



Council of the European Union
General Secretariat

**Interinstitutional files:
2016/0359(COD)**

Brussels, 22 November 2018

WK 14360/2018 INIT

LIMITE

**COMPET
ECOFIN
EJUSTICE
EMPL
JAI
JUSTCIV**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 13829/2018
Subject:	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 and amending Directive 2012/30/EU - Compromise proposals on Article 7-10 as preparation for the next inter-institutional meetings

Delegations will find in the Annex of this document compromise proposals on Articles 7-10 of the abovementioned proposal as preparation for the next inter-institutional meeting.

Delegations are informed that the Council and the European Parliament held a technical inter-institutional trilogue on the proposed Directive on Restructuring, Insolvency and Discharge of Debt on 19 November 2018. The Presidency will provide an oral debriefing of this technical trilogue during the meeting of the JHA Counsellors on Insolvency on 26 November.

During the technical trilogue, a lot of progress has been made in the discussions on Articles 7-10. As you will notice in the document below, the EP has agreed with the text of the Council general approach on a number of occasions. In other instances, the EP has not yet agreed but intends to discuss those points internally and will come back to the Presidency later.

As concerns the remaining paragraphs, the institutions have come up with a compromise proposal which is intended to take both positions into account properly. As agreed with the EP, the Presidency would like to discuss these compromise proposals with the delegations, with a view to be able to confirm them during the next trilogue which will take place on 27 November 2018.

The table below provides the latest compromise proposals as they were discussed during the technical meeting on 19 November 2018 in the right column, compared with the latest EP compromise proposal in the left column. The colour code in the table is as follows:

Cells in **yellow**: The Presidency and the EP have proposed a compromise text which still needs internal agreement. The parts proposed as a compromise have been underlined.

Cells in **green**: The Council and the EP have come to an agreement on the text.

Cells in **red**: The Presidency does not agree to the EP and will defend the General Approach. (Parts of the text in red cells marked in green indicates where the EP has already taken over the Council text).

*Delegations are invited to indicate whether they would have **strong** objections to some of the proposals in the right column of the table below, paying particular attention to the items marked in yellow. In case no feedback is given, the Presidency will consider that delegations can show flexibility in the spirit of compromise.*

	<i>Latest compromise proposals by the EP</i>	<i>Compromise Proposals as proposed by the Council during the technical meeting</i>
102	<p align="center"><i>Article 7</i></p> <p><i>Consequences of the stay of individual enforcement actions</i></p>	<p align="center"><i>Article 7</i></p> <p><i>Consequences of the stay of individual enforcement actions</i></p>
103	<p>1. Where the obligation of the debtor to file for insolvency under national law arises during the period of the stay of individual enforcement actions, that obligation shall be suspended for the duration of the stay.</p>	<p><i>(General Approach)</i></p> <p>1. Where the the a debtor's obligation of the debtor, provided for under national law, to file for the opening of an insolvency procedure under national law which can end in the liquidation of the debtor, arises during the period of the stay of individual enforcement actions, that obligation shall be suspended for the duration of the that stay.</p>
104	<p>2. A general stay of individual enforcement actions covering all creditors in accordance with Article 6 shall prevent suspend, for the duration of the stay, the opening of insolvency procedures at the request of one or more creditors.</p>	<p><i>(General Approach)</i></p> <p>2. A general stay of individual enforcement actions covering all creditors in accordance with Article 6 shall prevent suspend, for the duration of the stay, the opening of an insolvency procedure procedure which can end in the liquidation of the debtor at the request of one or more creditors.</p>
105	<p>3. Member States may derogate from paragraphs 1 and 2 where the debtor is becomes illiquid and therefore unable to pay its debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan or economically viable business transfer within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions.</p>	<p><i>(General Approach)</i></p> <p>3. Member States may derogate from paragraphs 1 and 2 where the debtor becomes illiquid and therefore is unable to pay his its debts as they fall due during the stay period. In that case, Member States shall ensure that restructuring procedures are not automatically terminated and that, upon examining the prospects for achieving an agreement on a successful restructuring plan within the period of the stay, a judicial or administrative authority may decide to defer the opening of insolvency procedure and keep in place the benefit of the stay of individual enforcement actions, if, taking into account the circumstances of the case, the opening of an insolvency procedure</p>

