Comparative guide to the law transposing the "Preventive Restructuring and Insolvency" Directive of 20 June 2019

Belgium, France, Germany, Italy, Netherlands, Spain[1]

Contents

[1] The countries are listed in alphabetical order in English.

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A. Presentation

The aim of this comparative guide to the laws transposing the European Directive on the prevention of insolvency and insolvency law is to present the orientations and rules adopted by the Member States that took part in the training organised under European project EU-CIP2, on the transposition of European Directive 2019/1023 of 20 June 2019 on preventive restructuring frameworks and insolvency procedures.

The essential reforms prescribed by this Directive concern several aspects:

- Insolvency prevention mechanisms and procedures;
- Formation of classes of affected parties and adoption of restructuring plans;
- Voting on restructuring plans by creditors and equity holders;
- Confirmation of restructuring plans by judicial authorities;
- Discharge of debt measures allowing insolvent individual entrepreneurs to recover.

The Member States are obliged to transpose these innovations into their respective laws although they retain a margin of appreciation and the possibility of introducing derogations.

The idea here is to provide judges and insolvency practitioners with a comparative insight into the texts implementing this Directive.

Summary of the answers

Comparative guide

Directive (EU) 2019/1023 of 20 June 2019 requires Member States to introduce new rules into their national law to harmonise the procedures applicable to distressed companies. The training session provided by the associated organisations for European judges and practitioners in charge insolvency proceedings has focused on the main innovations in the Directive: preventive restructuring procedures, the forming of classes of affected parties, voting on the adoption of restructuring plans and discharges of debt for individual entrepreneurs.

To provide the judges and practitioners in charge of insolvency proceedings with comprehensive information, this guide has been drawn up based on information provided by several experts on the national laws of the Member States represented on this training course. It includes a general introduction summarising the new rules and the experts' responses detailing the legislative solutions adopted by each of the Member States.

I. Preventive procedures (Dir., Art. 4 et seq.)

Contrary to what one might suppose, the Member States did not wait for the 2019 Directive to adopt rules that allow companies in distress to seek the bases of an amicable agreement with their creditors.

1. Pre-existing mechanisms

There were amicable, non-judicial procedures such as the conciliation procedure (which inspired the European legislator in drawing up the Directive), the amicable agreement or refinancing agreements, entered into on the margins of the legal proceedings. When an approval became necessary, cases moved into a judicial phase and were the subject of a publication. Approval made the agreement enforceable on everyone (France, Italy, Spain) or protected the settlement against the effects of the suspect period (Belgium).

As for Dutch law, it only allowed for the suspension of payments, which was a public judicial procedure, enforceable only on the unsecured creditors, but the debtor could nevertheless offer their creditors an amicable agreement and ask the court to suspend proceedings for this purpose.

German law, on the other hand, was averse to the idea of allowing debtors to renegotiate their debts without court intervention. The only possibility common to all distressed companies offered to a company under threat of imminent insolvency was to benefit from judicial insolvency proceedings. There was also a three-month phase of temporary protection against on enforcement actions brought by individual creditors, but it was necessarily followed by insolvency proceedings.

Unsurprisingly it was observed that the different national laws already linked the amicable and non-public nature of the mechanisms and preventive procedures to the principle of confidentiality.

2. Introduction of new mechanisms

The adoption of the Directive on preventive restructuring frameworks was followed by legislative reforms in most of the laws analysed.

This took the form of negotiated agreements where the debtor is in-possession but assisted by an expert (Italy). A stay of proceedings can then be ordered by the judge and the process followed by approval by a judicial authority (Dir., Art. 5).

Other countries have introduced procedures that substantially comply with the requirements of the European Directive, such as the court approval of written agreements procedure *(Wet Homologatie Onderhands Akkoord)*, known as the WHOA (Netherlands): a stay of individual actions ordered by the court, along with the appointment of an expert (Netherlands) to look after the creditors' interests. What is remarkable in the Dutch law as in the reformed German law, and the Belgian law, is that the legislator leaves to the debtor the responsibility of choosing between public proceedings and non-public proceedings, the same rules applying in both cases (or which are, as in Belgian law, substantially similar). Preventive mechanisms compliant with the Directive have also been introduced in Germany by the Act on the Stabilisation and Restructuring Framework for Businesses *(Unternehmensstabilisierungs- und -restrukturierungsgesetz*, known as the StaRUG). Preventive mechanisms inspired by the Directive but which are not intended to be fully compliant with the Directive have been maintained or created in Belgian law (conciliation, amicable agreements outside judicial

reorganisation, judicial reorganisation by way of amicable agreement or collective agreement for small and medium-sized enterprises).

