



INSOL Europe/LexisPSL Joint Project on EU Harmonisation Directive 2019/1023

Consolidated table

As at 18 May 2022

LexisPSL are working with INSOL Europe on a joint project to obtain articles from INSOL Europe's membership and Country Coordinators showing how EU Member States have implemented [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](#) (the EU Directive).

We look at how various EU Member States (plus the UK) have updated or amended their insolvency and restructuring laws to implement the EU Directive.

This table only provides a summary of some of the key features and you should read the full article for more information and always contact local lawyers in the relevant jurisdiction to check the current measures in force and the impact of any particular circumstances or nuances on your case.

Implementation timing

The EU Directive has been effective since 17 July 2019 (20 days after publication in the Official Journal on 26 June 2019) and had to be implemented by Member States by 17 July 2021 (within two years of it coming into force; see Practice Notes: [Harmonising insolvencies and restructurings across Europe](#) and [Harmonisation through the Restructuring and Second Chance Directive—implementation tracker table](#)).

However, Member States that encountered particular difficulties in implementing the EU Directive could (under Article 34.2) request an extension of a maximum period of one year (eg to 17 July 2022), provided they notified the EU Commission by 17 January 2021.

Consolidated table

17 questions were answered for each country and the table below summarises some of the key findings.

The final column gives links to the full article for each country which answers all 17 questions.

The table will be updated with more countries as more articles are received.

Country	What is/are the name of the proceeding(s) (Q1)	What are the entry criteria? (Q3)	What is the voting threshold for approval ? (Q8)	Can creditors be crammed down? (Q12)	Is the proceeding within Annex A of the EU Recast Regulation on Insolvency 2015/848? (Q 14)	Link to full article
Austria	<p>European restructuring proceedings (<i>Europäisches Restrukturierungsverfahren</i>)</p> <p>Regular restructuring proceedings</p> <p>Simplified restructuring proceedings</p>	<p>Requires likelihood of insolvency (<i>wahrscheinliche Insolvenz</i>).</p> <p>A debtor is considered likely insolvent if the debtor's viability would be threatened without restructuring, in particular in case of imminent illiquidity.</p> <p>Likelihood of insolvency is (rebuttably) assumed to be in place if the crisis indicators known from the Austrian Business Reorganization Act (<i>Unternehmensreorganisationsgesetz</i>) are met, i.e. the equity ratio (<i>Eigenmittelquote</i>)</p>	<p>If in every creditor class, (i) the simple majority in number and (ii) a majority of at least 75 % in value (both calculated based on the creditors present at the hearing) vote in favour of the plan.</p>	<p>Yes: if (i) the majority of classes including the secured creditors or the majority of the "in the money" classes voted in favour of the plan and (ii) dissenting creditor classes are not treated worse than same ranking and treated better than subordinated classes.</p>	<p>Yes: European restructuring proceedings</p> <p>No: regular proceedings and simplified proceedings</p> <p>Unclear: confidential restructuring proceedings</p>	<p>See News Analysis: INSOL Europe/LexisPSL joint project on the implementation analysis of the Directive (EU) 2019/1023 in the EU Member States—Austria</p> <p>Also available on the INSOL Europe website at: https://www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023</p>

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		is less than 8% and the notional debt repayment period (<i>fiktive Schuldentilgungsdauer</i>) is more than 15 years.				
Cyprus	Examinership	The debtor is unable to pay its debts or it must be likely that the debtor will be unable to pay its debts, the debtor must not have passed a resolution for its winding up and no order for liquidation has been made against it.	Approved by a majority of creditors, in terms of value of claims, in each class.	Yes if approved by the majority of the voting classes of affected parties, provided that at least one of those classes is a secured creditors class or is senior to the ordinary unsecured creditors class; or, failing that at least one of the voting classes of affected parties.	Yes it will be listed.	See News Analysis: INSOL Europe/LexisPSL joint project on the implementation analysis of the Directive (EU) 2019/1023 in the EU Member States—Cyprus Also available on the INSOL Europe website at: https://www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023
France	Updates to: safeguard (<i>sauvegarde</i>), accelerated safeguard (<i>sauvegarde accélérée</i>) and judicial reorga-	Safeguard proceedings: the existence of financial difficulties which may lead to the cessation of pay-	Two thirds of the amount of the claims.	Yes; if the majority of the classes have not voted in favour of it under certain conditions: the agreement of a ma-	Yes: Safeguard proceedings and accelerated safeguard opened after a conciliation.	See News Analysis: INSOL Europe/LexisPSL research on implementation of EU Directive 2019/1023—France