		<i>which can end in the liquidation of the debtor would not be in the general interest of the creditors.</i>
<p>Explanation:</p> <p>As regards Art. 7 (1) to (3), the EP indicated that it would check with the groups whether our text is acceptable for them.</p>		
106	<p>4. Member States shall ensure that, during the stay period, creditors to which the stay applies may not withhold performance or terminate, accelerate or in any other way modify essential executory contracts <i>which are necessary for the continuation of the day-to-day operation of the business, including any supplies where a suspension of deliveries would lead to the company's activities coming to a standstill</i>, to the detriment of the debtor for debts that came into existence prior to the stay <i>on condition that no severe financial difficulties for creditors are caused.</i></p>	<p>Deleted</p> <p><i>Idea moved to Paragraph 5a</i></p>
107	<p>5. Member States shall ensure that creditors may not withhold performance or terminate, accelerate or, in any other way, modify executory contracts to the detriment of the debtor by virtue of a contractual clause providing for such measures, solely by reason of the debtor's entry into restructuring negotiations,:</p> <p>(a) a request for an opening of a preventive restructuring procedure;</p> <p>(b) a requested request for a stay of individual enforcement actions;</p> <p>(c) the opening of a preventive restructuring procedure; or</p>	<p><i>(General Approach)</i></p> <p>5. Member States shall ensure that creditors may do not withhold performance or terminate, accelerate or, in any other way, modify executory contracts to the detriment of the debtor by virtue of a contractual clause providing for such measures, solely by reason of the debtor's entry into restructuring negotiations,:</p> <p>(a) a request for an opening of a preventive restructuring procedure;</p> <p>(b) a requested request for a stay of individual enforcement actions;</p> <p>(c) the opening of a preventive restructuring procedure; or</p>

	<p>(d) the ordering granting of a stay of individual enforcement actions as such or any similar event connected to the stay,</p> <p>unless they are affected by the stay and they can prove that they would suffer significant disadvantages from such an event.</p>	<p>(d) the ordering granting of a stay of individual enforcement actions as such or any similar event connected to the stay.</p>
--	--	---

Explanation:

The EP agreed to our text proposal. Concerning their last subparagraph, they indicated that they would wait with the decision to delete it for the final version of Art. 6 (8), as the possibility to lift the stay also covers cases of unfair prejudice and “significant disadvantages” or “severe financial difficulties” could be one of the examples of unfair prejudice.

108		<p>5a. Member States may shall ensure that, during the stay period provide for rules preventing or restricting creditors to which the stay applies may not withhold from withholding performance or terminate terminating, accelerate accelerating or, in any other way, modify modifying essential executory contracts <u>which are necessary for the continuation of the day-to-day operation of the business, including any supplies where a suspension would lead to the company's activities coming to a standstill,</u> to the detriment of the debtor for debts that came into existence prior to the stay <u>solely by reason that they were not paid by the debtor.</u></p> <p><u>Member States may provide that this paragraph also applies to other executory contracts.</u></p> <p>Member States may limit the application of this provision to This paragraph applies in particular in the case of essential contracts which are necessary for the continuation of the day to day operation of the business.</p>
-----	--	--

Explanation:

The EP agreed to the compromise proposal of the Council. As regards their proposal to include “on condition that no severe financial difficulties for creditors are caused”, reference is made to the explanation before.

109	<p><i>[5b. Member States may provide that the stay of individual enforcement actions shall not apply to netting arrangements, including close out netting arrangements, on financial markets, energy markets and commodity markets even in circumstances where Article 31 does not apply, if such arrangements are enforceable under national insolvency law. The stay shall, however, apply to the enforcement by a creditor of a claim against the debtor arising as a result of the operation of a netting arrangement.]</i></p> <p><i>(EP not against in principle but some more explanations, preferably in writing would be appreciated.)</i></p>	<p><i>5b. Member States may provide that the stay of individual enforcement actions shall not apply to netting arrangements, including close out netting arrangements, on financial markets, energy markets and commodity markets even in circumstances where Article 31 does not apply, if such arrangements are enforceable under national insolvency law. The stay shall, however, apply to the enforcement by a creditor of a claim against the debtor arising as a result of the operation of a netting arrangement.</i></p>
-----	--	--

Explanation:

The EP in principle is willing to accept this. However, they want to make sure that basic supplier contracts (e.g. concerning electricity) the debtor needs to run their business with are not covered by this paragraph. The COM proposed to come up with a drafting suggestion for this.

