

PROTECTION OF INTERIM FINANCING FOR DISTRESSED COMPANIES

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SAS SECURES USD 700 MILLION IN DEBTOR-IN-POSSESSION FINANCING

SAS Group, 14 August 2022



Cineworld files Chapter 11 with \$1.94B DIP loan in hand; sees emergence in Q1 2023

Pitchbook, 7 September 2022



LATAM obtains US\$3.7 billion super-priority DIP financing

Latin Lawyer, 27 April 2022

Introduction: European Restructuring Directive

- Ensure access to a preventive restructuring framework
- Minimum harmonisation

Introduction: interim financing

= financing to ensure the continuity of the business of the debtor during the restructuring negotiations

Protection

- Clawback protection (mandatory)
- Priority right (optional)

Overview

1. Pros and cons
2. Comparative analysis
3. Recommendations for future transpositions
4. Conclusion

1. Pros and cons

PROS

Encourages investment in viable but distressed companies

- ↑ chances of success
- Signalling effect

CONS

Affects the rights of existing creditors

↓ availability of credit

2. Comparative analysis



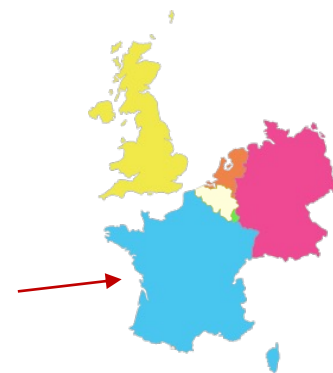
2. Comparative analysis

- § 364 Bankruptcy Code
- DIP financing
- 4 types
 - 1° - 2°: administrative expense
 - 3°: 3 variants
 - 4°: senior or equal lien



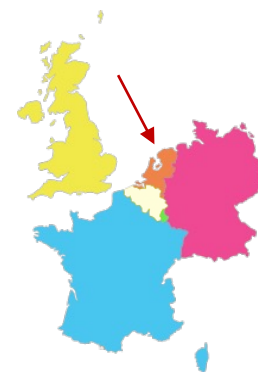
2. Comparative analysis

- Ordonnance n°2021-1193 of 15 september 2021
- Article L622-17, II and III Code de Commerce
- *Post-money privilège*
- Priority, no superpriority



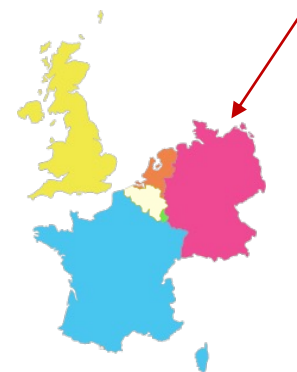
2. Comparative analysis

- WHOA
- Legislative proposal of 21 February 2022
- No priority



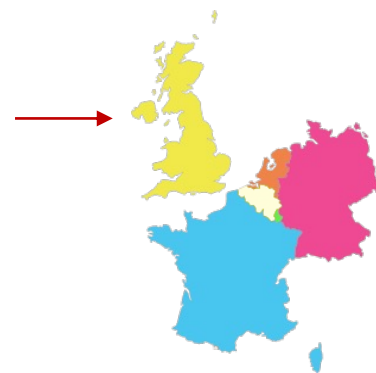
2. Comparative analysis

- StaRUG
- No priority



2. Comparative analysis

- Corporate Insolvency and Governance Act 2020
- No support, no priority



3. Recommendations future transpositions

- Deadline 17 July 2021 (2022)
- E.g. Belgium
- *De lege lata*
- Costs and expenses incurred in the insolvency proceedings

3. Recommendations future transpositions

- *De lege ferenda*
- Priority, no superpriority
- Priority over other claims arising from the execution of contracts during the restructuring negotiations

4. Conclusion

- Divergent transpositions
- No priority over existing security rights
- No superpriority
- France ✓
- Netherlands, Germany, UK ✗
- Priority, no superpriority 💡

Thank you!

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