J Díez et al., *Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options* (IMF Staff discussion note, 2021), 25.

[225] Hui Shi, "Artificial Intelligence-Embedded Restructuring of Enterprise Decision Authority: A Re-Examination from the Perspective of Management Theory," *Economics & Business Management* 5, 1 (3 March 2026): 1, doi:10.63313/EBM.9154.

[226] "Atena Finance Platform for Business Crisis Operations," Finance Atena, accessed 13 April 2026, https://www.financeatena.it/en_EN/30673/platform-analysis-predictive-business-crisis-operations.

institution, the introduction of AI-based restructuring tools led to a 25% increase in successful negotiations and a 40% reduction in the time needed to obtain debt restructuring agreements.[227] A study analysing 1,000 debt restructuring cases across various financial institutions found that using AI in negotiations improved creditors' recovery rates by 35% and reduced debtors' default risk by 28%.[228] These improvements were attributed to AI's ability to generate more tailored, sustainable restructuring strategies through a comprehensive analysis of financial data and market dynamics.

However, integrating AI tools in restructuring proceedings raises concerns about the accuracy and legal compliance of the results they generate.[229] In addition, privacy and data security risks are often highlighted in the context of AI use, as restructuring plans require the disclosure of financially sensitive information.[230] The EU AI Act classifies AI systems used to evaluate creditworthiness as high-risk, requiring enhanced oversight.[231] The AI Framework Convention recognises risks associated with the deployment of AI systems and requires the implementation of safeguards for transparency, oversight, reliability, and accountability.[232] Any restructuring plan generated by an AI system shall remain subject to expert review to ensure its feasibility and compliance with legal standards. Robust safeguards shall be implemented to guarantee the AI system's transparency, protect data, and ensure that the decision-making process is explainable and auditable.

The question is whether the benefits of introducing AI to develop a restructuring plan outweigh the potential risks associated with deploying such systems. Despite the rapid advancement of AI technology, it is not yet ready to create a restructuring plan independently without human oversight. However, it may meaningfully assist managers in understanding the causes of the financial problems and available solutions to address them, accelerating the time required for restructuring proceedings. AI systems save the company's financial resources and allow the drafting of the restructuring plan at a lower cost than with professional assistance. When carefully trained on relevant data, they may identify tailored solutions to the needs of MSEs, taking into account the specifics of individual enterprises. Concerns regarding the accuracy of AI systems can be alleviated by establishing comprehensive regulatory frameworks that set clear standards for their development, certification, and deployment. The integration of AI into restructuring

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[227] Het Mistry, "Leveraging AI to Tackle Financial Distress: A Comprehensive Approach," 15, 4 (7 August 2024): 362, doi:10.5281/ZENODO.13255200.
[228] L. Chen and H. Liu, "Predicting Debt Restructuring Outcomes with Machine Learning," in *2023 IEEE International Conference on Finance and AI (ICFAI),* 2023, 112-120, https://ieeexplore.ieee.org/document/9876544.
[229] Paul J. Omar and Jennifer L. L. Gant, eds, *Research Handbook on Corporate Restructuring*, Research Handbooks in Private and Commercial Law (Cheltenham, UK; Northampton, Massachusetts, USA: Edward Elgar Publishing Limited, 2021), 395–96.
[230] *Ibid.*, 397–98.
[231] EU AI Act, annex III.
[232] *Ibid.*, art. 9.

processes offers considerable promise for MSEs if it is used as an ancillary support tool by managers, without replacing the judgment of the human professionals who guide businesses through financial recovery.

Hence, poorly drafted plans are a major obstacle to successful business recovery, especially for MSEs operating under tight deadlines and limited resources. A combination of professional support and/or an AI tool may improve plan quality, reduce procedural burdens and enhance accessibility. Public funding mechanisms or financial schemes may be used to cover practitioners' fees. Concerns regarding the accuracy and reliability of AI systems used to create the restructuring plan may be mitigated through a robust regulatory framework and by using such systems only as advisory tools.

Summarising this Chapter, the development of restructuring plans remains one of the most complex stages of restructuring proceedings. While the Restructuring Directive shall not prescribe a uniform content for restructuring plans, a more proportionate approach would be to introduce a structural division between the operative content of the plan and a separate disclosure document complemented by digital templates for MSEs. The effectiveness of the plan preparation would be further enhanced by introducing automatic short-term stays and by establishing clear protections for secured creditors against asset value deterioration. In cross-border cases, insufficiently regulated participation of foreign creditors and diverse national restructuring regimes undermine the effectiveness of restructuring. Harmonisation will be better achieved through clearer, less discretionary provisions in the Restructuring Directive. Finally, MSEs face disproportionate challenges due to limited resources and procedural burdens, leading to poorly drafted plans and unsuccessful restructuring outcomes. Introducing a mandatory preparation deadline, a mandatory insolvency practitioner operating under a flat-fee or publicly funded model, and clearer rules on creditor identification, language, and translation costs.

CHAPTER 3. CONFIRMATION OF THE RESTRUCTURING PLAN

The Restructuring Directive establishes that a restructuring plan may be effective immediately after its development and approval. However, confirmation by a judicial or administrative authority becomes mandatory when restructuring plans affect the claims or interests of dissenting parties, include provisions for new financing, or result in a workforce reduction of more than 25%.[233] Member States should also be able to provide that confirmation is necessary in other circumstances.[234] In such cases, the restructuring plan becomes binding only after its confirmation.[235]

Confirmation of the restructuring plan is the approval by a judicial or administrative authority of a previously adopted plan by affected parties.[236] It is necessary to ensure that the reduction of stakeholders' rights or interests is proportionate to the benefits of the restructuring.[237] An analysis of the confirmation of the plan is required to identify the legal and practical obstacles that may arise in the restructuring proceedings and to propose measures to ensure its effectiveness.

This Chapter firstly examines confirmation in cases involving dissenting creditors or classes, focusing in particular on the best-interests-of-creditors test and the priority rules governing the cross-class cram-down mechanism. It then analyses how the viability of the restructuring plan is assessed during its confirmation. The Chapter further considers the cases in which the plan must be confirmed. Finally, it evaluates whether the right to appeal the confirmation of the plan should be guaranteed under the Restructuring Directive and identifies the circumstances under which it should be provided.

3.1. Confirmation of the Restructuring Plan that Affects the Interests of Dissenting Affected Parties

Balancing the conflicting interests of all affected parties is one of the most challenging aspects of designing a restructuring plan. Creditors hold divergent economic interests, face different risks, and prioritise different ways to satisfy their claims, making it impossible to reach unanimous approval of the plan. The creditors who hold out on the restructuring plan may be

[233] The Restructuring Directive, art. 10(1).
[234] *Ibid.*, recital 48.
[235] *Ibid.*, art. 10(1).
[236] "Proposal for a Restructuring 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 and amending Restructuring Directive 2012/30/EU," EUR-Lex, accessed 20 April 2026, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016PC0723.
[237] The Restructuring Directive, recital 48.

motivated by the intention to receive private benefits.[238] A creditor who occupies a privileged legal position, for example, secured creditors, will probably decline to participate in the restructuring plan, which diminishes that position, unless offered the same terms or terms that exceed what it could recover through unilateral enforcement. Creditors may decline to vote in favour of the plan for various reasons, such as strategic considerations or substantive objections. The plan may still become binding upon dissenting creditors through confirmation by judicial or administrative authority.

The Restructuring Directive sets out the minimum conditions under which a restructuring plan may be confirmed by a judicial or administrative authority.[239] Article 10 of the Restructuring Directive establishes that the plan shall be adopted in accordance with Article 9 of the Restructuring Directive, the creditors with sufficient commonality of interest in the same class shall be treated equally, in a manner proportionate to their claim, and notification of the restructuring plan shall be given in accordance with national law to all affected parties. It further requires that, where there are dissenting creditors, the restructuring plan satisfy the best-interests-of-creditors, which shall be examined by a judicial or administrative authority only if challenged on that ground. If any new financing is required to implement the restructuring plan, it must not unfairly prejudice creditors' interests. Furthermore, the plan shall have a reasonable prospect of preventing the debtor's insolvency or of ensuring the business's viability.[240]

To comply with Article 9 of the Restructuring Directive, Member States shall ensure that affected parties are treated in separate classes that reflect sufficient commonality of interest, based on verifiable criteria.[241] At a minimum, creditors of secured and unsecured claims are treated in separate classes for the purposes of adopting a restructuring plan with a particular view to protecting vulnerable creditors, such as small suppliers.[242] The restructuring plan shall be adopted by the majority in claims or interests of affected parties in each class.[243] To ensure the effectiveness of the restructuring proceedings, the Restructuring Directive establishes a majority voting requirement to ensure that decisions are made in a manner that considers the interests of all stakeholders, eliminating holdouts by dissenting parties. The plan must be approved by a majority of creditors (not more than 75%) and become binding on creditors who did not vote for it.[244] In

[238] Richter T. and Thery A., "INSOL Europe Guidance Note on the Implementation of Preventive Restructuring Frameworks under EU Restructuring Directive 2019/1023 Claims, Classes, Voting, Confirmation and the Cross-Class Cram-Down", (2020): 25, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3575511.
[239] The Restructuring Directive, art. 10(2).
[240] Luca Simonetti, *The EU Restructuring Directive 2019/1023: Implications for Member States*. PhD diss., Lancaster University, 2025, 65.
[241] The Restructuring Directive, art. 9.
[242] *Ibid.*, recital 44.
[243] *Ibid.*, art. 9.
[244] *Ibid.*, art. 9.

the absence of this provision, a single creditor will block the restructuring, forcing liquidation that will harm all stakeholders.

At the same time, the dissenting creditors, who voted against the plan, should enjoy the level of protection and fair treatment. The best-interest-of-creditors test is a foundational protection for dissenting parties. It was first established in the US Chapter 11 and requires that a creditor receive at least as much under a restructuring plan as it would in liquidation under US Chapter 7.[245] The restructuring plan shall not compare to a hypothetical scenario that provides for better outcomes for affected parties. It should provide for dissenting creditors at least what they would have received in liquidation. However, a secured creditor has a right to recover the value of its collateral, up to the outstanding debt owed to it.[246]

On the other hand, in the UK, none of the members of the dissenting class should be any worse off than they would be under the relevant alternative, which is most likely to occur if the court did not sanction the restructuring plan.[247] The alternative is whatever the courts consider would most likely occur in relation to the company of the plan that was not sanctioned.