110	<p><i>Deleted</i></p>	<p><i>6. — Member States shall ensure that nothing prevents This Directive shall not prevent the debtor from paying in the ordinary course of business claims of or owed to unaffected creditors and the claims of affected creditors that arise after during the stay of individual enforcement actions is granted and which continue to arise throughout the period of the stay.</i></p>
-----	------------------------------	---

Explanation:

There are two possible interpretations for this provision: It could state the obvious that the stay does not free the debtor from their obligation to pay their debts to non-involved creditors or for debts that fall due during the stay. However, an a-contrario argument could suggest that

the debtor should not be obliged to pay debts which have already fallen due before the stay. The rationale for this would be that creditors whose claims could be subject to a cut under the restructuring plan should not be able to put pressure on the debtor as regards the payment of their debts and therefore, to force the debtor to pay or otherwise the creditor would not agree to the restructuring plan.

Even though the EP agreed that the last interpretation would be helpful for restructuring, it argued that the provision is not clear and it would be better to refer to such a possibility for Member States to include such as provision in a recital.

A recital (e.g. in recital 19) could reflect this idea: Member States could also provide for that the debtor should not be obliged to pay debts which have already fallen due before the stay, so that creditors whose claims could be subject to a cut under the restructuring plan should not be able to put pressure on the debtor as regards the payment of their debts with a view to the adoption of the restructuring plan.

111	<p>7. Member States shall not require debtors to file for insolvency procedures if the stay period expires without an agreement on a restructuring plan being reached, ensure that the expiry of the stay without the adoption of a restructuring plan does not, as such, give rise to the opening of an insolvency procedure which can end in the liquidation of the debtor, unless the other conditions for filing such opening laid down by national law are fulfilled.</p>	<p><i>(General Approach)</i></p> <p>7. Member States shall not require debtors to file for insolvency procedures if the stay period expires without an agreement on a restructuring plan being reached, ensure that the expiry of the stay without the adoption of a restructuring plan does not, as such, give rise to the opening of an insolvency procedure which can end in the liquidation of the debtor, unless the other conditions for filing such opening laid down by national law are fulfilled.</p>
112	<p>Chapter 3</p> <p>Restructuring plans</p>	<p>Chapter 3</p> <p>Restructuring plans</p>
113	<p><i>Article 8</i></p> <p><i>Content of restructuring plans</i></p>	<p><i>Article 8</i></p> <p><i>Content of restructuring plans</i></p>
114	<p>1. Member States shall require restructuring plans submitted for confirmation by a judicial or administrative authority to contain at least the following information:</p> <p>(The question of information to workers temporarily moved to line 134)</p>	<p><i>(General Approach)</i></p> <p>1. Member States shall require restructuring plans submitted for adoption in accordance with Article 9, or for confirmation by a judicial or administrative authority in accordance with Article 10, to contain at least the following information:</p>

115	(a) the identity of the debtor or the debtor's business for which the restructuring plan is proposed;	(a) the identity of the debtor or the debtor's business for which the restructuring plan is proposed;
116	(b) a valuation of the present value of the debtor or the debtor's business the assets and liabilities at the moment of submission of the restructuring plan, including the expected liquidation value of the assets, as well as a description of the economic situation of the debtor, the financial flows during the duration of the restructuring plan and the position of workers , as well as a reasoned statement on and a description of the causes and the extent of the financial difficulties of the debtor ;	(b) a valuation of the present value of the debtor or the debtor's business the assets and liabilities at the moment of submission of the restructuring plan, including a value of assets, as well as a description of the economic situation of the debtor and the position of workers , as well as a reasoned statement on and a description of the causes and the extent of the financial difficulties of the debtor ; Council: <i>The recitals will clarify that Member States are not obliged to require an expert opinion regarding the value of the assets.</i>

Explanation:

As regards our suggestion to include the value of the assets, the EP indicated that it would discuss this internally.

Concerning the suggestion to include the “financial flows”, the EP indicated that it was rather flexibel as concerns the meaning. The Co-legislators preliminary agreed that it should be up to national law to define what financial flows are. The Presidency therefore suggests to include a new point in point f stating: “financial flows in accordance with national law”.