The role of the court also depends, sometimes, on the initiatives of the parties alone. This can be the case, for example, of the appointment of an expert, challenges to the plan, measures involving an interim stay of the enforcement actions and the confirmation of a plan (Netherlands and Belgium).

The stay of enforcement actions is not automatic, but may be requested by the debtor (Dir., Art. 6). The court may appoint a restructuring practitioner if it seems necessary to do so and if it is requested. A general stay of enforcement actions can only result from the opening of judicial reorganisation proceedings procedure, certain creditors (specific pledge, actions by subcontractors) being partially exempted in some cases (Belgium).

The reforms introduced following the European Directive generally make a distinction between the preventive procedure (confidential) and the approval phase (public). In connection with a preventive procedure, the stay of enforcement actions is granted as of right for a renewable period of three months (sometimes four months as in Belgium) and may or may not concern creditors that hold security charges except at the express request of the debtor. On the other hand, as part of restructuring proceedings, a stay of enforcement actions must be requested for a period limited to three months (Spain).

The sale of the company may sometimes be authorised, as part of a negotiated settlement process (in Belgium in a collective agreement, Netherlands). It may also be prepared during preventive proceedings, before being implemented in later insolvency proceedings subject to legal publicity (Belgium, France).

Where a confidential procedure and a similar procedure subject to publicity are introduced, only the public proceedings will benefit from automatic recognition in other Member States, under the rules of the European Regulation of 20 May 2015 (Netherlands, Belgium).

Unlike in French law, the public prosecutor is generally not informed of the status of preventive proceedings and plays no role in such proceedings. In Belgium, they will be kept informed at every stage of preventive and reorganisation procedures except in so-called private proceedings (*besloten reorganisatie*). However, they do sometimes have the ability to intervene, if there are signs of insolvency in legal proceedings that are already ongoing: thus, in Spain, the prosecutor must then inform the creditors or take legal action if it seems that insolvency proceedings are "*culpable*".

Finally, prevention proceedings do not affect the rights of employees, whose situation generally remains unchanged and subject to the rules of ordinary law; they are not concerned by a termination of contracts or by the stay of enforcement actions.

II. Classes of affected parties

The forming of the classes of affected parties is a major innovation brought about by the European Directive of 20 June 2019 (Dir., Art. 9). This division of creditors into classes only existed in a similar form in the national laws studied in Dutch law and in a slightly different form in the German Insolvency Code: Germany had introduced this mechanism under the name of creditor groups, inspired by American and English law. Sometimes, the national law did provide for categories of creditors (Belgium).

Under this reform the creditors and equity holders are divided into separate classes with a view to voting on a restructuring plan proposed by the directors of the company to facilitate its adoption. The reform introduced by the Directive constitutes a significant change in the classification of creditors, which until now were divided between creditors holding a security charge and unsecured creditors. The decisive criterion is the nature of the claim and not the capacity of its holder. The class formation required by the Directive, when associated with the new principles of absolute priority, cross-class cram-downs and best interests of creditors, allows a plan to be rendered enforceable upon the creditors who have not adopted it, on the equity holders and even the directors in the event of debt restructuring and/or a reorganisation of the company, including the capital. It is also about overcoming a negative vote by the equity holders whilst ensuring the rights of dissenting minority creditors are protected.