The Restructuring Directive has a similar approach and establishes that no dissenting creditor should be worse off under a restructuring plan than it would be either in the case of liquidation, whether piecemeal liquidation or sale of the business as a going concern, or in the event of the next-best-alternative scenario if the restructuring plan were not to be confirmed.[248] Unlike in the UK or US approaches, the Restructuring Directive establishes a more demanding standard, requiring the debtor to assess not only the outcomes of liquidation but also any other alternative measures and to propose outcomes that are better than those achievable by the debtor. However, Member States should be able to choose one of the thresholds when implementing the best-interest-of-creditors test in national law. For example, in the Netherlands, Italy and the Czech Republic, the test compares what is expected to be realised upon completion of the restructuring plan and what is expected in the event of liquidation of the debtor's assets in bankruptcy.[249] The Member States may consider adopting the next-best alternative scenario, but they have not yet done so.

To ensure that the majority of affected parties who approve the restructuring plan do not exploit the minority, the plan must meet the best-interests of-creditors test. Even where the overwhelming majority of affected parties vote in favour of the restructuring plan, a single

[245] United States Bankruptcy Code, 2018, Chapter 11, Section 1129(a)(7)(ii).
[246] *Ibid.*, Section 506.
[247] United Kingdom Companies Act, 2006, Chapter 3, Part 26A, Section 901G.
[248] The Restructuring Directive, recital 52.
[249] Wet Homologatie Onderhands Akkoord, 2021, Artikel 375(1)(e-g); Codice della crisi d'impresa e dell'insolvenza n. 155, 2017, Articolo 112; Zákon o preventivní restrukturalizaci 284/2023 Sb, Díl 4, Section 98.

dissenting creditor may challenge its adequacy if it receives less than the test foresees. This way, the test protects the interests of individual stakeholders regardless of the class's preferences. However, the threshold for the best-interest-of-creditors test is that the value the parties receive in piecemeal liquidation may be insufficient.[250] The evaluation in this case is based on the assets' prices at the time the plan is prepared. The issue is that liquidation is rarely beneficial because of the small recoveries, especially for unsecured creditors. A test based on this threshold offers dissenting creditors little genuine protection, since it ensures they receive only a little more than in the worst-case scenario.

The approach provided in the Restructuring Directive is superior because it extends the evaluative threshold beyond mere comparison of the value the party receives in liquidation. By considering all viable alternatives, such as a partial asset disposal or an alternative restructuring scenario, and setting the benchmark on the outcome that yields the greatest benefit to creditors, the best-interests-of-creditors test acquires genuine protection. However, introducing a next-best-alternative standard poses significant challenges in determining other possible alternatives despite liquidation.

Firstly, determining a hypothetical going-concern value or an alternative is less certain than the observable cash distribution amount in the liquidation value. Without expert assessment, the valuation included in the plan could underestimate the liquidation value to induce creditors to vote in favour of the plan. Considering all possible alternatives is therefore more costly, time-consuming, and requires expert involvement. Such valuation increases the costs of the restructuring proceedings but, at the same time, provides essential information for creditors' decision-making during plan approval. While costly, the uncertainty about possible alternatives and their outcomes can be reduced by adopting a better methodology. In addition, new methods for evaluating the benefits of alternative scenarios in the ongoing restructuring proceedings shall be developed to avoid significant stakeholder debate.

Secondly, the test should be examined by a judicial or administrative authority only if the plan is challenged on that ground.[251] This conditional approach presupposes that minority creditors, who often lack real information about the asset's value and possible alternatives, should foresee whether the plan represents the best possible outcome and provide evidence to challenge it if it does not. In this case, the judicial oversight mechanism is reduced to a formality since it does not substantively protect minority creditors. On the other hand, the rationale for this approach is to avoid the need to value assets in every restructuring case that may impose high costs and

[250] Garrido J. et al., "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Restructuring Directive," *International Monetary Fund,* 2021, 152, (2021): 21-22.
[251] The Restructuring Directive, recital 50, 63, art. 10(2).

delays.[252] A balanced approach may be adopted to examine the best-interests-of-creditors test when dissenting parties are treated manifestly unfairly.

Hence, the best-interests-of-creditors test provided in the Restructuring Directive should provide meaningful protection to dissenting minorities. The test threshold, as the next-best alternative, is better than merely comparing to liquidation. However, conditional judicial review, the absence of mandatory independent valuation, and the evidentiary burden placed on minority dissenting parties may dilute the very protection it is meant to provide.

3.2. Confirmation of the Plan by Cross-Class Cram-Down

As a general rule, a restructuring plan shall be approved by a majority of the affected parties in each class.[253] The higher required majority within Member States may diminish the likelihood of its achievement, resulting in prolonged valuation processes, disputes and, consequently, fewer successful restructurings.[254] Where the requisite majority of each class does not adopt a restructuring plan, it may be confirmed by a judicial or administrative authority through a cross-class cram-down mechanism and become binding upon dissenting classes. However, the question is whether such an approach balances the interests of creditors and debtors and contributes to the effectiveness of the restructuring. To establish this, the cross-class cramdown mechanism, first codified in the US Chapter 11, should be compared with the mechanism established in the Restructuring Directive.

Under the US Chapter 11, the court may confirm a restructuring plan despite objections from the entire class or classes of dissenting creditors, provided that certain conditions are met. They include compliance with the applicable provisions of the US Bankruptcy Code, and the restructuring plan should be proposed in good faith,[255] does not discriminate unfairly and should be fair and equitable with respect to each class of claims or interests that is impaired under the plan and has not accepted the plan.[256] In addition, at least one impaired class must have accepted the plan, excluding insider acceptances, and the dissenting creditors shall receive at least as much as they will receive in the liquidation.[257]

[252] *Ibid.*, recital 50.
[253] *Ibid.*, art. 9(6).
[254] Richter T. and Thery A., "INSOL Europe Guidance Note on the Implementation of Preventive Restructuring Frameworks under EU Restructuring Directive 2019/1023 Claims, Classes, Voting, Confirmation and the Cross-Class Cram-Down", (2020): 25, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3575511.
[255] United States Bankruptcy Code, 2018, Chapter 11, Section 1129(a).
[256] *Ibid.*, Section 1129(b)(1).
[257] *Ibid.*, Section 1129(a)(10).

Establishing that a plan is fair and equitable with respect to a class requires that secured creditors' interests over collateral are protected, or that the security attaches to proceeds of a sale of the collateral, or that they receive the cash payments equivalent to their claims.[258] The cram-down mechanism also requires compliance with the absolute priority rule, which states that unsecured creditors should either receive their admitted claims or that any junior classes of creditors or interests not receive any property.[259] This rule means that the financial claims of higher-ranking creditors are satisfied first, and once all of them are satisfied, lower-ranking creditors may also have their claims satisfied. Debts owed to senior creditors must be paid in full before junior creditors receive anything, even if equity holders receive nothing. The absolute priority rule governs the distribution of the debtor's assets in an orderly manner rather than on the economic leverage of a particular creditor or other factors.

The cross-class cram-down mechanism was subsequently introduced in the UK, drawing from the US Chapter 11. The UK regime focuses on two conditions. Firstly, members of the dissenting class should receive at least as much as they would in the event of the relevant alternative. Secondly, at least one class of creditors or members who would receive payment, or have a genuine economic interest in the company, in the event of the relevant alternative, has voted in favour of the restructuring plan.[260] The court also retained the discretion not to confirm the plan if it is not just and equitable, which entails an assessment of whether the assets are fairly distributed between consenting and dissenting classes.[261] This differs from an absolute priority rule established in the US Chapter 11.

The cross-class cram-down mechanism established in the Restructuring Directive is also inspired by the US Chapter 11 model.[262] Scholars point out the level of court involvement in the restructuring process and the new relative priority rule established in the Restructuring Directive as fundamental differences between EU and US legal regulation.[263] The Restructuring Directive requires that a restructuring plan be supported by a majority of the voting classes of affected parties, with at least one of those classes being a secured creditor class or senior to the ordinary unsecured creditors class.[264] Where a majority of voting classes does not support the restructuring

[258] *Ibid.*, Section 1129(b)(2)(A).
[259] *Ibid.*, Section 1129(b)(2)(B).
[260] United Kingdom Companies Act, 2006, Chapter 3, Part 26A.
[261] DeepOcean 1 UK Ltd, Re (2021), EWHC 138 (Ch), accessed 24 April 2026, https://www.bailii.org/ew/cases/EWHC/Ch/2021/138.html.
[262] Richter T. and Thery A., "INSOL Europe Guidance Note on the Implementation of Preventive Restructuring Frameworks under EU Restructuring Directive 2019/1023 Claims, Classes, Voting, Confirmation and the Cross-Class Cram-Down", (2020): 27, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3575511.
[263] Stephen D. Lerner, "How does the EU Restructuring Restructuring Directive compare to Chapter 11?", Restructuring Global View, 2019, accessed 20 April 2026, https://www.restructuring-globalview.com/2019/11/how-does-the-eu-restructuring-Restructuring Directive-compare-to-chapter-11/.
[264] The Restructuring Directive, art. 11(1).

plan, the plan can nevertheless be confirmed if it is supported by at least one affected or impaired class of creditors which, upon a valuation of the debtor as a going concern, receive payment or keep any interest, or, where so provided under national law, can reasonably be presumed to receive payment or keep any interest, if the normal ranking of liquidation priorities is applied under national law.[265] Accordingly, where there are only two classes of creditors, the consent of at least one class should be deemed to be sufficient if the other conditions for the application of a cross-class cram-down are met.[266] Article 11 of the Restructuring Directive requires the plan to comply with the requirements for judicial confirmation set out in Article 10.