117	(c) the identity of affected parties, whether named individually or described by reference to one or more categories of debt in accordance with national law , as well as their claims or interests covered by the restructuring plan;	(General approach) (c) the identity of affected parties, whether named individually or described by reference to one or more categories of debt in accordance with national law , as well as their claims or interests covered by the restructuring plan;
118	(d) where applicable , the classes into which the affected parties have been grouped, on the basis of objective criteria , for the purpose of adopting the restructuring plan , together with a rationale for doing so and information	(General approach) (d) where applicable , the classes into which the affected parties have been grouped for the purpose of adopting the restructuring plan , together with a rationale for doing so and information about the

	about the respective values of creditors and members claims and interests in each class;	respective values of creditors and members claims and interests in each class;
119	(e) where applicable , the identity of non-affected parties , whether named individually or described by reference to one or more categories of debt in accordance with national law, which are not affected by the restructuring plan , together with a statement description of the reasons why it is not proposed to not affect them;	(General approach) (e) where applicable , the identity of non-affected parties , whether named individually or described by reference to one or more categories of debt in accordance with national law, which are not affected by the restructuring plan , together with a statement description of the reasons why it is not proposed to not affect them;
120	(ea) the identity of the practitioner in the field of restructuring, where applicable ;	(ea) the identity of the practitioner in the field of restructuring, where applicable ;
121	(f) the terms of the restructuring plan , including, but not limited to in particular :	(General approach) (f) the terms of the restructuring plan , including, but not limited to in particular :
122	(i) any proposal by which debts are rescheduled or waived or converted into other forms of obligation proposed restructuring measures as referred to in [point (2) of Article 2(1)] ;	(General approach) (i) any proposal by which debts are rescheduled or waived or converted into other forms of obligation proposed restructuring measures as referred to in point (2) of Article 2(1) ;
123	(ii) its the proposed duration of such measures ;	(General approach) (ii) its the proposed duration of such measures, if applicable; and
124	(iia) any proposal for a stay of individual enforcement actions as part of the restructuring plan;	(General approach) Deleted.
<p>Explanation:</p> <p>The EP explained that it is important for them to keep row 124. The Council and the Commission pointed out that the place of this provision seems rather arbitrary. A preliminary compromise was to include it as an examples in the recitals.</p>		

Recital 31 will therefore clarify that a suspension of enforcement of claims should be understood as financial assistance and could therefore be new financing.

125	<i>(iib) the modalities of information and consultation of the workers' representatives in accordance with Union and national law;</i>	<i><u>(iib) the modalities of information and consultation of the workers' representatives in accordance with Union and national law;</u></i>
-----	--	---

Explanation:

As the suggested Articles 12a now provides the information and consultation of workers' representatives in accordance with Directive 2002/14/EC, it seems reasonable to include in the plan how this information and consultation was carried out, e.g. through a special meeting or written information and consultation.

126	<i>(iic) organisational aspects that touch upon consequences as regards employment such as dismissals, short-time work or similar;</i>	<i><u>(iic) overall consequences as regards employment such as dismissals, short-time work or similar;</u></i>
-----	--	--

Explanation:

The EP agreed that it would not make sense to refer to each and every terminated contract – as some MS have already pointed out during the last JHA Counsellors meeting. Therefore, the Presidency proposes to change the text into “overall consequences...”. The Presidency would also like to highlight that this does not mean that Member States have to allow such measures as part of the restructuring procedure. However, if national law provides for such possibilities, it seems reasonable to have those consequences listed in a general manner in the restructuring plan. E.g. if the debtor decides to cut their expenses by laying off staff, it seems quite reasonable to include this measure. Otherwise creditors voting on the plan would ask how the debtor plans to do that.

127	(iii) any new financing anticipated as part of the restructuring plan;	(iii) any new financing anticipated as part of the restructuring plan and the reasons why the new financing is necessary to implement that plan; and
128	(g) a opinion or reasoned statement of reasons by the person responsible for proposing the restructuring plan which explains why the restructuring plan has a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business, including the necessary pre-conditions for its success. Member States may provide for	(g) an a opinion or reasoned statement of reasons by the person responsible for proposing the restructuring plan which explains why the business is viable, how implementing the proposed plan is likely to result in the debtor avoiding restructuring plan has a reasonable prospect of preventing the insolvency and restore its long-term viability of the debtor