The scope of the reform varies from State to State. Italy applies these new rules to all enterprises except for very small commercial entities, on the basis of relatively low thresholds (assets of less than €300,000, income of less than €200,000 and debts of less than €500,000). In the Netherlands, no distinction is made based on the size of companies. Likewise, German law does not contain any distinctions in this respect, depending on the size of the company. France, on the contrary, reserves the classes of affected parties mechanism for the largest companies (over 250 employees and a turnover over €20 million or a turnover over €40 million, or in the case of company controlling a group reaching one of these thresholds, or below them at the directors' request). Finally, German law allows SMEs to be exempted from forming the classes, a possibility for which the Directive provides. In the different laws, what characterises the classes of affected parties is their formation on the basis of the existence of a homogeneous economic interest as provided for by the Directive and the impact of the draft plan on their rights. Belgian law reserves the obligation to use the classes of affected parties mechanism for companies with a turnover over €40 million excluding VAT or €20 million on the balance sheet and 250 employees, but can also apply it, as in France, at the debtor's request. It will be noted that in this respect, Spanish law has provided for a special, simpler procedure for micro-enterprises, i.e. those with fewer than 10 employees, a turnover of less than €700,000 and liabilities of less than €350,000.

Similarly, employees are not considered as affected parties as their rights are normally safeguarded anyway (Dir., Art. 13) except in Belgium where claims dating from before the opening of the proceedings can be spread.

It is generally up to the debtor to form the classes based on these criteria. Sometimes it falls to the restructuring expert ion as is the case in the Netherlands.

The judicial authority exercises control over the forming of the classes, sometimes only when approving the plan (as is the case in Italy). The distinction based on the holding of a security guarantee or a lien remains a criterion in the classification of the creditors. The formal classification inspired by the rank (in national law) of security guarantees and liens is qualified

in some States by a more economic approach inspired by the concrete effect of the security: a pledge, retention of title, a security trust will thus be considered as having an identical effect when forming the classes.

After the vote, the approval of the plan renders it binding on the creditors and equity holders (Dir., Art. 10).

If the shareholders and other equity holders constitute a separate class of affected parties, their rank may vary in the settlement of the debts, as shareholders are placed in a subordinate class.

The majority required to approve a restructuring plan by the national laws is generally a simple majority, whilst the arrangements for the voting and the adoption of the plan following the votes vary according to the laws: they are sometimes specified in Belgium (50% in amounts) and in France and sometimes left to the appreciation of the debtor or the restructuring expert, as in Spain and the Netherlands.

III. Voting on the adoption of plans by the classes of affected parties

The laws of the Member States examined all apply the absolute priority rule for the approval of the plan. Sometimes, the legislator, as in Belgium, has made use of the exception (Dir., Art 11.2 2nd paragraph) to alter the absolute priority rule. Unaltered absolute priority is the principle by which one class cannot have its claims satisfied as long as another higher ranking one has not. But several of the laws allow derogations from this principle, a possibility for which the Directive provides, when the success of the restructuring plan justifies it (Dir., Art. 11). It can be seen that Italy applies the absolute priority rule in a distinct way to appreciate the company's liquidation value, but applies the relative priority rule to appreciate its going-concern value. In Belgium, the alteration of the rule reserves a share in the "reorganisation value" for the creditors without imposing immediate payment.

As for the best interests of creditors test, also required by the 2019 Directive, the national laws transpose the principle by comparing the situation of the dissenting creditors impaired by a plan to the situation they would be in in the event of liquidation proceedings.

This test may impose a valuation of the company, so that the court can make an informed ruling. All the laws provide the possibility of appealing against the valuation used by the court, but some opt for a re-examination of the value used in the plan approval process (France, Netherlands), while others defer such a re-valuation to the approval phase (Spain, Belgium).

The approval phase of a restructuring plan by the courts appears to comply everywhere with the rules on the examination of the draft plan laid down by the European Directive (Dir., Art. 10): this concerns both compliance with the rules on the form, that is to say the forming of the classes, the majority conditions and the voting arrangements and compliance on the rules of substance, such as the absolute priority rule and the best interests of creditors test (Netherlands, Germany).