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	nisation (<i>redressement judiciaire</i>).	ments; the criterion has to be checked by the commercial court. Judicial reorganisation proceedings: two cumulative criteria, namely a state of cessation of payments and the possibility of recovery. The cessation of payments is defined by the insufficiency of available assets and reserves that would allow the debtor to meet the liabilities due.		majority of classes including at least one class of creditors holding securities or any other class having a higher rank than the unsecured creditors, or, failing that, by a class which would not be entitled to any payment in the event of a judicial liquidation.	No: Conciliation proceedings.	Also available on the INSOL Europe website at: https://www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023
Germany	Restructuring plan (under 'StaRUG')	Where a debtor faces a 'likelihood of insolvency', meaning the company: (a) is 'imminently illiquid' (<i>drohend zahlungsunfähig</i>) pursuant to Section 18 of the German Insolvency Code (<i>Insolvenzordnung</i>), i.e. it is more likely than not that the debtor will be unable to	Each class voting on the Restructuring Plan proposal must consent with a majority of at least 75 percent of the respective voting rights	Yes if: (a) the majority of classes vote in favour of the Restructuring Plan (in each case with the required majority); (b) members of the dissenting class can be expected to be in a position that is not worse than without the Restructuring Plan; and (c) members of the dissenting class	Yes: publicly heard StaRUG schemes (' <i>die öffentliche Restrukturierungssche</i> ') were included in Annex A of the EU Insolvency Regulation. (however, the option to have a case listed and heard in court publicly will only be available in Germany as of 17 July 2022, once the respective rules for publication	See News Analysis: INSOL Eu-rope/LexisPSL joint project on the implementation analysis of the Directive (EU) 2019/1023 in the EU Member States—Germany Also available on the INSOL Europe website at: https://www.insol-europe.org/technical-

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		pay its debts within the next 24 months; and (b) is not 'illiquid' or 'over-indebted' (ie failing either the insolvency cash-flow and/or balance-sheet test)		receive an adequate share in value created by the Restructuring Plan	have come into effect) No: Private StaRUG schemes	content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023
Hungary	Restructuring proceedings (' <i>szerkezetátalakítási eljárás</i> ') and public restructuring proceedings (' <i>nyilvános szerkezetátalakítási eljárás</i> ')	Likelihood of insolvency defined as: a situation in which there are reasonable grounds for believing that the debtor will be unable to meet their outstanding payment obligations when they fall due, without taking further measures.	(i) The support of a numerical majority of all the affected creditors with recognised or uncontested claims in each creditor class and (ii) a majority of the votes in proportion to the total number of votes that may be cast by the affected creditors in the creditor class.	No	Yes: ' <i>Nyilvános szerkezetátalakítási eljárás</i> ' (public restructuring proceedings) will be listed in Annex A No: ' <i>Szerkezetátalakítási eljárás</i> ' (i.e. non-public restructuring proceedings) will not be listed.	See News Analysis: INSOL Eu-rope/LexisPSL joint project on the implementation analysis of the Directive (EU) 2019/1023 in the EU Member States—Hungary Also available on the INSOL Europe website at: https://www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023
Lithuania	Restructuring proceedings under the Law on Insolvencies of Legal Persons (JANI)	Restructuring proceedings under JANI can be opened if all the following condi-	Creditors shall be deemed to have approved the draft restructuring plan if, in each group of	Yes, to an extent: 1) (Holdout) creditors can be crammed down 2) shareholders can	Yes: both restructuring and bankruptcy proceedings	Available on the INSOL Europe website at: https://www.insol-europe.org/technical-content/insol-

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		<p>tions are met: 1) the debtor is facing financial difficulties 2) the debtor is viable 3) the debtor is not being wound up by reason of bankruptcy.</p> <p>Financial difficulties of a legal person means that the legal person is insolvent or that there is a likelihood of insolvency.</p> <p>A legal person is insolvent if is unable to meet its financial obligations in a timely manner or if the legal person's liabilities exceed the value of its assets.</p> <p>A likelihood of insolvency exists if there is a realistic possibility that a legal entity will become insolvent within the next</p>	<p>creditors, creditors affected by the restructuring plan have approved the draft restructuring plan, whose claims amount in value to more than 1/2 of the total amount of the claims of creditors in that group approved by the court.</p>	<p>be crammed down with approved of the court if certain conditions are met, including a qualified voting majority 3) in addition, where the plan does not get the mandatory support in one of the two statutory groups. However, since JANI does not allow the formation of groups other than the two statutory groups, it is not possible to cram down particular creditors by forming specific groups for such creditors (eg suppliers, employees)</p>		<p>europelexispsl-research-on-implementation-of-the-eu-directive-20191023</p>