	<p><i>the opinion or reasoned statement to be validated by an external expert, such as the practitioner in the field of restructuring if such a practitioner was appointed.</i></p>	<p><i>and ensuring the viability of the business, and states any anticipated including the necessary pre-conditions for its success. Where the statement is made by the debtor, Member States may provide for the opinion or reasoned statement to be made or validated by an external expert, such as a or by the practitioner in the field of restructuring if such a practitioner was appointed.</i></p>
<p>Explanation:</p> <p>This suggested amendment clarifies that no new validation is necessary if the statement was already made by the external expert or practitioner.</p>		
129	(The proposal moved to line 134).	
130	<p>2. Member States shall make available online a comprehensive check-list for restructuring plans, adapted to the needs of SMEs. The check-list shall include practical guidelines on how the restructuring plan has to be drafted under national law.</p> <p><u>The check-list shall be made available in the official language or languages of the Member State. Member States shall endeavour to make the check-list available in other languages, in particular in languages used in international business.</u></p>	<p>2. Member States shall make available online a model comprehensive check-list for restructuring plans available online, adapted to the needs of SMEs. That model shall contain at least the information required under national law and shall provide general but practical information The check-list shall include practical guidelines on how the model is to be used the restructuring plan has to be drafted under national law.(...)</p> <p>The check-list shall be made available in the official language or languages of the Member State. Member States shall consider to make the check-list available in at least one other languages, in particular in languages used in international business. It shall be designed in such a way that it can be adapted to the needs and circumstances of every case.</p>
131	Deleted	<p>(General approach)</p> <p>Deleted</p>
132	EP proposal:	(General approach)

	<p>3a. Member States shall ensure that workers' rights, entitlements and claims are not affected by the restructuring plan subject to Article 6(3) of this Directive. Member States shall also ensure that restructuring plans have no impact on occupational pension funds or schemes.</p>	<p>Deleted.</p>
133	<p>Article 9</p> <p>Adoption of restructuring plans</p>	<p>Article 9</p> <p>Adoption of restructuring plans</p>
134	<p>-1 Member States shall ensure that, irrespective of who applies for the preventive restructuring procedure in accordance with Article 4, debtors have the right to submit restructuring plans for adoption by the affected parties.</p> <p>Member States may provide that creditors as well as practitioners in the field of restructuring are able to submit restructuring plans and that creditors are able to propose an alternative restructuring plan.</p> <p>Member States shall ensure that the restructuring plans are submitted to workers' representatives for information and consultation.</p> <p>(Possibly placed elsewhere in this Article)</p>	<p>01. Member States shall ensure that, irrespective of who applies for the preventive restructuring procedure in accordance with Article 4, debtors have the right to submit restructuring plans for adoption by the affected parties.</p> <p>Member States may also provide that and under which conditions creditors and practitioners in the field of restructuring have the right to submit restructuring plans.</p> <p>Where a Member State so decides, it shall define under national law the conditions under which creditors are able to propose a restructuring plan.</p>
<p>Explanation:</p> <p>The EP would agree to this combination of the two paragraphs. As this only constitutes a change in languages but not in substance the Presidency believes that this would be a good compromise.</p>		
135	<p>1. Member States shall ensure that any affected creditors have a right to vote on the adoption of a restructuring plan after having been duly informed about</p>	<p>1. Member States shall ensure that any affected creditors <i>parties</i> have a right to vote on the adoption of a restructuring plan. Member States may also grant such voting</p>

the procedure and its potential consequences (move to Article 8?). Member States may grant such voting rights <i>also</i> to affected equity holders, in accordance with Article 12(2). Creditors that are not affected by the restructuring plan shall not have a voting right concerning the adoption of that plan. (Clarification in recital that workers who are creditors have the right to vote under this article)	rights to affected equity holders, in accordance with Article 12(2). Parties that are not affected by the restructuring plan shall not have a voting right concerning the adoption of that plan.
--	---

Explanation:

COM suggested the following definition of "affected parties" in Article 2(3): creditors, including, **where applicable under national law, workers**, or classes of creditors and where applicable under national law, equity holders, whose claims or interests respectively are directly affected under a restructuring plan. The presidency does not believe that this would entail a change in substance, as the last part of the definition would also apply to workers (whose claims or interests are directly affected...) which means that similarly to what is already done by Article 1(3a) Member States may decide to include or exclude workers. The EP indicated that they would agree with this definition and they are willing to refer to "affected parties" throughout the text.