IV. Discharge of debts

The possibility of granting an insolvent debtor a discharge of their unpaid debts has existed in the law of many of the European States since the end of the 20th century, under the influence of the American Bankruptcy Code and English law. The 2019 Directive has made this measure a general rule obligatory for all the Member States (Dir., Art. 20). According to the laws studied, the measure applies to all natural persons who are insolvent and in good faith, whether or not they have a professional activity, the only exception being Italy, where legal persons also benefit from the measure. The measure is refused to certain debtors whose bad faith is established, or according to the debts or their behaviour: personal debts, the insolvent debtor's maintenance debts and those resulting from an obligation to compensate for damage linked to the death or bodily harm of a person caused by their fault (Belgium), debts arising from deliberate wrongful acts (Belgium), debts arising from student loans as in American law (Netherlands), wage debts and debts owed to public organisations (Spain), debts resulting from a criminal punishment, fraudulent bankruptcy or misappropriation of assets (Italy). In addition, certain laws exclude the measure when the debtor has already benefited from a similar procedure (France, Italy). The discharge of debt occurs either after a period of three years, as provided for by the Directive (Dir., Art. 21), or when the insolvency proceedings are closed or after whichever of these periods is the shortest (if the liquidation takes more than three years)

It should be added that this measure is sometimes automatic (France, Belgium) although a possibility is reserved for creditors to contest it (France, Belgium), but most often it is granted by the courts (Italy, Germany, Netherlands).

Generally speaking, it does not benefit the debtor's guarantors (France, Spain, Netherlands), since it is a concession granted only to the debtor.

Finally it can be seen that certain laws are more severe and subordinate the discharge of debt to specific obligations such as the payment of a contribution to the creditors (Germany, Netherlands) or looking for employment (Netherlands). They also sometimes require the selling off of all assets that have an economic value and can be seized (France, Belgium, Netherlands).

All the States whose laws were analysed endeavour to establish a balance between the protection of the insolvent debtor in good faith and the rights of their impaired creditors. Rather than harmonised rules, this measure, as it is transcribed in the laws of the European States (both before and after the transposition of the Directive), can be qualified as a waiver of the need to honour commitments made, subject to conditions that vary according to the legal and philosophical conceptions of the indebtedness of natural persons.

There are other important provisions in the Directive of 20 June 2019 which have not been dealt with here, as they are outside the scope of the training proposed for European judges and practitioners: the duties of directors where there is a likelihood of insolvency (Dir., Art. 19), the early warning tools (Dir., Art. 3), the specialisation of courts (Dir., Art. 25) or data collection (Dir., Art. 29). The information provided by the national experts contains, for the laws of certain Member States, some detail on these different aspects.

B. Answers given by the national experts

1. Prevention mechanisms and procedures

1. Reference texts in the European Directive: Articles 4 and 5.
2. Questions

I.2-1. Were there already preventive procedures or measures in place before transposition?

Belgium

The law provided for a procedure to detect companies in difficulties (economic policing), a framework for amicable out-of-court agreements (at least two creditors) with a possibility of approval by the president of the court, business mediator to help with restructuring. The law before transposition allowed for provisional measures in some cases through an administrator (*mandataire*).

The law provided, as a legal framework: a single procedure known as public judicial reorganisation ("PRJ"), which allowed for either the seeking of an amicable agreement with certain creditors or the obtaining a collective agreement with all the creditors, or selling off all or part of the business under the court's authority.

France

Yes. The conciliation procedure (Comm. Code, Art. L 611–4) and the ad hoc procedure (Comm. Code, Art. L 611–3).

The Directive was transposed by Order no. 2021–1193 of 15 September 2021

Germany

Italy

Yes.

1. The certified plan (*piano attestato*) took place outside the courts. There was no approval of the plan. But the plan was accompanied by the certification of an expert who would declare that the plan was workable and that it could resolve the crisis or insolvency situation. In this case, if the general rules of good faith had been respected, the payments made under the plan could not be the subject of actions to revoke them in the event of a compulsory liquidation and the entrepreneur could not be held liable for the offence of bankruptcy.

2. The restructuring agreement (*accordi di ristrutturazione*) was a non-judicial procedure (out of court) in a phase of negotiation with the creditors, followed by approval by the civil court. Agreements with creditors were based on a plan and could provide for different conditions as long as 60% of the creditors agreed (according to the value of their claims). Creditors who

did not accept the plan had to have their claims paid in full within 120 days of the approval of the plan. The plan had to be certified by an expert, in particular with regard to its feasibility. The plan had to be approved by the Court of First Instance (in Italy, there are no commercial courts, but large courts do have specialised divisions). It was possible to obtain a temporary stay of enforcement measures from the court.

