Protection of Interim Financing for Distressed Companies

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The EU Restructuring Directive imposes EU Member States to ensure that, where there is a likelihood of insolvency, debtors have access to an effective preventive restructuring framework. Within this preventive restructuring framework, EU Member States may provide that grantors of interim financing are entitled to receive payment with priority in subsequent insolvency procedures.

Interim financing means financial assistance, provided by an existing of new creditor, to ensure the continuity of the business of the debtor during the restructuring negotiations. According to the European legislator, the success of a restructuring plan often depends of the availability of such interim finance. Therefore, the granting of interim financing should be encouraged.

After discussing the advantages and disadvantages of granting a priority right to interim finance, we will examine the US regime of debtor-in-possession (DIP) financing, which served as a source of inspiration for the European legislator. Next, we will investigate whether France, the Netherlands and Germany have already transposed the EU Restructuring Directive and whether they have granted (or are planning to grant) a priority right to interim financing. We will also briefly treat the United Kingdom, because of its important reform of insolvency law in 2020. Finally, we will formulate recommendations for EU Member States that still have to transpose the EU Restructuring Directive (especially for Belgium).