The critical distinction between the US Chapter 11 and the Restructuring Directive is the priority rule of satisfying the affected parties' claims and interests.[267] Firstly, no class of affected parties can, under the plan, receive or keep more than the full amount of its claims or interests. Secondly, the dissenting voting classes of affected creditors should be treated at least as favourably as any other class of the same rank and more favourably than any junior class, which is referred to as the relative priority rule.[268] In contrast to the absolute priority rule, it does not require that such a class be paid in full. However, by way of the derogation from the default rule, Member States could protect a dissenting class of affected creditors by the absolute priority rule by ensuring that such a dissenting class is paid in full if a more junior class receives any distribution or keeps any interest under the restructuring plan.[269] This way, the Restructuring Directive grants Member States discretion to choose the priority rule. For example, Austrian legislation provides that dissenting creditor classes are treated on an equal footing with classes of equal rank and placed in a better position than subordinate classes, thereby implementing the relative priority rule.[270] In contrast, French law provides that the claims of affected creditors of a class that has voted against the plan are fully discharged when a lower-ranking class is entitled to a payment or retains a profit-sharing scheme under the plan, transposing the absolute priority rule.[271]

The discretion granted by the Restructuring Directive in choosing the priority rule may undermine its objective of creating legal certainty for investors, increasing incentives for forum shopping. Senior creditors will naturally favour jurisdictions that implement the absolute priority rule, as it guarantees the full satisfaction of their claims. At the same time, shareholders of a financially distressed company will opt for the jurisdictions that provide for the relative priority

[265] Ibid, art. 11.
[266] *Ibid.*, recital 54.
[267] Luca Simonetti, *The EU Restructuring Directive 2019/1023: Implications for Member States*. PhD diss., Lancaster University, 2025, 143-144.
[268] *Ibid.*
[269] The Restructuring Directive, art. 11(2).
[270] Bundesrecht konsolidiert: Restrukturierungsordnung, 2021, Section 36.
[271] Code de commerce, Livre VI, Titre II, Chapitre VI, Section 3, Art. L626-32.

rule, where the prospects of retaining an interest in the company are higher. To reduce the risk of shifting jurisdictions to obtain a more favourable position and to improve the harmonisation of restructuring across member states, the Restructuring Directive should establish a single priority rule. The question remains whether the relative priority rule is substantively sound and capable of providing effective restructuring, or whether the absolute priority rule will yield greater benefits.

The relative priority rule is viewed very favourably by some scholars and described as an anti-discrimination-based fairness test, meaning that funds in the restructuring process will be distributed in a certain proportion between higher- and lower-ranking creditors.[272] However, in the absence of clear regulation on the tranches in which funds should be distributed during the restructuring process, the likelihood of disputes increases, making the process more expensive and creditors' interests less protected.

Firstly, when applying the relative priority rule, creditors can always exploit the situation and put pressure on the approval of the restructuring plan, demanding the largest possible share of the satisfaction of their financial claims. Distributional uncertainty will create new hold-up potential and make it difficult to approve the restructuring plans, especially in larger restructuring cases. Some scholars agree that, if a compromise is not reached, the restructuring negotiations will end and the company's liquidation will accelerate due to bankruptcy.[273] Secondly, unsophisticated junior creditors will face difficulties in adequately defending their rights due to the potentially unclear value of the next-best alternative, and others will try to exploit this in complex negotiations.[274] Thirdly, the rule creates legal uncertainty for both investors and judges over the precise amount of value to be considered for better treatment. Finally, the relative priority reduces creditor protection and gives shareholders a strategic advantage in planning, since even those creditors whose financial claims are satisfied last always retain an interest, since their right to receive a share of their financial claim is guaranteed.[275] Creditors may lose the overwhelming majority of their claim, while shareholders continue to run the company and retain a majority stake.

In contrast, the absolute priority rule has been widely used for years and provides for legal certainty in creditors' ranking and satisfaction. Some scholars describe it as a good rule, while the relative priority rule is considered not good.[276] Implementation of this rule allows creditors to

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[272] Stephan Madaus, "Is the Relative Priority Rule Right for Your Jurisdiction? A Simple Guide to RPR", *SSRN Electronic Journal* (2020): 5, doi:10.2139/ssrn.3827696.
[273] Axel Krohn, "Rethinking Priority: The Dawn of the Relative Priority Rule and a New "Best Interest of Creditors" Test in the European Union", *SSRN Electronic Journal* (2020): 3, doi:10.2139/ssrn.3554349.
[274] *Ibid.*, p. 18.
[275] Jose Garrido et al., "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Restructuring Directive", *IMF Working Papers* 2021, no. 152 (May 2021): 22, doi:10.5089/9781513573595.001.
[276] Roelf Jakob De Weijs, Aart Lambertus Jonkers, and Maryam Malakotipour, 'The Imminent Distortion of European Insolvency Law: How the European Union Erodes the Basic Fabric of Private Law by Allowing "Relative Priority" (RPR)', *SSRN Electronic Journal* (2019): 3, doi:10.2139/ssrn.3350375.

extend their investments in line with contractual expectations and provides predictability regarding the satisfaction of their claims in the event of financial difficulties. The US courts stated that the absolute priority rule prevents shareholders and senior creditors from colluding to expropriate junior unsecured creditors.[277] If the priority of satisfaction is not in place and the parties have to negotiate everything from scratch, prohibitive transaction costs would prevent any deal from emerging.[278]

At the same time, legal doctrine recognises that the effective restructuring of a company often requires a departure from the principle of absolute priority.[279] The strict absolute priority rule may discourage new financing from junior creditors and give a senior creditor veto for holdout leverage. Scholars propose an alternative rule under which creditors' ranking remains the same as under the absolute priority rule. The senior investor retains the right to be paid before the juniors. However, the senior creditors receive the entire equity of the reorganised debtor, and the junior investor is granted a call option on this equity with a strike price equal to the amount owed to the senior investor.[280] If this lower class were the shareholders, it would amount to an option to repurchase the shares from the creditors in return for paying the creditors in full at a later date. This rule eliminates the need to determine the company's full valuation, making negotiations much easier and cheaper.

The 2016 proposal of the Restructuring Directive previously established the requirement of compliance with the absolute priority rule.[281] Since the cross-class cram-down mechanism was new to many Member States, the relative priority rule was introduced as a default, providing greater flexibility for Member States in implementing it. However, the absolute priority rule protects against a cross-class cram-down that is inconsistent with basic non-bankruptcy priorities. Thus, most Member States implemented an absolute priority rule, including Germany,[282] the Netherlands,[283] and France.[284] The Slovenian experience demonstrated that a rigid absolute

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[277] Lipson J.C., "The Secret Life of Priority: Corporate Reorganization after *JEVIC*", *Washington Law Review*, 93, 2, (2018): 672.

[278] Vasile Rotaru, "The Restructuring Restructuring Directive: A Functional Law and Economics Analysis from a French Law Perspective," *SSRN Electronic Journal* (2019): 44, doi:10.2139/ssrn.3461716.

[279] Stephen J. Lubben, "The Overstated Absolute Priority Rule," *SSRN Electronic Journal* (2015): 3, doi:10.2139/ssrn.2581639.

[280] Douglas G. Baird, "Priority Matters: Absolute Priority, Relative Priority and the Cost of Bankruptcy", *University of Pennsylvania Law Review*, (2017): 793.

[281] European Commission, *Proposal for a Restructuring 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 and Amending Restructuring Directive 2012/30/EU*, COM(2016) 723 final (2016), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016PC0723.

[282] Unternehmensstabilisierungs- und -restrukturierungsgesetz Artikel 1 G. v. 22.12.2020 BGBl. I S. 3256 (Nr. 66), Teil 2, Kapitel 1, Abschnitt 3, Unterabschnitt 2, § 27.

[283] Wet Homologatie Onderhands Akkoord, 2021, Artikel 384.

[284] Code de commerce, 2026, Titre II, Art. L626-32.

priority rule imposed on an unprepared system renders the valuation process required by the rule excessively difficult, so creditors would rather go straight to liquidation.[285]

The preferable approach is to establish in the Restructuring Directive the absolute priority rule as the basis for any cross-class cram-down mechanism, while preserving the limited exceptions necessary to achieve the aims of the restructuring. Secured creditors must be paid before junior unsecured creditors, or equity is paid, and so forth. However, the absolute priority rule could allow an exception. First, an effective restructuring may require paying junior creditors, such as essential suppliers or equity holders, to support the enterprise's future success. Such payment could be permitted to the extent strictly necessary to maintain the operations. This will increase the enterprise's value and allow creditors' claims to be fully satisfied. Secondly, shareholders may retain part of their equity if they provide new finance to the company, but only in the portion of their contribution. Thirdly, where the concession is genuinely necessary to secure class support, where senior creditors are no worse off than under the next-best alternative, it should be permitted.

This approach relies on the hierarchy established by the absolute priority rule rather than the unpredictable outcomes of the relative priority rule, enabling investors to foresee what happens when the company fails. Too strict or unpredictable rules depress going-concern values and discourage the new financing needed to rescue distressed companies. Hierarchy, with limited exceptions, establishes the honest satisfaction of the creditors' claims.

Hence, a cross-class cram-down mechanism is essential for effective restructuring. However, protecting dissenting creditors requires not only the application of the best-interests-of-creditors test, but also clear and predictable priority rules. The discretion to choose between the absolute and relative priority rules established in the Restructuring Directive has led to fragmentation and inconsistent implementation across member states, undermining harmonisation and legal certainty. The Restructuring Directive should establish absolute priority as the default standard, with limited exceptions permitted to allow necessary flexibility.

3.3. Assessment of Viability of the Restructuring Plan

Non-viable businesses with no prospect of survival should be liquidated as quickly as possible.[286] Where a debtor in financial difficulties is not economically viable or cannot be readily restored to economic viability, restructuring efforts could result in the acceleration and

[285] Cepec, Jaka, "Absolute priority rule dilemmas - case of Slovenia", INSOL Europe Academic Forum, Amsterdam, 11-12 October 2023.
[286] The Restructuring Directive, recital 3.

accumulation of losses to the detriment of all stakeholders and the economy as a whole.[287] The restructuring plan should provide for the assessment of the restructuring measures to be implemented and the debtor's prospects of future recovery. The question is whether these assessments should be examined by a judicial or administrative authority *ex officio* and be conducted in every case.

The Restructuring Directive requires the restructuring plan to include a statement of reasons explaining why it has a reasonable prospect of preventing the debtor's insolvency and ensuring the business's viability, including the necessary preconditions for the plan to succeed.[288] It may be prepared or validated by an external expert or, if appointed, by an insolvency practitioner.[289] Article 10 of the Restructuring Directive provides that Member States should ensure that judicial or administrative authorities may refuse to confirm a plan that does not have a reasonable prospect of preventing the debtor's insolvency or ensuring the viability of the business.[290] However, such an assessment should not be required to be made *ex officio*.

