

Implementation Directive (EU) 2019/1023

	Directive EU 2019/1023	UK Restructuring Plan	Irish Rescue Process (Examinership)	Dutch Scheme (WHOA)	StaRUG Scheme (Germany)	French Scheme (France)	Spain Restructuring Plan	Italian Composition with creditors (Concordato Preventivo)	Luxembourg Scheme of composition with creditors (Concordat préventif de faillite)
Triggering element	Likelihood of insolvency	Impending financial difficulties	Unable to pay its debts or likely to be unable to pay its debts	Reasonable expectation of illiquidity (it should be reasonably likely that the debtor will not be able to continue paying its liabilities for a company to be eligible)	Impending illiquidity	Not in a state of insolvency or in a state of insolvency for less than 45 days (conciliation proceeding) Difficulties that the debtor is unable to overcome (safeguard proceeding). Following a continuous lasting 45 days or more state of insolvency (receivership proceeding)	Likelihood of insolvency, impending insolvency or insolvency (prior to judicial declaration)	Situation of crisis or insolvency	Debtor must be in good faith. Debtor must not be in a suspension of payments situation nor unable to obtain credit. Creditors representing ¾ of the outstanding debt must agree
Out-of-court process	No	No Two court decisions	No Min. Two court decisions	No One court decision	No One court decision	No One court decision	No One court decision	No One court decision	No Two court decisions
Initiation of proceeding	N/A	Court application by debtor, creditor or shareholder	Court application by debtor, creditor or shareholder	Notice to court by debtor, creditor, shareholder, or the debtor's works council requesting the court to appoint a "restructuring expert", who can propose a WHOA-plan on behalf of the debtor	Notice to court by debtor	Petition to court by debtor and for the receivership creditors or public prosecutor may petition the court	Notice to court by debtor	Court application by debtor	Court application by debtor
Debtor in possession	Yes	Yes Compulsory monitor for standalone moratorium	Yes Appointed Examiner does monitor and can apply to exercise powers of the directors	Yes Optional observer Compulsory restructuring expert with regards to third party initiation	Yes Optional restructuring nominee Compulsory restructuring nominee, with regards to moratorium, cross-class cram down etc.	Yes Depending on the proceeding, optional or compulsory judicial trustee and creditors representative	Yes Optional appointment of an expert in the field of restructuring	Yes Extraordinary transactions to be authorized by the court	Partially as the debtor will not be able to alienate, mortgage or commit himself without the authorisation of the delegated judge (juge-délégué)
Moratorium	Optional Collective or individual stay	Optional Collective stay, but various exceptions (e.g. financial contracts) 20 - 40 BD (extendable)	Automatic stay for maximum 1 year but the Examiner's report must be presented within the required 100/150 day period	Optional Collective or individual stay 4mths (extendable to 8 mths) COMI-shift protection	Optional Collective or individual stay 3-4mths (extendable to 8 mths) COMI-shift protection	Optional for conciliation, mandatory for safeguard and receivership Collective (safeguard and receivership) or individual (conciliation) stay 2 mths (extendable to 4mths) for the accelerated safeguard 12 mths for the safeguard Still 18 mths for the receivership	Optional Collective stay 3 mths (extendable other 3 mths)	Optional Collective or individual stay 4 mths (extendable to a maximum of 12 mths)	Temporary suspension of all subsequent enforcement measures
Ban on ipso-facto	Yes	Yes, but various exceptions (e.g. financial contracts)	Yes	Yes	Yes	Yes	Yes Some exceptions (certain financial contracts)	Yes	No

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Cram down within classes	Not higher than 75% in value or headcount	Yes, with 75% in value per class, no headcount	Yes, with 50% in number and value	Yes, with 2/3 in value per class, no headcount	Yes, with 75% in value per class, no headcount	Yes, with 2/3 in value per class, no headcount	Yes, 2/3 for unsecured creditors and 3/4 for secured creditors	Yes, with the majority of creditors included in the class or 2/3 of actually voting creditors	No
Cross-class cram down (i.e. possibility to impose a plan on dissenting creditors with a lower rank)	Yes, subject to best interest of creditor test, absolute or relative priority rule and at least one in the money class in favour	Yes, subject to no worse off test and at least one in the money class in favour	Yes, only one single class approval is required but such class must be "in-the-money" creditor i.e. that class of creditors would be in line to receive some payment in a liquidation scenario	Yes, subject to best interest of creditor test, (relaxed) absolute priority rule and at least one in the money class in favour	Yes, subject to best interest of creditor test, (relaxed) absolute priority rule and majority of the classes in favour	Yes, subject to best interest of creditor test, (relaxed) absolute priority rule and either (i) majority of the classes in favour (with a minimum of one class of secured creditors or with a rank ahead of the unsecured creditors) or (ii) at least one class in favour, with a rank ahead of unsecured creditors, and not being a class of equity holders	Yes, simple majority per class provided that one is secured or at least one in the money class	Yes, subject to best interest of creditors test, (relaxed) absolute priority rule and, at least, one in the money class in favour	No
Cram-up (i.e. possibility to impose a plan on dissenting upper-ranked creditors, even secured ones)	N/A	Yes	Yes	Subject to absolute priority rule	Subject to absolute priority rule	Yes, subject to the same conditions as cram-down	Subject to absolute priority rule	Subject to absolute priority rule	No
Super-priority DIP finance	N/A	No	No (but Examiner can certify DIP finance as expense of the examination subject to the Court approval)	No	No	Yes, if granted the New money privilege in conciliation proceeding if inflow of new money during the proceedings	Yes, 50% against the state under certain conditions	Yes, subject to Court's approval	No
Interim court orders	Optional	Yes, at covering hearing	Yes	Yes	Yes	No	Yes	Yes	No
Legal remedies	N/A	Yes	Yes	No	Yes	Yes	Yes	Yes	No
Basis for founding jurisdiction	N/A	Sufficient connection	Irish COMI or Irish registered company. Non-EU companies can be brought in as a related company if they have sufficient connection	Public (COMI), Private (sufficient connection)	Public (COMI), Private (Brussel Ia Regulation)	Registered office or COMI, or extension on limited grounds (fictitious legal personality, abnormal intercompany funding)	Registered office or COMI	COMI or establishment	COMI