136	1a. Member States shall ensure that, where the plan includes measures leading to changes in the work organisation or in contractual relations, those shall be confirmed by workers in cases where national law and practices provide for such confirmation.	See Article 12a.
137	1a. Notwithstanding paragraph 1, Member States may exclude from the right to vote the following: (a) equity holders; (b) creditors whose claims rank below the claims of ordinary unsecured creditors in the normal ranking of liquidation priorities; or (c) any related party creditor that has a conflict of interest in relation to the debtor or the debtor's business with a conflict of interest under national law.	(General approach) 1a. Notwithstanding paragraph 1, Member States may exclude from the right to vote the following: (a) equity holders; (b) creditors whose claims rank below the claims of ordinary unsecured creditors in the normal ranking of liquidation priorities; or (c) any related party of the debtor or the debtor's business with a conflict of interest under national law.

138	<p>2. Member States shall ensure that creditors and equity holders are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with sufficient commonality of interest, in accordance with national law. As a minimum, creditors of secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. Member States shall may also provide that workers' are treated in a separate class of their own where they are affected by the plan.</p> <p>Member States may provide that debtors which are SMEs may opt to not apply separate classes.</p>	<p>2. Member States shall ensure that affected parties are treated in separate classes which reflect the class formation criteria. Classes shall be formed in such a way that each class comprises claims or interests with rights that are sufficiently similar to justify considering the members of the class a homogenous group with sufficient commonality of interest based on verifiable criteria, in accordance with national law. As a minimum, secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan.</p> <p>Member States shall also provide that workers' claims are treated in a separate class of their own in cases where they are affected by the plan.</p> <p>Member States may also provide that equity holders are treated in a separate class of their own in cases where they are affected by the plan.</p> <p>Member States may provide that debtors which are SMEs may opt to not treat affected parties, including workers, in separate classes.</p>
<p>Explanation:</p> <p>The EP was willing to drop Article 8(3a) if the Council could agree on a mandatory class for workers' claims. The presidency argued that in case of SMEs those SMEs should be able to decide to not apply the class formation in whole or to not apply it to certain groups of creditors, such as workers. Therefore, the mandatory class for workers' claims would only apply to large companies, unless SMEs opt to use the class formation. The presidency believes that as concerns large companies, the debtor would have to form a class with workers' claims anyway, as only this would reflect the commonality of interests properly. Therefore, it seems reasonable to agree to this compromise.</p>		
139	<p>3. Voting rights and the formation of classes shall be examined by the a judicial or administrative authority when a request is filed for confirmation of the restructuring plan is submitted. Member</p>	<p>3. Voting rights and the formation of classes shall be examined by a judicial or administrative authority when a request (...) for confirmation of the restructuring plan is</p>

	<i>States may provide for a judicial or administrative authority to examine and confirm the formation of classes at an earlier stage.</i>	<i>submitted. Member States may provide for a judicial or administrative authority to examine and confirm the voting rights and formation of classes at an earlier stage.</i>
140	4. A restructuring plan shall be deemed to be adopted by affected parties, provided that a majority in the amount of their claims or interests and a majority of creditors is obtained in each and every class. Member States shall lay down the required majorities for the adoption of a restructuring plan, which shall be in any case not higher than 75% in the amount of claims or interests in each class.	4. A restructuring plan shall be deemed to be adopted by affected parties, provided that a majority in the amount of their claims or interests is obtained in each and every class. Member States may, in addition, require that a majority in the number of affected parties is obtained in each class. Member States shall lay down the required majorities required for the adoption of a restructuring plan, which. Those majorities shall be in any case not be higher than 75% in the amount of claims or interests in each class or, where applicable, in the number of affected parties in each class.
141	5. Notwithstanding paragraphs 1 to 4, Member States may stipulate provide that a formal vote on the adoption of a restructuring plan takes the form of a consultation can be replaced by (...) an agreement of a with the requisite majority of affected parties in each class.	(General approach) 5. Notwithstanding paragraphs 1 to 4, Member States may stipulate provide that a formal vote on the adoption of a restructuring plan takes the form of a consultation can be replaced by (...) an agreement of a with the requisite majority of affected parties in each class.
142	Deleted.	(General approach) Deleted
143	<i>Article 10 Confirmation of restructuring plans</i>	<i>Article 10 Confirmation of restructuring plans</i>
144	1. Member States shall ensure that at least the following restructuring plans can become are binding on the parties only if they are confirmed by a judicial or administrative authority:	(General approach) 1. Member States shall ensure that at least the following restructuring plans can become are binding on the parties only if they are confirmed by a judicial or administrative authority:
145	(a) restructuring plans which affect the claims or interests of dissenting affected parties;	(General approach)