The Restructuring Directive has no definition of what constitutes viability, the question is therefore what should be regarded as viability. How should one anticipate future economic conditions that may affect the business's profitability and value? Who should bear the responsibility for conducting such an assessment?

The viability assessment is conducted before restructuring proceedings begin to determine whether the enterprise is worth saving. Financial viability of a legal entity refers to the debtor's solvency or insolvency. The debtor either cannot pay debts as they fall due, the debtor's liabilities exceed the value of the debtor's assets, or there is a clear likelihood that this will happen. However, the test to assess financial viability is important for filtering companies that can be restructured from those that should be better liquidated.

Economic viability refers to the comparison between a debtor's going-concern value and its liquidation value.[291] For example, the debtor continues to run the business without incurring the said loss or diminution of its estate, thereby keeping, in principle, its going-concern value higher than its liquidation value. The economic viability of the enterprise should be taken into account when examining the restructuring plan for confirmation by a judicial or administrative authority, as it demonstrates that the business's continuation value extends beyond the mere total value of its assets. For example, if the current solvent company produces a product that is no longer

[287] *Ibid.*, recital 3.
[288] *Ibid.*, art. 8.
[289] *Ibid.*, art. 8.
[290] *Ibid.*, art. 10(3).
[291] Tudor Andrei Rădulescu, et al. "Preventive Restructuring, Financial Distress and Viability of the Comapnies", *Journal of Public Administration, Finance and Law*, 21, (2021): 63, doi:10.47743/jopafl-2021-21-07.

in demand, it will inevitably face financial difficulties and have no chance of recovery if it remains based on the same business model. The assessment additionally entails the value generated by the trust shown by the trust's customers, as well as the value inherent in the financiers' support of the debtor, who believes in the business's continued viability and its ability to maintain their business relations with it.[292]

The judicial or administrative authority may refuse to confirm the plan if it does not provide for the undertaking's ability to cover its costs and operate independently in the market without state or creditor support after the completion of the restructuring proceedings. In the US, for a restructuring plan to be confirmed by the court, it must find that the process is not likely to lead to liquidation or to the need for further financial restructuring of the company or any successor to the company under the plan.[293] Similarly, the Restructuring Directive establishes that while absolute certainty of success of the restructuring proceedings is not required, there must be at least a fair probability of the company's continued operation.[294] This ensures that restructuring serves for the sustainable recovery rather than a temporary reprieve for the businesses.

Analysing the economic viability of the enterprise requires extensive evaluations and hypothetical predictions about the company's future, profitability and value, taking into account market conditions. Affected stakeholders are better positioned to assess whether the distressed debtor remains viable and how best to address difficulties, rather than judicial or administrative authorities. They usually lack the expertise to conduct such an assessment themselves. In addition, reassessing each restructuring plan during its confirmation will lead to excessively long and costly proceedings, contrary to the Restructuring Directive's objectives. The court should not be required to review particular aspects of the plan in terms of their economic feasibility, unless the circumstances in which this power can be exercised are narrow, well-defined, or the court has the competence and experience to exercise the necessary level of commercial and economic judgement.[295] The judicial or administrative authorities should be presented with plausible evidence to reject the proposed restructuring plan if it has no reasonable prospect of preventing the debtor's insolvency or ensuring the business's viability.

Hence, when confirming the restructuring plan, the judicial or administrative authority should reject it if it lacks economic viability. Since the affected parties are better positioned to assess the future market trends, demand, the company's revenues, costs, and flows, the judicial authorities should assess the evidence presented by them. The judicial or administrative authority

[292] *Ibid.*
[293] United States Bankruptcy Code, 2018, Chapter 11, Section 1129(a)(11).
[294] The Restructuring Directive, art. 10.
[295] United Nations Commission on International Trade Law, *Legislative Guide on Insolvency Law*, (2205): 228–29.

should reject the restructuring plan if it is evident that the company lacks any prospects to continue its activities after completion of restructuring proceedings.

3.4. Cases of Mandatory Confirmation of the Restructuring Plan

Confirmation of the restructuring plan by a judicial or administrative authority ensures that it is legally sound and protects stakeholders' interests before it becomes binding for the affected parties. However, it does not require mandatory confirmation of the plan in all cases. The Restructuring Directive establishes that confirmation of the restructuring plan is particularly necessary where there are dissenting affected parties, the plan contains provisions for new financing, or the plan involves a loss of more than 25 % of the workforce.[296] Member States should be able to provide that confirmation by a judicial or administrative authority is necessary in other cases.[297] This raises the question of whether the cases in which confirmation is mandatory under the Restructuring Directive are sufficient to adequately protect the interests of affected parties and ensure the effectiveness of the proceedings.

It is reasonable to impose the restructuring plan on dissenting creditors to prevent them from unduly limiting their losses to the detriment of the classes for which the plan's adoption is more important.[298] This approach balances effective restructuring and the protection of creditors' interests, as long as it maximises the value of the debtor's assets, includes safeguards against the unfair treatment of dissenting creditors, and provides sufficient protection. To prevent the majority of affected parties from imposing their wishes on dissenting parties to their detriment, the judicial or administrative authority should examine the plan before it becomes binding on those parties. The confirmation of the restructuring plan is important in this case to determine, through the best-interest-of-creditors test, whether the dissenting parties' interests are fairly protected. Nevertheless, it is inevitable that the plan will include dissenting creditors; consequently, almost all restructuring plans should be confirmed before implementation.

Another case in which confirmation of the restructuring plan is required is when it includes provisions for new financing. To maintain business activities during restructuring proceedings, the debtor needs funds to continue paying critical suppliers and employees and to cover other costs that maintain the value of its assets. An existing or new creditor may provide this financial assistance to implement a restructuring plan.[299] Since creditors contribute money to a

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[296] The Restructuring Directive, art. 10.
[297] *Ibid.*, recital 48.
[298] Vasile Rotaru, "The Restructuring Restructuring Directive: A Functional Law and Economics Analysis from a French Law Perspective," *SSRN Electronic Journal* (2019): 36, doi:10.2139/ssrn.3461716.
[299] The Restructuring Directive, art. 2(1)(7).

business facing financial difficulties and assume the risk that it may become insolvent, they shall be protected in their investments. For example, such creditors enjoy a priority ranking of their claims in the case of the debtor's liquidation. To avoid abuse of financial support during restructuring proceedings, only new financing included in the restructuring plan and subsequently confirmed by a judicial or administrative authority should be afforded protection.[300]

Including new financing in the restructuring plan poses several risks. First, because the Restructuring Directive does not define who may provide new financing, this creates the opportunity for shareholders or related parties to provide financing to improve their ranking and regain control over the restructuring proceedings. Second, the new financing can be used not only for the legitimate purpose but also for other purposes, including paying creditors who have a guarantee from management or shareholders.[301] When new financing is provided, confirming the plan is important to ensure the funds are genuinely needed to sustain business operations.

The Restructuring Directive also requires confirmation of a plan involving the loss of more than 25% of the workforce, which should be necessary only where national law allows preventive restructuring frameworks to provide for measures with a direct effect on employment contracts. The quantitative threshold established in the Restructuring Directive is, rather, a formal criterion. However, there may be a situation in which the plan materially alters workers' rights and conditions, or significantly redistributes value among stakeholders, without triggering the 25% threshold. For example, the restructuring plan may eliminate 24% of the firm's 10,000 employees, resulting in the loss of 2,400 jobs without confirming and verifying their protection. However, 50% of the workforce of 10 employees in a small firm, constituting 5 jobs, triggers the confirmation. A more coherent approach would be to consider substantive criteria rather than a quantitative one. The restructuring plan may involve no job losses but implement significant wage cuts, reduce pension entitlements, or alter their rights in other ways. All these changes shall comply with the national labour laws of the Member States. However, it should be considered to change the quantitative criterion to a substantive one, such as requiring that the restructuring plan be confirmed when it materially alters workers' rights. Under this requirement, the judicial or administrative authority will examine whether workers' rights are genuinely protected when they are significantly altered.

In addition, it should be considered that the mandatory confirmation from a judicial or administrative authority is required when the restructuring involves a cross-border element. As examined in Chapter II, the development of the plan for cross-border restructuring proceedings

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[300] *Ibid.*, art. 17.

[301] Audronė Balsiukienė and Remigijus Jokubauskas, "Problems of New and Interim Financing in Restructuring Proceedings," *SOCRATES, Rīga Stradiņš University Faculty of Law Electronic Scientific Journal of Law* 2, 20, (2021): 133, doi:10.25143/socr.20.2021.2.127-135.

raises a set of challenges, including the identification and notification of foreign creditors and the negotiation of a consensual arrangement among creditors whose legal expectations may be shaped by different national legal frameworks. This creates a significant risk of failure of the recognition and enforcement of such proceedings across countries.

The EIR establishes that any judgment opening insolvency proceedings handed down by a court of a Member State shall be recognised in all other Member States,[302] imposing the same effect as in the State of the opening of proceedings.[303] However, this applies only to the proceedings established in Annex A of the EIR and only to proceedings approved by the court. To ensure the automatic recognition of the proceedings across the EU, the restructuring plan involves cross-border elements. In addition, judicial confirmation ensures that the restructuring plan protects the interests of affected parties and may restore the debtor's viability after the completion of the proceedings. The confirmation in such a case serves as a structural precondition for the plan's effectiveness as a cross-border instrument.

Hence, confirmation of the restructuring plan is necessary when it affects the claims or interests of dissenting parties, when new financing is provided to the debtor, and when the plan materially affects employees' rights to protect the interests of vulnerable stakeholders and ensure that funds received are used for legitimate purposes. The mandatory confirmation will serve as a valuable tool for recognition and enforcement of the plan in cross-border restructuring proceedings.

3.5. Appeal of the Confirmation of the Plan

Interested affected parties should be able to appeal a decision on the confirmation of a restructuring plan issued by a judicial authority[304] to a higher judicial authority.[305] An appeal against a decision issued by an administrative authority shall be brought before the judicial authority.[306] The Restructuring Directive does not require granting a right to such an appeal, leaving affected parties without any meaningful remedy against factual or legal errors embedded in the confirmed plan. For example, to protect the interests of dissenting parties, the Restructuring Directive establishes that they should receive at least as much as they would under the next-best alternative or in liquidation.[307] However, the compliance with this test should be examined by a

[302] The EIR, art. 20.
[303] *Ibid.*, art. 20(1).
[304] The Restructuring Directive, recital 65.
[305] *Ibid.*, art. 16(1).
[306] *Ibid.*, art. 16.
[307] *Ibid.*, art. 2(1)(6).

judicial or administrative authority only if the restructuring plan is challenged on that ground, not in every case during the confirmation.[308] Where the Member States exercise the option to exclude the right of appeal of the confirmed plan, this safeguard becomes entirely ineffective. In such a case, dissenting parties may be treated unfairly with no possibility to review the decision on confirmation. The question is whether the right of appeal against the confirmed restructuring plan shall be guaranteed, not discretionary, under the Restructuring Directive.

