



In this section of *eurofenix* we bring you short updates from our members including insolvency measures in response to the COVID-19 crisis in their jurisdictions. To contribute to a future edition, please contact: [paulnewson@insol-europe.org](mailto:paulnewson@insol-europe.org)

## Austria: New act on implementing the Directive



DAVID SEIDL  
Graf & Pitkowitz  
Rechtsanwälte GMBH  
Graz, Austria

**T**he Austrian Ministry of Justice has submitted its draft for the Implementation Act of the Directive on Restructuring and Insolvency to the Parliament (Restrukturierungsordnung – “ReO”) on 22 February 2021. The reactions of the professional public are mixed.

The draft foresees a (so-far locally unknown) judicial preventive restructuring procedure to help companies overcome a probable insolvency via a pre-packed restructuring plan.

This restructuring plan will have to provide restructuring measures (essentially fresh capital and/or a haircut) and a categorisation of creditors in certain classes that will be (or will not be) affected by the restructuring plan. The draft suggests five classes of creditors (secured, unsecured, bonds, SMEs and creditors of subordinate claims). Stay of execution and an automatic stay of essential contracts is accessible.

While the debtor remains in possession, if the court approves a stay of execution, a cross-class cram-down is required, or if the self-administration of the debtor leads to disadvantages for the creditors, the court has to appoint a restructuring office holder who shall supervise and support the management for the preparation and implementation of the plan. The office holder will prepare a report to the court and the affected

creditors with a detailed and qualified opinion on the proposed restructuring plan.

The affected creditors will vote on the restructuring plan. In each class, a 75% majority of the amounts of debts and a 50% majority of the headcount of the creditors will be necessary. If the plan is not accepted by all classes but by the majority, the court may rule a cram-down. If the conditions for the confirmation of the restructuring plan are fulfilled, the class of the refusing creditors are treated equally with the classes with the same ranking respectively better than subordinated classes and no class of creditors would receive more than its full claimed amount.

Public or confidential procedures shall be possible. The public procedure will be called “European Restructuring Procedure” and will fall within the scope of the Regulation (EU) 2015/848 on insolvency proceedings. All basic information, such as the company’s name, the competent court, the appointed office holder, the schedule of hearings and the cornerstones of the restructuring plan, as well as the votes and the court’s decisions will be made public on a website, administrated by the Ministry of Justice. The hearings will be accessible to creditors only. This procedure is to be completed within two, maximum three months.

A so-called simplified restructuring plan will also be available, which shall affect only the financial creditors. This procedure is designed as fully pre-packed and requires the consent of the majority of at least 75% of the creditor claims in each class.

After the draft’s publication on the website of the Austrian Parliament on 22 February 2021, an impressive number of 50 observations and opinions by numerous institutions and professionals were filed.

In these observations and opinions, one of the main concerns appears to be a rather low level of distinction from the already available reorganisation procedure, as well as the absence of more innovative restructuring tools such as debt-to-equity-swaps or semi-mandatory capital increases. This lack of more opportunities might render the Restructuring Act rather uninteresting for debtors, who might tend to utilise the tried-and-tested reorganisation plan, with a minimum quota of 20% (which requires a double positive vote of more than 50% of the creditors and of the total amount of the claims).

We share these concerns. It appears that the Austrian lawmaker might miss this unique chance for true innovations in court-approved procedures, by approving a mere minimum-implementation of the Directive. ■



*The Austrian lawgiver might miss this unique chance for true innovations in court-approved procedures*