		(a) restructuring plans which affect the claims or interests of dissenting affected parties; and
146	(b) restructuring plans which provide for new financing; and	(b) restructuring plans which provide for new financing.
147	<i>(ba) restructuring plans which involve the loss of more than 25% of the workforce.</i>	<i>(ba) [without prejudice to Article 1 (3a),] restructuring plans which involve the loss of more than 25% of the workforce;</i>
148	2. Member States shall ensure that the conditions under which a restructuring plan can be confirmed by a judicial or administrative authority are clearly specified and include at least the following:	(General approach) 2. Member States shall ensure that the conditions under which a restructuring plan can be confirmed by a judicial or administrative authority are clearly specified and include at least the following:
149	(a) the restructuring plan has been adopted in accordance with Article 9 and has been notified to all known creditors and equity holders likely to be affected by it;	(General approach) (a) the restructuring plan has been adopted in accordance with Article 9 and has been notified to all known creditors likely to be affected by it;
150	<i>[Could Council please further clarify what they mean with (aa)]</i>	<i>(aa) creditors in the same voting class, or, where there is only one class in accordance with the second subparagraph of Article 9(2), creditors with sufficient commonality of interest in the same class are equally treated, proportionate to their claim;</i>
<p style="text-align: center;">Explanation:</p> <p>The COM proposed the new wording, as this would simplify the provision and make it reader-friendlier. As this does not constitute a change in substance, the Presidency believes that it is reasonable. The EP agrees with the principle of this provision.</p>		
151	<i>[dealt with in (a)]</i>	<i>(ab) the restructuring plan has been notified to all affected parties in accordance with national law <u>to all affected parties</u>;</i>

152	(b) where there are dissenting creditors , the restructuring plan complies with the best-interest-of-creditors test;	(General approach) (b) where there are dissenting creditors , the restructuring plan complies with the best-interest-of-creditors test;
153	(c) where applicable , any new financing is necessary to implement the restructuring plan and does not unfairly prejudice the interests of creditors.	(General approach) (c) where applicable , any new financing is necessary to implement the restructuring plan and does not unfairly prejudice the interests of creditors.
154	Compliance with point (b) of the first subparagraph shall be examined by a judicial or administrative authority only if challenged.	Compliance with point (aa) and (b) of the first subparagraph shall be examined by a judicial or administrative authority only if challenged.
<p>Explanation:</p> <p>During the technical Trilogue the COM questioned what the court should examine if a plan needs to be confirmed solely on the grounds that it involves the loss of 25% of the workforce. Points (a) and (ab) may still be of general interest and therefore a court may still need to examine them ex officio. Points (b) and (c) will not be a problem because they apply only where relevant (dissenting creditors and new financing respectively). Therefore, the only point which would need to be addressed would be (aa) containing the <i>pari passu</i> principle. There is no need to examine compliance with this principle of creditor protection if there are no dissenting creditors and no new financing. To solve this the COM and the Presidency suggest to stipulate in the last sentence in Para 2 that compliance with (aa) shall be examined only if challenged. Compliance with the <i>pari passu</i> principle would most likely not be challenged where there are no dissenting creditors.</p>		
155	3. Member States shall ensure that judicial or administrative authorities may refuse to confirm a restructuring plan where that plan does not have a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business.	(General approach) 3. Member States shall ensure that judicial or administrative authorities may are able to refuse to confirm a restructuring plan where that plan does would not have a reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business.
156	4. Member States shall ensure that where a judicial or administrative authority is required to confirm a restructuring plan in order for it to	(General approach) Deleted

	<p>become binding, a decision is taken without undue delay within a reasonable time and without undue delay after the request for confirmation has been filed and in any case no later than 30 days after the request is filed.</p> <p>[Condition for accepting Council position on Art. 6 (7a)]</p>	
--	--	--