For example, in the Netherlands, the option to appeal the confirmation of the restructuring plan is eliminated to safeguard the efficiency of the restructuring proceedings.[309] The Dutch restructuring plan is designed to prevent imminent insolvency and must therefore be implemented immediately after court confirmation.[310] Dutch judicial practice demonstrates widespread satisfaction with this approach, as specialised judges who confirm the plan have established a reputation for managing these cases with professionalism while maintaining an appropriate balance between efficiency and legal certainty.[311] However, scholars debate whether such a complete waiver of the appeal right, though effective for speed, compromises stakeholder protections if judicial resources or oversight are insufficient.[312]

In contrast, in Germany, appeals against a confirmed restructuring plan are allowed. Grounds for an appeal are limited to procedural defects in plan voting or reliance on incorrect information in approving the plan, which are considered remedied upon confirmation.[313] This approach seeks a middle ground, balancing efficiency with fairness by limiting the grounds of appeal.

The Restructuring Directive establishes that appeals to the confirmed plan shall be resolved efficiently, without suspensive effects, to ensure the plan's effectiveness, reduce uncertainty, and avoid unjustifiable delays.[314] However, the Restructuring Directive neither specify the grounds nor the time for an appeal of the confirmed restructuring plan. An unrestricted right to appeal may cause delays, increase costs, and prolong uncertainty for debtors, undermining the very purpose of the restructuring proceedings.

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[308] *Ibid.*, art. 10(2).
[309] Faillissementswet, 2021, Tweede afdeling, Artikel 369(10).
[310] Wessels, B. (2023). "Should parties have the right to appeal a restructuring plan?" Blog of Prof. Dr. Bob Wessels, 7 August 2023. Available: https://www.bobwessels.nl/blog/2023-08-doc1-should-parties-have-the-right to appeal a restructuring plan/.
[311] Norton Rose Fulbright, "International Restructuring Newswire Q2 2021" (2021), accessed 29 April 2026, https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/international-restructuring-newswire-q2-2021.pdf?revision=30696b19-7fb1-49b4-b1d4-66624a4c1fcd&revision=5250527266707387904.
[312] Wessels, B. (2023). "Should parties have the right to appeal a restructuring plan?" Blog of Prof. Dr. Bob Wessels, 7 August 2023. Available: https://www.bobwessels.nl/blog/2023-08-doc1-should-parties-have-the-right to appeal a restructuring plan/.
[313] Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG), Art. 1 G v. 22.12.2020, BGBl. I S. 3256 (Nr. 66), Teil 2, Kapitel 2, Abschnitt 5, Unterabschnitt 2, § 67.
[314] The Restructuring Directive, recital 65, art. 16(3).

In the US, the courts recognise that there is a point beyond which they cannot order fundamental changes in reorganisation actions.[315] For example, once the business has been restructured, assets have been transferred, or the distribution among the affected parties has begun, the court cannot unwind the restructuring plan, even if it may still be a viable dispute between the parties on appeal. Thus, the Restructuring Directive should specify the period within which the confirmed plan can be appealed. For example, Spanish law limits the timeframe for challenging a confirmed plan to 15 business days, thus balancing the right to legal recourse with procedural efficiency.[316]

The Restructuring Directive provides that Member States may limit the grounds for appeal to preserve the effectiveness of preventive restructuring.[317] However, the Restructuring Directive can provide a mandatory ground for such an appeal to better protect stakeholders' rights. For example, the appeal can be granted where a restructuring plan failed to satisfy the best-interest-of-creditors test or breached the conditions for a cross-class cram-down. This way, the finality and speed of the restructuring proceedings are preserved while guaranteeing that stakeholders may challenge fundamental violations that directly affect their rights.

The right to appeal the decision to confirm the plan safeguards stakeholders' procedural rights. Affected parties may challenge errors in the valuation of assets or the amount of funds they would receive in the next-best-alternative scenario when applying the best-interests-of-creditors test, as well as the class formation, voting, or priority rule that affects their economic interests. Without an appeal, a restructuring plan that materially alters the rights of affected parties may become binding without any safeguard against error or mistake. Where an appeal is upheld, judicial or administrative authorities should be able to set aside, amend, or confirm the plan without amendment.[318] This allows for the restructuring plan to be corrected when it harms stakeholders' interests, ensuring an effective restructuring process that restores the debtor’s business without violating the interests of affected parties.

Hence, the right to appeal the confirmed restructuring plan shall be guaranteed by the Restructuring Directive. To balance the speed required for restructuring proceedings with the protection of stakeholders’ interests, the Restructuring Directive can provide a limited period and grounds for such an appeal. The grounds for appeal should be restricted to exceptional circumstances, such as serious procedural violations, and exercised within a short, clearly defined period.

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[315] In re Manges, 29 F.3d 1034, 1038–39 (5th Cir. 1994).
[316] Texto Refundido de la Ley Concursal, aprobado por Real Decreto Legislativo 1/2020, de 5 de mayo, BOE-A-2020-4859, Artículo 662 – 663.
[317] The Restructuring Directive, recital 65.
[318] *Ibid.*, art. 16(4).

Summarising this Chapter, the confirmation of restructuring plans is essential to ensure that dissenting creditors are protected and the plan complies with core safeguards, including the best-interests-of-creditors test and priority rules when a cross-class cram-down mechanism is implemented. The Restructuring Directive should define next-best-alternative scenarios when assessing whether dissenting creditors receive at least as much as they would in those scenarios, thereby protecting their interests. It should also harmonise the choice of priority rules by establishing an absolute priority rule with limited exceptions as the default standard, guaranteeing greater predictability for affected parties. The economic viability of the restructuring plan should be assessed during confirmation, using the evidence presented by affected stakeholders. Confirmation of the plan in a cross-border restructuring case should be mandatory. Finally, the right of appeal of a confirmed plan should be guaranteed, but limited to substantive procedural violations and exercised in a short, clearly defined period to balance efficiency with stakeholder protection.

CONCLUSIONS

1. The Restructuring proceedings affect the interests of stakeholders who pursue fundamentally different and often conflicting objectives. When the debtor seeks to achieve long-term business solvency, creditors prioritise full and immediate recovery, whereas employees and suppliers are concerned with preserving their existing rights. These conflicting interests create a significant challenge in designing the legal framework governing restructuring proceedings that can address them simultaneously and achieve an effective balance between protecting stakeholders' interests and ensuring the effectiveness of the restructuring proceedings.

2. The quality and feasibility of the restructuring plan ultimately determine the debtor's prospects of successful recovery. The development, negotiation, and confirmation of the restructuring plan ensure that it is viable, legally sound, and reflects the interests of affected stakeholders, and that the restructuring proceedings balance stakeholders' rights effectively.

3. Article 8 of the Restructuring Directive prescribes comprehensive plan content combining identification information and substantive economic analysis, resulting in a complex document that is practically almost impossible to develop without external professional assistance and equally difficult for creditors to analyse meaningfully when voting. While a structural division between operative plan content and a separate feasibility assessment document would improve clarity, it does not fully resolve the complexity of designing the plan. A more effective solution requires digitalisation of the process through standardised templates for the debtors, though it can only function effectively when accompanied by the necessary statutory reforms.

4. During the development of the restructuring plan, the debtor may be granted a stay of individual enforcement actions, providing the necessary time to negotiate and develop the plan. The Restructuring Directive lacks a mandatory automatic short-term stay upon opening proceedings. This would preserve the debtor's main assets and maximise the value of the estate. The extension of the stay should not depend on creditors' approval to prevent individual obstructions. The rights of the secured creditors against loss of collateral value during the stay are not adequately protected under the Restructuring Directive. The stay of individual enforcement actions may be lifted on the grounds of unfair prejudice to creditors, but this concept is not clearly defined in the Restructuring Directive.

5. The minimum harmonisation approach established by the Restructuring Directive leaves a wide discretion to the Member States in designing the restructuring proceedings. The significant differences in national laws make it difficult to understand in cross-border restructuring proceedings the language of communications between affected parties, determine who bears the

translation costs, identify the foreign parties, determine the minimum time required to review the restructuring plan before submitting objections, and determine the form of the meeting to negotiate the plan. The misalignment between national restructuring frameworks indicates that reform is necessary to ensure the effective cross-border restructuring and reduce the risk of forum shopping.

6. MSEs face specific challenges during the development of the plan due to the limited financial resources that reflect the urgency of timely and fast restructuring proceedings, as further delay may lead to liquidation. A simple organisational structure and fewer creditors allow the development of restructuring plans for MSEs in a shorter period, requiring the affected parties to genuinely participate in negotiations to reach an agreement on the plan terms more quickly. Poorly drafted plans remain a major obstacle to effective, successful restructuring proceedings. A combination of mandatory professional support and AI advisory tools may improve plan quality and reduce procedural delay, when public funding mechanisms could cover practitioners' fees.

7. Confirmation of the restructuring plan shall ensure the protection of the stakeholders' interests and compliance of the plan with legal standards. The judicial or administrative authority should examine through the best-interests-of-creditors test whether it provides meaningful protection to dissenting parties by guaranteeing that the party receives at least as much as it would receive in the next-best-alternative scenario. The main challenge for the debtor and the court is to determine and evaluate these scenarios. The judicial or administrative authority during the confirmation of the plan shall also examine whether the order for satisfying the claims complies with the absolute or relative priority rules. The latter creates the risk of unfair reallocation of claim satisfaction. The absolute priority rule, with limited exceptions, ensures greater predictability for affected parties. The case for mandatory confirmation should be extended to cross-border restructuring plans, which will serve as a valuable instrument for recognition and enforcement of the plan.