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		three months. Viability of a legal person is defined as the state in which the legal person carries on business activities that enable it to meet its future obligations.				
Portugal	Special Revitalisation Proceedings (<i>'Processo Especial de Revitalização'</i>)	Two prerequisites: pre-insolvency (ie imminent insolvency and economic difficulties) and ability to recover (a concept not defined by the law nor in the literature). Economic difficulties are defined as the situation where the debtor faces serious difficulties to fulfil their obligations. Imminent insolvency is not legally defined, but refers to the situation where the debtor anticipates that they will not be able to fulfil their obligations in the	In the first case, approval requires the approval in each class of more than two thirds and then, there are four possibilities: a) the approval of every class; b) the approval of the majority of classes, provided at least one is of secured creditors; c) if there is no class of secured creditors, the approval of the majority of classes, provided at least one is of unsubordinated creditors; or d) if there is a tie, the approval of at least one class	Yes; holdout creditors may be crammed down, either as a class or as individual creditors.	Yes	See News Analysis: INSOL Europe/LexisPSL joint project on the implementation analysis of the Directive (EU) 2019/1023 in the EU Member States—Portugal Also available on the INSOL Europe website at: https://www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023

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		near future (ie, when the debts become due).	<p>of unsubordinated creditors.</p> <p>In the latter case, there may be two possibilities: a) provided there is a voting quorum of one third of the total (recognised) claims which cast vote, the approval of more than two thirds of the claims which effectively cast vote and of more than 50% of the claims which effectively cast vote corresponding to unsubordinated claims; b) the approval of more than 50% of the total (recognised) claims which cast vote and of more than 50% of the claims which effectively cast vote corresponding to unsubordinated claims.</p>			
The Netherlands	<i>Wet Homologatie Onderhandse Akkoorden</i> (WHOA)	The debtor must, with reason, be faced with the pro-	Two thirds of the total claim value.	Yes	Yes: public restructuring procedure. WHOA procedure.	See News Analysis: INSOL Europe/LexisPSL research

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		spect of not being able to continue paying his debts; the importance of being able to meet current financial obligations (eg salary payments, gas, water, electricity and monthly rent) is emphasized.			No: private WHOA restructuring procedure.	on implementation of EU Directive 2019/1023—The Netherlands Also available on the INSOL Europe website at: https://www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023
The UK	Part 26A restructuring plan	Condition A: the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern, and Condition B: (a) a compromise or arrangement (arrangement includes a re-organisation of the company's share capital by the con-	75% in value of all those present and voting in each class must vote in favour of the plan.	Yes	No	See News Analysis: INSOL Europe/LexisPSL research on implementation of EU Directive 2019/1023—the UK Also available on the INSOL Europe website at: https://www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023

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		solidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods) is proposed between the company and (i) its creditors, or any class of them, or (ii) its members, or any class of them, and (b) the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties mentioned.				
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The questions

INSOL Europe and LexisPSL posed the following 17 questions (which largely track the requirements of the EU Directive) for each country:

- When did/will the new restructuring law come into force? What is/are the name of the new proceedings which comply with the EU Directive?
- Is court approval automatically required? Is court involvement possible during the course of the proceedings? (for eg to rule on short notice on conflicts regarding classes of creditors with voting rights, etc...)

- What are the entry criteria (ie must insolvency be proved)? Could you please define the entry criteria under your national legislation?
- Can foreign companies use the process?
- Does the debtor (ie company's management) remain in possession or is an insolvency practitioner (or any other professional, in that case could you please specify) automatically appointed?
- Is there any moratorium on claims to protect the debtor during the process? What is the minimum and maximum length of the stay?
- Are creditors placed into classes for voting purposes? How are 'affected creditors' defined under your legislation?
- What is the voting threshold to approve the restructuring?
- Can shareholders be bound?
- How are secured creditors treated?
- How are employees treated?
- Can certain (holdout) creditors be crammed down? Is the absolute priority rule applied?
- Can onerous contracts be disclaimed? Are there any restrictions on ipso facto clauses?
- Will the new procedure be listed in Annex A of the EU Recast Regulation on Insolvency 2015/848? If not, how will it be recognised in other countries?
- Are new money or other arrangements granted any protection/priority (eg DIP finance)?
- How long should the process take (roughly)?
- How much is the process likely to cost (roughly)?