3. Moratorium agreement: an agreement with a part of the creditors simply with the aim of gaining more time to pay or stopping individual enforcement actions. The agreement may be extended to the minority of creditors who do not approve it.

4. The pre-bankruptcy composition (*concordato preventivo*), which could be implemented in two different ways.

4.1 A composition with continuation of the company (*concordato in continuità*), reserved for situations where it was possible for the debtor to continue operating their business or sell the company to a third party.

4.2 The liquidation composition (*concordato liquidatorio*) to wind up the business. This type of pre-bankruptcy composition was limited to situations where the creditors were to receive at least 20% of their claims. The liquidation pre-bankruptcy composition did not provide for the restructuring of the company and was not concerned by the transposition of the Directive.

Netherlands

Spain

Law 22/2003 of 9 July (known as the *"Ley Concursal*", LC), which came into force on 1 September 2004, had been reformed by Royal Decree-Law no. 3/2009 of 27 March 2009, to allow debtors to present an early draft plan to the court, containing a prior agreement which was then subject to the approval of the insolvency judge (*juez del concurso)*. But it was Law 38/2011 of 10 October 2011 which brought in an important change in non-judicial preventive procedures, concerning "debt refinancing and restructuring agreements", and out-of-court payment agreements with the creditors (*acuerdo extrajudicial de pagos*).

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I.2-2. Give a brief description of the essential features of the existing procedures (collective or semi-collective, public or confidential, automatic ending of enforcement actions, divestment, objectives of the procedures, discharge of debt)?

Belgium

Approved amicable agreements protected against any avoidance actions, which allowed payments, commitments to pay, payment spreading agreements, allowances, guarantees, carve-outs, compensation arrangements, etc. to be "covered". This was a confidential, semi-collective procedure without stays of enforcement actions and without divestment.

The PRJ was collective, public, with stays of enforcement actions and, normally, without dispossession.

France

The conciliation procedure is a confidential, semi-collective procedure: it is limited to the main creditors of the debtor, who determines the creditors involved themself. A stay of individual enforcement proceedings may be ordered at the debtor's request for certain claims and for a limited period of time. The aim of the procedure is to sign an amicable agreement with the main creditors. The negotiations are conducted by a conciliator appointed by the president of the court with jurisdiction..

The ad hoc procedure is an assistance mission entrusted to a professional appointed at the debtor for an unlimited mission, without divestment of the debtor.

Germany

Italy

1) Certified plan: confidential, no automatic halting of enforcement proceedings, no divestment, restructuring of the company with a view to achieving a situation of financial equilibrium, discharge of debts only on the basis of negotiations.

2) Restructuring agreements: semi-collective, confidential in the first phase and public when they go before the court for approval, halting of enforcement proceedings on application, no divestment, restructuring with a view to achieving financial equilibrium, discharge of debts by at least 60% of the creditors who have accepted the plan.

3) Moratorium agreement: semi-collective, confidential in the first phase and public before the court in the event of objections, no automatic halting of enforcement proceedings, no divestment.

4) Composition with creditors: collective, public, automatic stay of enforcement proceedings for the entire duration of the proceedings until approval, divestment of debtor for extraordinary administrative acts and monitoring by a receiver (*commissario giudiziale*) appointed by the court, restructuring in a continuity pre-bankruptcy composition or liquidation and discharge of the debts.

Netherlands

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I.2-3. What innovations have been introduced as a result of transposition?

Belgium

The law of 25 May 2023 includes the class system, but it remains optional for SMEs (small and medium-sized enterprises: they can exercise an opt-in right in the initial application).