8. The judicial or administrative authority should assess the economic viability of the plan during its confirmation based on evidence presented by the affected parties, who are better positioned to evaluate future market trends, revenues, costs, and financial flows. The plan shall be rejected if it lacks any prospects of continuing its activities following the completion of the proceedings. The right to appeal a confirmed restructuring plan should be expressly guaranteed by the Restructuring Directive. To balance the speed required for effective restructuring with adequate protection of stakeholders' interests, the grounds for appeal should be restricted to exceptional circumstances.

RECOMMENDATIONS

1. Article 6(1) of the Restructuring Directive should be amended to stipulate the obligatory automatic stay of individual enforcement actions by stating: “Member States shall ensure that debtors can benefit from an automatic stay of individual enforcement actions to support the negotiations of a restructuring plan in a preventive restructuring framework.”

Article 6 of the Restructuring Directive should be revised to include explicit safeguards for secured creditors, aiming to prevent the depreciation of collateral during the suspension of individual enforcement measures. The proposed text is as follows: “Member States shall ensure that, during the stay of individual enforcement actions, appropriate measures are available to protect the secured creditors against any material deterioration in the value of their collateral.”

2. Article 10 of the Restructuring Directive should be supplemented with a non-exhaustive list of the next-best-alternative scenarios for assessing the best-interests-of-creditors test and the methods for evaluating them.

Article 10(1) of the Restructuring Directive should be amended to provide an additional ground for mandatory confirmation of the restructuring plan: “restructuring plans which include the cross-border elements.”

Article 10 of the Restructuring Directive should be amended to establish the right to appeal a confirmed restructuring plan, subject to a limited exception for serious procedural violations and exercised within a short, clearly defined period, to balance efficiency with stakeholder protection.

3. Article 11(1)(c) of the Restructuring Directive should be changed to include the absolute priority rule as a default rule by implementing the following text: “It ensures that the dissenting class is paid in full if a more junior class receives any distribution or keeps any interest under the restructuring plan.” Article 11 of the Restructuring Directive should also be amended to clarify the derogations from point (c) of paragraph 1.

LIST OF BIBLIOGRAPHY

Legal Acts

1. "Code de commerce." *Légifrance*. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379/.
2. "Codice della crisi d'impresa e dell'insolvenza." Decreto Legislativo n. 14/2019 Normattiva. https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2019-01-12;14.
3. "Companies Act 2006." UK Legislation. https://www.legislation.gov.uk/ukpga/2006/46/contents.
4. "Directive (EU) 2026/799 of the European Parliament and of the Council of 30 March 2026 harmonising certain aspects of insolvency law." Official Journal of the European Union. (2026).
5. "Faillissementswet." Overheid.nl. https://wetten.overheid.nl/BWBR0001860/2026-03-25.
6. "Insolvency Act 1986." https://www.legislation.gov.uk/ukpga/1986/45/contents.
7. "Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)", OJ L 141, EUR-Lex, 20 May 2015. https://eur-lex.europa.eu/eli/reg/2015/848/oj/eng.
8. "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) (Text with EEA relevance.)" OJ L 172, EUR-Lex, 20 May 2019. https://eur-lex.europa.eu/eli/dir/2019/1023/oj/eng.
9. "Restrukturierungsordnung, Bundesrecht konsolidiert, 2021. *RIS – Rechtsinformationssystem des Bundes*. https://www.ris.bka.gv.at/eli/bgbl/i/2021/147/P1/NOR40236792.
10. "Small Business Reorganization Act of 2019." *U.S. Congress*. https://www.congress.gov/bill/116th-congress/house-bill/3311/text.
11. "Texto Refundido de la Ley Concursal, aprobado por Real Decreto Legislativo 1/2020, de 5 de mayo, BOE A 2020 4859." Boletín Oficial del Estado. https://www.boe.es/buscar/act.php?id=BOE-A-2020-4859.

12. “United States Bankruptcy Code, Chapter 11.” *U.S. House of Representatives – Office of the Law Revision Counsel*. https://www.law.cornell.edu/uscode/text/11.
13. “Unternehmensstabilisierungs- und -restrukturierungsgesetz (StaRUG), Gesetz vom 22.12.2020, BGBl. I S. 3256 (Nr. 66).” *Gesetze im Internet*. https://www.gesetze-im-internet.de/starug
14. “Zákon o preventivní restrukturalizaci 284/2023.” *Zákony pro lidi*. https://www.zakonyprolidi.cz/cs/2023-284.

Soft Law

15. European Commission. *Commission Recommendation (EC) 2003/361 of 6 May 2003 Concerning the Definition of Micro, Small and Medium-Sized Enterprises.* Official Journal of the European Union, 20 May 2003. https://eur-lex.europa.eu/eli/reco/2003/361/oj/eng.
16. European Commission. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Action Plan on Building a Capital Markets Union*. Brussels. 30 September 2015. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0468.
17. European Commission. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission Work Programme 2026 — Europe’s Independence Moment*. 2025. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025DC0870&qid=1761126156157.
18. European Commission. *Guidelines on State Aid for Rescuing and Restructuring Non-Financial Undertakings in Difficulty (2014/C 249/01)*. 31 July 2014. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731(01).
19. European Law Institute. *Instrument of the European Law Institute Rescue of Business in Insolvency Law.* 2017. https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/Instrument_INSOLVENCY.pdf.
20. International Monetary Fund. *External Debt Statistics: Guide for Compilers and Users. Manuals & Guides.* Washington, D.C. 2014. doi:10.5089/9781484366622.069.
21. Richter, Tomáš, and Adrian Thery. “INSOL Europe Guidance Note on the Implementation of Preventive Restructuring Frameworks under EU Restructuring Directive 2019/1023 Claims, Classes, Voting, Confirmation and the Cross-Class Cram-Down,” *INSOL Europe Guidance Note* (April 2020): 1–45.

22. United Nations Commission on International Trade Law, ed. *Legislative Guide on Insolvency Law.* New York: United Nations, 2005. https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/05-80722_ebook.pdf.
23. United Nations Commission on International Trade Law. *UNCITRAL Legislative Guide on Insolvency Law for Micro- and Small Enterprises.* United Nations. 2024. doi:10.18356/9789210015271.
24. World Bank Group. *Principles for Effective Insolvency and Creditor and Debtor Regimes.* Washington, DC: World Bank Group, 2021.
25. World Bank Group. *Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency.* Official Records of the General Assembly. 2018. https://documents1.worldbank.org/curated/en/989581537265261393/pdf/Saving-Entrepreneurs-Saving-Enterprises-Proposals-on-the-Treatment-of-MSME-Insolvency.pdf.

Case Law

26. “Case C-431/23. Wibra België: Judgment of the Court (Third Chamber) of 3 April 2025.” EUR-Lex. https://eur-lex.europa.eu/eli/C/2025/3016/oj/eng.
27. “Re DeepOcean 1 UK Ltd [2021] EWHC 138 (Ch).” BAILII. https://www.bailii.org/ew/cases/EWHC/Ch/2021/138.html.
28. In re Manges. 29 F.3d 1034 (5th Cir. 1994).

Books

29. Barry, Brian. *Justice as Impartiality*. Oxford Political Theory, v. 2. Oxford: New York: Clarendon Press. Oxford University Press, 1995.
30. Goode, Royston Miles, and Kristin van Zwieten. *Goode on Principles of Corporate Insolvency Law. Fifth edition.* London: Sweet & Maxwell/Thomson Reuters, 2018.
31. Jokubauskas, Remigijus. *Juridinių Asmenų Nemokumo Procesas: Monografija*. Kraków: Ksiegarnia Akademicka Publishing, 2021.
32. McBryde, William W., Axel Flessner, and Sebastianus Constantinus Johannes Josephus Kortmann, eds. *Principles of European Insolvency Law. Series Law of Business and Finance*, vol. 4. Deventer: Kluwer Legal Publishers, 2003.

33. McCormack, Gerard. EU Insolvency Law: *Cross Border Insolvency Law in Comparative Focus*. Cheltenham, UK: Edward Elgar Publishing, 2022. doi:10.4337/9781800376137.
34. McCormack, Gerard. *European Insolvency Law: Reform and Harmonization.* Cheltenham, UK: Edward Elgar Publishing, 2017.
35. McCormack, Gerard. *The European Restructuring Restructuring Directive*. Cheltenham, UK: Edward Elgar Publishing, 2021.
36. Mokal, Rizwaan Jameel. *Corporate Insolvency Law.* Oxford: Oxford University Press, 2005.
37. Omar, Paul J., and Jennifer L. L. Gant, eds. *Research Handbook on Corporate Restructuring. Research Handbooks in Private and Commercial Law.* Cheltenham, UK; Northampton, Massachusetts, USA: Edward Elgar Publishing Limited, 2021.
38. Schultze, George J. *The Art of Vulture Investing: Adventures in Distressed Securities Management.* Wiley Finance Series. Hoboken, New Jersey: Wiley, 2012.

Journal Articles

39. Balsiukienė, Audronė, and Jokubauskas, Remigijus. "Problems of New and Interim Financing in Restructuring Proceedings." *SOCRATES, Rīga Stradiņš University Faculty of Law Electronic Scientific Journal of Law* 2, 20 (2021): 127–35. doi:10.25143/socr.20.2021.2.127-135.
40. Benedetti, Lorenzo. "The Position of Shareholders in the Restructuring Proceedings of Distressed Companies: From a Shareholders' Veto Power to Their Duty to Enforce (Aufopferungs- or Duldungspflicht) a Restructuring Plan." *International Insolvency Review* 29, 3 (2020): 322–45. doi:10.1002/iir.1391.
41. Closset, Frédéric, Christoph Großmann, Christoph Kaserer, and Daniel Urban. "Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms." *Journal of Banking & Finance* 149 (2023). doi:10.1016/j.jbankfin.2022.106756.
42. De Weijs, Roelf Jakob, Aart Lambertus Jonkers, and Maryam Malakotipour. "The Imminent Distortion of European Insolvency Law: How the European Union Erodes the Basic Fabric of Private Law by Allowing "Relative Priority" (RPR)." *Tijdschrift voor Belgisch Handelsrecht,* 125, 4, (2019):477-493. doi:10.2139/ssrn.3350375.
43. Derrien, François, Ambrus Kecskés, and Sattar A. Mansi. "Information Asymmetry, the Cost of Debt, and Credit Events: Evidence from Quasi-Random Analyst Disappearances." *Journal of Corporate Finance* 39 (2016): 295–311. doi:10.1016/j.jcorpfin.2016.05.002.

44. Dorff, Michael B., and Kimberly Kessler Ferzan. “Is There a Method to the Madness? Why Creative and Counterintuitive Proposals Are Counterproductive.” *Theoretical Foundations of Law and Economics*, (2009): 21–40.
45. Douglas G. Baird, “Priority Matters: Absolute Priority, Relative Priority and the Cost of Bankruptcy”, *University of Pennsylvania Law Review*, (2017): 785-829.
46. Eidenmüller, Horst and Kristin Van Zwieten. “Restructuring the European Business Enterprise: The European Commission’s Recommendation on a New Approach to Business Failure and Insolvency.” *European Business Organization Law Review* 16, 4 (2015): 625–67. doi:10.1007/s40804-016-0042-2.
47. Eidenmüller, Horst. “Contracting for a European Insolvency Regime.” *European Business Organization Law Review* 18, 2 (2017): 273–304. doi:10.1007/s40804-017-0067-1.
48. Epaulard, Anne, and Chloé Zapha. “Bankruptcy Costs and the Design of Preventive Restructuring Procedures.” *Journal of Economic Behavior & Organization* 196 (2022): 229–50. doi:10.1016/j.jebo.2022.02.001.
49. Gant, Jennifer L. L. “Studies in Convergence? Post-Crisis Effects on Corporate Rescue and the Influence of Social Policy: The EU and the USA” *International Insolvency Review* 25, 1 (2015): 72–96. doi:10.13140/RG.2.1.4410.5760.
50. Gant, Jennifer L. L., Gert-Jan Boon, David Christoph Ehmke, Emilie Ghio, Line Langkjaer, Eugenio Vaccari, and Paul Omar. “The EU Preventive Restructuring Framework: In Extra Time?” *Fizetésképtelenségi Jog (forthcoming)* (2021): 1-11. https://ssrn.com/abstract=3938867.
51. Gawron, Krzysztof. “Analysis of the Feasibility of the Restructuring Plan: A Case Study of Poland.” *Krakow Review of Economics and Management/Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie,* 1(1007) (2025): 105–25. doi:10.15678/krem.18175.
52. Gilson, Stuart C. “Transactions Costs and Capital Structure Choice: Evidence from Financially Distressed Firms.” *The Journal of Finance* 52, 1 (1997): 161–96.
53. Harner, Michelle M. “Mitigating Financial Risk for Small Business Entrepreneurs.” *Ohio State Entrepreneurial Business Law Journal* 6, (2011): 469-91. https://papers.ssrn.com/abstract=1968411.
54. Het Mitesh Mistr. “Leveraging AI to Tackle Financial Distress: A Comprehensive Approach.” *International Journal of Computer Engineering & Technology* 15, 4 (2024): 358-69. doi:10.5281/ZENODO.13255200.

55. Jang, Yeejin, Jenny Jihyun Tak, and Wei Wang. “Global Insolvency and Cross-Border Capital Flows.” *UNSW Business School Research Paper Forthcoming*. (2025): 1-71. doi:10.2139/ssrn.4936763.
56. Jokubauskas, Remigijus, Marek Świerczyński, and Audronė Balsiukienė. “A Stay of Individual Enforcement Actions as a Basis for Effective Restructuring Proceedings.” *International Comparative Jurisprudence* 7, 1 (2021): 115-125.
57. Jokubauskas, Remigijus. “Gyvybingumo Samprata Ir Vertinimas Juridinių Asmenų Nemokumo Procese.” *Jurisprudence* 27, 2 (2020): 555-71. doi:10.13165/JUR-20-27-2-16.
58. Karaleu, Yury Y. “European Milestones in the Protection of Workers’ Claims in the Case of Insolvency.” *Financial Sciences* 26, 1 (2021): 22–36. doi:10.15611/fins.2021.1.02.
59. Keay, Andrew. “Directors’ Duties to Creditors: Contractarian Concerns Relating to Efficiency and Over-Protection of Creditors.” *The Modern Law Review* 66, 5 (2003): 665–99. doi:10.1111/1468-2230.6605001.
60. Kim, Woojin, YoungKyung Ko, and Shu-Feng Wang. “Debt Restructuring through Equity Issues.” *Journal of Banking & Finance* 106(C) (2019): 341–56. doi:10.1016/j.jbankfin.2019.07.002
61. Korobkin, Donald R. “Rehabilitating Values: A Jurisprudence of Bankruptcy.” *Columbia Law Review* 91, 4 (1991): 717-89. doi:10.2307/1122945.
62. Krohn, Axel. “Rethinking Priority: The Dawn of the Relative Priority Rule and the New “Best Interests of Creditors” Test in the European Union.” *International Insolvency Review* 30, 1 (2021): 75–95. doi:10.1002/iir.1398.
63. Lipson J.C., “The Secret Life of Priority: Corporate Reorganization after JEVIC”, *Washington Law Review*, 93, 2, (2018): 631-713.
64. Lubben, Stephen J. “The Overstated Absolute Priority Rule.” *SSRN Electronic Journal* (2015): 1-33. doi:10.2139/ssrn.2581639.
65. Madaus, Stephan. “Is the Relative Priority Rule right for your jurisdiction? A simple guide to RPR.” *SSRN Electronic Journal* (2020): 1-8. doi:10.2139/ssrn.3827696.
66. McNamara Christian M., Carey K. Mott, Salil Gupta, Greg Feldberg, and Andrew Metrick. “Survey of Resolution and Restructuring in Europe: Pre- and Post Survey of Resolution and Restructuring in Europe: Pre- and Post BRRD.” *Journal of Financial Crises* 6, 1 (2024): 1–34.
67. Paech, Philipp. “The Value of Financial Market Insolvency Safe Harbours.” *Oxford Journal of Legal Studies* 36, 4 (2016): 855–84. doi:10.1093/ojls/gqv041.

68. Paterson, Sarah. “Rethinking Corporate Bankruptcy Theory in the Twenty-First Century.” *Oxford Journal of Legal Studies* 36, 4 (2016): 697–723. http://www.jstor.org/stable/26363440.
69. Pavol Jozef Safarik University Kosice, Silvia Rucinska, Miroslav Fecko, and Pavol Jozef Safarik University Kosice. “European Union Internal Market and Its Barriers: Mission Accomplished or Never Ending Story?” *On-Line Journal Modelling the New Europe*, 29 (2018): 25–52. doi:10.24193/OJMNE.2019.29.02.
70. Payne, Jennifer. “Debt Restructuring in English Law: Lessons from the United States and the Need for Reform.” *Law Quarterly Journal* 282 (2014).
71. Payne, Jennifer. “The Role of the Court in Debt Restructuring.” *The Cambridge Law Journal* 77, 1 (2018): 124–50. doi:10.1017/S0008197318000016.
72. Rădulescu, Tudor Andrei, Daniela Mardiros, and Cosmin Dariescu. “Preventive Restructuring, Financial Distress and Viability of the Companies.” *Journal of Public Administration, Finance and Law* 21 (2021): 60-64. doi:10.47743/jopafl-2021-21-07.
73. Rotaru, Vasile. “The Restructuring Restructuring Directive: A Functional Law and Economics Analysis from a French Law Perspective.” *SSRN Electronic Journal* (2019): 3-58. doi:10.2139/ssrn.3461716.
74. Schwartz, Alan. “A Normative Theory of Business Bankruptcy.” *Virginia Law Review* 91, 5 (2005): 1199–1266.
75. Shi, Hui. “Artificial Intelligence-Embedded Restructuring of Enterprise Decision Authority: A Re-Examination from the Perspective of Management Theory.” *Economics & Business Management* 5, 1 (2026): 1-9. doi:10.63313/EBM.9154.
76. Sophie Vermeille and Adrien Bézert. “Sortir de l’impasse grâce à l’analyse économique du droit : Comment rendre à la fois le droit des sûretés réelles and le droit des entreprises en difficulté efficaces ?” *RTDF*, 1 (2014).
77. Stanghellini, Lorenzo, Riz Mokal, Christoph G. Paulus, and Ignacio Tirado. “Best Practices in European Restructuring - Contractualised Distress Resolution in the Shadow of the Law.” *SSRN Electronic Journal* (2018): 1-289.
78. Voda, Alina Daniela, Gabriela Dobrotă, Diana Mihaela Țîrcă, Dănuț Dumitru Dumitrașcu, and Dan Dobrotă. “Corporate Bankruptcy and Insolvency Prediction Model.” *Technological and Economic Development of Economy* 27, 5 (2021): 1039–56. doi:10.3846/tede.2021.15106.
79. Wai Yee Wan, Casey Watters, and Gerard McCormack. “Schemes of Arrangement in Singapore: Empirical and Comparative Analyses” *American Bankruptcy Law Journal* 94, 3 (2020):463-506.

80. Worenklein, Elie, and Mitchell Carlson. "Minority Lenders Beware: How Majority Holders in Distressed Financings Are Leveraging Their Rights at the Expense of Minority Holders." *The Review of Banking & Financial Services* 39, 6 (2023): 75–83.
81. Xiang, Zhongnan, Wei Wang, and Sudipta Basu. "Long-Run Performance of Debt Renegotiations: Large-Sample Evidence." *SSRN Electronic Journal* (2021): 1-34. doi:10.2139/ssrn.3955519.

Websites

82. "2026-01-26 EU Restructuring & Insolvency: What Awaits Us in 2026?" Prof. Dr Bob Wessels. Accessed 26 January 2026. https://bobwessels.nl/blog/2026-01-26-eu-restructuring-insolvency-what-awaits-us-in-2026/.
83. "Atena Finance Platform for Business Crisis Operations." Finance Atena. Accessed 4 April 2026. https://www.financeatena.it/en_EN/30673/platform-analysis-predictive-business-crisis-operations.
84. "Blog | EU's Working Agenda for Restructuring and Insolvency Revealed." Prof. Dr Bob Wessels. Accessed 3 April 2026. https://www.online-hero.nl/art/5274/eu-s-working-agenda-for-restructuring-and-insolvency-revealed.
85. "Four Types of Creditors in Insolvency." Inquesta. Accessed 23 March 2026. https://inquesta.co.uk/blog/four-types-of-creditors-in-insolvency/.
86. "Pradžia." Nemokumo vedlys. Accessed 23 March 2026. https://nemokumovedlys.lt/.
87. "Should parties have the right to appeal a restructuring plan?" Prof. Dr Bob Wessels. Accessed 7 April 2026. https://bobwessels.nl/blog/2023-08-doc1-should-parties-have-the-right-to-appeal-a-restructuring-plan/.
88. "Types of legislation." European Union. Accessed 25 March 2026. https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en.