The existing laws which concern both procedures without judicial reorganisation and those that do take place within a judicial framework, have been reworked: the amicable agreement outside judicial reorganisation can apply with a single creditor, approval cannot be granted if the debtor is manifestly not viable and if the agreement is excessively prejudicial to the rights

of the third parties in the debtor's assets (return to the appreciation of the judge, who was restricted by the old rules). The status of the business mediator is clarified (this position disappears as such and their role is entrusted to the reorganisation practitioner). It is now possible to organise conciliation proceedings before the Business Court's chamber for companies in economic difficulties (*chambre des entreprises en difficulté*) at the debtor's request with the creditors that it specifies (including the public creditors). The judicial reorganisation procedure available to small and medium-sized enterprises is retained but modified to bring it closer to the system required by the Directive. Business transfer is no longer a method of judicial reorganisation as such, but it is a procedure *sui generis* that leads to the liquidation of the legal person debtor. A "pre-pack bankruptcy" procedure has also been set up. The discharge of debt is automatic and occurs at the latest 3 years after the composition of the liabilities becomes known.

France

The Order of 15 September 2021 allows a time limit of up to two years to be imposed on creditors who do not waive their claim. Payments can be also spread by the judge within the limit of the term of the conciliator's mission.

Germany

Italy

1. The negotiated settlement process, which is new, is a process of negotiation before the Chamber of Commerce with the help of an expert, who checks whether the conditions are met for a recovery and may, where appropriate, lead the negotiations with the creditors. The entrepreneur may ask the court to take interim measures, in particular a stay of enforcement proceedings. They may also ask for permission to obtain financing, guaranteed by a priority in any proceedings that may follow, and to sell the business without the buyer being obliged to pay the earlier debts (excluding wage claims).

2. As soon as the negotiated settlement process is concluded, the entrepreneur is authorised to ask the court to approve a simplified liquidation pre-bankruptcy composition, in which the creditors do not vote, if no other solutions are possible.

3. Certified plan. Better regulated. There are no substantial changes.

4. Restructuring agreements: provision is made for three types of agreement. The most important ones are extended effectiveness restructuring agreements: agreements entered into with one category of creditors, who have claims that are similar in their legal nature and the economic interests involved, can become binding for any creditor belonging to the same category, if there is a 75% majority and if the creditors were able to participate in the initial negotiations. Must be approved by the Court.

5. Moratorium agreement: agreement intended to delay payment deadlines and waive or stay enforcement actions. This agreement may be extended to the other creditors in the same class with the same conditions as the extended effectiveness restructuring agreement

6. Composition with creditors: this has retained the same basic features. In the pre-bankruptcy composition with business continuation, the Directive's rules are followed for the creditors' voting. The classes are mandatory. It is possible to have approval by all the classes or by the majority of the classes, with the *cross-class cram down* mechanism. The absolute priority rule applies for the distribution of the assets at the liquidation value and the relative rule for the distribution of the assets at the going-concern value.

7. The liquidation pre-bankruptcy composition, which provides for the liquidation of the business. It has been modified, but there was no need to follow the Directive. Absolute priority must be applied. The creditors must receive at least 20% of their claims and 10% more than they could obtain in the event of a compulsory liquidation.

8. Restructuring plan subject to approval: this is a new procedure, which is regulated in the same way as a pre-bankruptcy composition, but it also has some feature that are very close to the restructuring agreements. The debtor is not divested. Even so they remain subject to the control of the court-appointed receiver (*commissario giudiziale*) and the court. The debtor's proposals and the plan may derogate from the order of priority, but also from the principle that all the debtor's assets can be used to pay their liabilities. Approval of all the classes is necessary.

If the proposals are not approved by the creditors, the debtor may transform their application and seek the opening of pre-bankruptcy composition proceedings (*concordato preventivo*). It is also possible to do the opposite.

Netherlands

Spain

Law 22/2003 is remained in application until 1er September 2020, then was replaced by Royal Decree-Law 1/2020 of 5 May (entitled "*Texto refundido de la Ley Concursal*", TRLC), which introduced a first reform of the earlier system with a view to the transposition in Spain of Directive 2019/1023.

Law 16/2022 of 5 September, which came into force on 26 September 2022, supposes that Spanish law has been completely adapted to the content of the Directive and contains the following main new provisions:

1. Procedural innovations:

a) A new procedure for informing the judge of the start of negotiations with the creditors with the aim of arriving at an agreement that avoids insolvency (*preconcurso*).

b) Simplification of insolvency proceedings: a new special fast-track procedure was introduced for "micro-enterprises" (enterprises with fewer than 10 employees and with an annual turnover of less than €700,000 or liabilities of less than €350,000 as posted in the last financial statements for the year before the declaration of insolvency).

c) New conditions of a pre-bankruptcy composition: the proposal of an agreement with structural changes (merger, demerger or total transfer of the assets or liabilities of the insolvent legal person) is regulated in more detail.