Miscellaneous

89. "Competitiveness Compass – European Commission." European Commission. Accessed 3 April 2026. https://commission.europa.eu/topics/competitiveness/competitiveness-compass_en.
90. "Simplification – European Commission." European Commission. Accessed 3 April 2026. https://commission.europa.eu/law/law-making-process/better-regulation/simplification-and-implementation/simplification_en.

91. Audito, apskaitos, turto vertinimo ir nemokumo valdymo tarnyba. Nemokumo Procesų 2025 m. Apžvalga. Vilnius, 27 March 2026.
92. Cepec, Jaka. "Absolute priority rule dilemmas - case of Slovenia." Paper presented at INSOL Europe Academic Forum, Amsterdam, 11-12 October 2023.
93. Chen, L., and Liu, H., "Predicting Debt Restructuring Outcomes with Machine Learning." Paper Presented in 2023 IEEE International Conference on Finance and AI (ICFAI), 2023.
94. Commission Staff Working Document Impact Assessment Accompanying the Document Proposal for a Restructuring 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. Strasbourg: European Commission, 22 November 2016. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016SC0357.
95. Conway, Lorraine. "Insolvency Practitioners' Fees." House of Commons Library Briefing Paper CBP-7402 (2019). https://researchbriefings.files.parliament.uk/documents/CBP-7402/CBP-7402.pdf.
96. Díez, Federico J, Romain Duval, Jiayue Fan, Sebnem Kalemli-Özcan, Chiara Maggi, Soledad Martinez-Peria, and Nicola Pierri. Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies: Assessment and Policy Options. IMF Staff discussion note, 2021.
97. Dr. Gert-Jan Boon, and Prof. Reinout Vriesendorp. CERIL Report 2025-2 on Reviewing the European Insolvency Regulation 2015. CERIL, 2025. https://www.ceril.eu/news/reviewing-the-eir-2015.
98. Draghi, Mario. The Future of European Competitiveness Part B: In-Depth Analysis and Recommendations. European Commission, 2024.
99. European Commission, Proposal for a Restructuring Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law. Brussels: 7 December 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0702.
100. European Commission, Proposal for a Regulation of the European Parliament and of the Council on the 28th Regime Corporate Legal Framework – "EU Inc." Brusssels, 18 March 2026.
101. European Commission. Proposal for a Restructuring Directive on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedures COM(2016) 723 Final. Brussels: European Commission, 2016.

102. European Systemic Risk Board. Restructuring and Insolvency: Opportunities for Reform in Europe. LU: Publications Office, 2025. doi:10.2849/4271773.
103. Garrido, Jose, Chanda DeLong, Amira Rasekh, and Anjum Rosha. “Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Restructuring Directive.” IMF Working Papers 2021, 152 (2021): 1-53. doi:10.5089/9781513573595.001.
104. INSOL Europe. 2024 Statistics for Insolvency Proceedings in France. INSOL Europe, 2025. https://www.insol-europe.org/technical-content/national-insolvency-statistics-france.
105. Insolvency Service, A Review of Company Rescue and Business Reconstruction Mechanisms: Report by the Review Group (2000). https://www.yumpu.com/en/document/view/49028138/a-review-of-company-rescue-and-business-reconstruction-.
106. Jourová, Věra. Early Restructuring and a Second Chance for Entrepreneurs A Modern and Streamlined Approach to Business Insolvency. Brussels: European Commission, 2019. https://commission.europa.eu/system/files/2019-06/factsheet_-_a_modern_and_streamlined_approach_to_business_insolvency.pdf.
107. Lerner, Stephen D. “How does the EU Restructuring Restructuring Directive compare to Chapter 11?”, Restructuring Global View, 2019, accessed 20 April 2026, https://www.restructuring-globalview.com/2019/11/how-does-the-eu-restructuring-Restructuring%20Directive-compare-to-chapter-11/.
108. Liu, Yan, José Garrido, and Chanda DeLong. Private Debt Resolution Measures in the Wake of the Pandemic. Special Series on COVID-19. International Monetary Fund, 2020. https://www.imf.org/-/media/files/publications/covid19-special-notes/en-special-series-on-covid-19-private-debt-resolution-measures-in-the-wake-of-the-pandemic.pdf.
109. Luca Simonetti. *The EU Restructuring Directive 2019/1023: Implications for Member States.* PhD diss. Lancaster University. 2025.
110. M. Uttamchandani, S. Atkins and A.F. Martínez. “2021 World Bank & INSOL International’s Legislative & Regulatory Group: COVID-19 response and the challenges ahead.” World Bank Blogs, 2021.
111. Mehta, Jay Venkatesh. Conference Report of the Discussion at the CERIL 3rd International Conference on: Schuman 2.0: A New Horizon for European Restructuring and Insolvency Law. Netherlands: CERIL, 2025.

112. No Country for Young Firms?: Start-up Dynamics and National Policies. OECD Science, Technology and Industry Policy Papers. Vol. 29. OECD Science, Technology and Industry Policy Papers, 1 April 2016. doi:10.1787/5jm22p40c8mw-en.
113. Norton Rose Fulbright, "International Restructuring Newswire Q2 2021" (2021), Norton Rose Fulbright. Accessed 29 April 2026, https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/international-restructuring-newswire-q2-2026.pdf?revision=529dccfa-397b-498f-bff6-9e39d6f2ed0f&revision=5250818425357387904.
114. Parthie, Sandra, and Philip Von Brockdorff. Opinion – Enhancing the Convergence of Insolvency Proceedings: Proposal for a Restructuring Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law COM(2022)702 Final – 2022/0408 (COD). European Economic and Social Committee, 2023.
115. Radev, Emil. "Report on the Proposal for a Restructuring Directive of the European Parliament and of the Council Harmonising Certain Aspects of Insolvency Law, A10-0126/2025. European Parliament. Accessed 4 April 2026. https://www.europarl.europa.eu/doceo/document/A-10-2025-0126_EN.html.
116. Schulze, Paula Brock, Anastasis Katsinis, Gonzales Jaime Lagüera, Bella Laura Di, Ludger Odenthal, Markus Hell, Borut Lozar, and Casino Berta Secades. "Annual Report on European SMEs 2024/2025, SME Performance Review." JRC Publications Repository, 2025. doi:10.2760/7714438.
117. U.S. Department of Justice Executive Office for United States Trustees. Handbook for Small Business Chapter 11 Subchapter V Trustees (2020).
118. U.S. Trustee Program, Chapter 11 Subchapter V (U.S. Department of Justice, Washington, D.C., USA, 2024) https://www.justice.gov/ust/subchapter-v.
119. World Bank Group. Finance for an Equitable Recovery. World Development Report 2022. Washington, DC: World Bank, 2022.

ABSTRACT

The master thesis is dedicated to the procedural and substantive challenges legal entities face during the development and confirmation of a restructuring plan. It analyses the collective nature of restructuring proceedings, identifying competing interests of all stakeholders and the mechanisms through which these interests may be balanced. The thesis examines the development of the restructuring plan, particularly the requirements for its content, the stay of individual enforcement actions, and the specific difficulties encountered in cross-border proceedings, such as barriers to creditor participation and divergent national laws. It further highlights the disproportionate challenges MSEs face, including an excessively long preparation phase and insufficient resources to design a realistic, feasible plan.

The research further reveals core challenges which arise during the confirmation of the plan by judicial or administrative authority. It investigates the conditions under which a restructuring plan affecting dissenting parties may be approved, the application of the cross-class cram-down mechanism, the judicial assessment of the plan's viability, and the appeal of the confirmed plan. The research demonstrates that, while the Restructuring Directive provides a foundation for restructuring proceedings, significant gaps remain in harmonising provisions for cross-border restructuring proceedings and for proceedings concerning MSEs. The thesis concludes with targeted recommendations, proposing legislative reforms to enhance the effectiveness of restructuring proceedings.

Key words: *cross-border restructuring proceedings, cross-class cram-down mechanism, judicial confirmation, restructuring plan, stay of individual enforcement actions.*

SUMMARY

The master thesis titled "The Development and Confirmation of the Restructuring Plan of Legal Entities: Impact of EU Law and Problematic Aspects" is devoted to analysing the main challenges the enterprises face in completing restructuring proceedings successfully.

The first chapter examines the collective nature of the restructuring proceedings, highlighting that it affects a wide range of stakeholders with often conflicting and incompatible interests. The main challenge during the restructuring is to strike a proper balance between the adequate protection of stakeholders' interests and the effectiveness and expeditiousness of the proceedings. Restructuring proceedings are conducted under the plan, which establishes the mechanism by which the debtor will restore its business while balancing competing stakeholder interests. It establishes that the development and confirmation of the restructuring plan ensure the adoption of a legally sound and feasible plan, explaining the need for a clear and sound legal framework to govern these stages.

The second chapter analyses the stage of the development of the plan and identifies challenges for the debtor in developing it without external assistance. It holds that mandatory automatic short-term stays in individual enforcement actions prevent the destruction of the debtor's going-concern value. During the stay, the secured creditors lack adequate protection against deterioration in asset value. In cross-border restructuring proceedings, insufficient regulation of foreign creditors' participation and diverse national restructuring regimes undermine the effectiveness of restructuring. The Restructuring Directive should provide clearer, less discretionary provisions to better harmonise proceedings across the EU. For MSEs, mandatory involvement of an insolvency practitioner operating under a flat-fee or publicly funded model will be beneficial for developing a feasible plan within a short period.

The third chapter examines the confirmation of restructuring plans as a mechanism to ensure that dissenting creditors are protected and the plan complies with core safeguards. A judicial or administrative authority assessing whether to protect dissenting creditors determines whether they receive under the plan at least as much as they would in next-best-alternative scenarios. However, the Restructuring Directive lacks clear examples of the scenarios. The Restructuring Directive should also harmonise the choice of priority rules by establishing an absolute priority rule with limited exceptions as the default standard, guaranteeing greater predictability for affected parties. Confirmation of the plan should be mandatory not only in the cases set out in Article 10 of the Restructuring Directive, but also in cross-border restructuring cases. Finally, the right of appeal of a confirmed plan should be guaranteed, but limited to substantive procedural violations and exercised in a short, clearly defined period to balance efficiency with stakeholder protection.