2. Substantial innovations:

a) The new debt restructuring plan: this restructuring plan replaces the existing refinancing agreements and out-of-court payment agreements.

b) The reform of the conditions for discharging debt (*exoneración del pasivo insatisfecho*): although the Directive does not require it, Spanish law allows the discharge of debt also to be maintained in the case of natural persons whose debts do not come from business activities (consumers).

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I.2-4. What is the legal nature of the planned procedures or measures: contractual? judicial?

Belgium

The amicable agreement outside proceedings and the statement of conciliation before the Business Court's chamber for companies in economic difficulties are mainly of a contractual nature. They are authenticated by the judge. The other measures examined, namely public amicable and collective agreement proceedings in the courts are mainly judicial procedures. The same applies to so-called private amicable and collective agreement proceedings. The transfer under judicial control is a judicial measure.

France

The preventive procedures are contractual procedures including when the debtor asks the president of the court to record an amicable agreement: it is an unpublished measure which cannot be appealed against.

On the other hand, the approval of an amicable agreement by a court judgment is a judicial procedure (Comm. Code, Art. L 611–8).

The ad hoc procedure is contractual. Conciliation is also contractual, although it also has the characteristics of a procedure; it rests on the agreement of the creditors and the debtor reached during negotiations accompanied by the conciliator. It is, in certain cases, the stage prior to the fast-track safeguard procedure; it allows a plan to be prepared which could then be imposed on the creditors by the court.

Germany

Italy

The negotiated settlement process is a contractual process. The certified plan is a contractual solution. The restructuring agreements in the second phase are of a judicial nature. The moratorium agreement is contractual, but it is possible to object to it in the courts. The pre-bankruptcy composition (*concordato preventivo*) is a judicial procedure, as is the restructuring plan subject to approval.

Netherlands

Spain

1. Preventive procedure (*preconcurso*): contractual in nature, but with judicial procedural effects.

2. Debt restructuring plan: semi-collective; contractual in the first phase, and judicial in the second phase when it goes to the court for approval. The regime applicable to restructuring plans rests on a principle of minimal judicial intervention and only *a posteriori*.

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I.2-5. What types of measures are planned: simple moratorium, negotiation of deadlines or debt reductions, other measures?

Belgium

In amicable agreements outside of judicial proceedings and in conciliation, the parties can deal with everything, but the approval will only be granted as long as the public policy requirements are met. Conciliation does not allow a reduction in the tax or social security debt to be obtained, but simply authorises the spreading of that debt. In amicable agreements outside of judicial proceedings which are public, a moratorium is not automatic.

In the "classic" reorganisation procedure applied to SMEs that have not opted for the Directive system, a procedure, a moratorium of 24 or 36 months may be imposed on the secured creditors, a period of 5 years for unsecured creditors with discharges of the principal and interest, a debt-to-equity swap and transfers of assets or business units. Some courts have confirmed "better fortunes" clauses or equitisation (recapitalisation by the shareholders). It is hard to see what would prevent payments in assets or financial instruments.

France

A carve-out is not possible in preventive proceedings; but such a sale may be prepared by the conciliator. In this case a receivership procedure (*redressement judiciaire*), which is public and of a judicial nature, must be opened for the court to decide on a disposal plan.

Germany

Italy

Moratorium, extended deadlines, discharge of debts, debt-to-equity swaps, transfer of assets or business units.

Netherlands

Spain

Simple moratorium, negotiation of more time to pay, discharge of debts, debt-to-equity swaps, transfer of assets or business units.

- **Is it possible to envisage the disposal of a branch of a business in an agreement?**

Belgium

Yes, in a non-judicial amicable arrangement. This is also the case in a judicial reorganisation by way of amicable agreement or in a judicial reorganisation by way of collective agreement (both in the case of public proceedings and private proceedings).

In a transfer under judicial authority, the sale is not the result of an agreement but occurs under authority of the court: a transfer in this context will imply that the assets not transferred will be the subject of liquidation proceedings (the legal person will not subsist after the sale).

France

A sale may be prepared by the conciliator in conciliation proceedings, but must be ordered by the court in under judicial safeguard (*sauvegarde judiciaire*) proceedings opened for this purpose.

Germany

Italy

Yes. It is possible to sell off the entire business as long as the company can continue. In judicial proceedings, the sale must be preceded by a call for tenders. Even in the negotiated settlement process, which is a non-judicial process, it is necessary to get the court's permission so that the buyer is not liable for the earlier debts.

Netherlands

Spain

1. During the *preconcurso* phase, the sale of production units is regulated in detail in order to receive potential purchase offers. The law provides for the appointment by the judge of an expert to do this.

2. A restructuring plan may also include a carve-out (sale of one branch of the business).

- **Are particular tax provisions planned?**

Belgium

Yes, the debtor is "immunised" as regards the capital gain resulting from the debt waiver.

France: No.

Germany:

Italy

Yes.
1. To immunise the capital gain resulting from the debt waiver.
2. There are special conditions as regards the tax authorities to arrive at an agreement on its claims.

Netherlands

Spain

Yes.
1. To immunise the capital gain resulting from the debt waiver: once the bankruptcy authorities have been informed of the claims and the maximum time limit of one month mentioned in the bankruptcy law has passed, we have two months to issue the rectified VAT bill.
2. It is possible arrive at an agreement with the tax authorities its claims.

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I.2-6. Specific questions concerning confidentiality

- **Is the procedure confidential?**

Belgium

In the non-judicial preventive procedure, the proceedings are non-public rather than actually confidential. There is no protection confidentiality except for a non-disclosure agreement.

Concerning the judicial reorganisation procedure, the Law of 25 May 2023 allows for a choice, both in proceedings in line with the Directive and for the proceedings applicable to SMEs that have not opted for the proceedings in line with the Directive, between public proceedings and private proceedings. Private proceedings are not publicised in any way, not even the judgments delivered.

The RegSol computer system is designed to effectively filter access to the data.

France

Yes.
When an amicable agreement is approved, only the judgment is the subject of a legal publication.

Confidentiality is guaranteed by a legal prohibition on anyone involved in the proceedings disclosing information to third parties. This is asserted in Article L. 611-15 of the French Commercial Code and guaranteed by the judgment opening proceedings in accordance with requirements reiterated by the Court of Cassation.

Germany

Italy

1. Negotiated agreement: yes.

2. Certified plan: yes

3. Restructuring agreement: yes in the first phase before approval;

4. Moratorium agreement: same regime.

5. Composition with creditors: non.

6. Restructuring plan subject to approval: no.

Netherlands

Spain: See above.

- **If so, how is this enforced?**
  Are there sanctions in the event of a breach of confidentiality?

Belgium:

No, unless this is through ordinary law sanctions (civil, disciplinary, etc.).

France

A person responsible for a breach is liable. They may be ordered to pay damages.

Germany

Italy

The Business Crisis and Insolvency Code provides for specific duties on the part of the debtor and the creditors. One of these duties is confidentiality. The risk is an action for damages.

Netherlands

Spain: No.

- **Can the debtor request that confidentiality be lifted?**

Belgium: Yes, the law provides that the debtor may agree to the dissemination of information.

France: No.

Germany:**Italy**: Yes.

Netherlands: Not applicable.

Spain: Not applicable.

- **Where the procedure is confidential, is the debtor or the practitioner appointed bound by the obligation to inform employees' representatives of it? Are employees officially a party to the procedure? Do employees' representatives have a particular position with regard to the employees?**

Belgium

In the non-judicial preliminary phases, no, unless it affects matters where there is an obligation to provide information under ordinary law. The workers are not parties in the proceedings. The workers' representatives must refer to the ordinary law on social consultation.

France

Obligation to inform the staff representatives, but only if the approval of an amicable agreement is requested by the debtor, in which case, the conciliator must inform the staff representatives (Comm. Code, Art. L 611–8-1).

Germany: Not applicable.

Italy

No, unless it affects matters where there is an obligation to provide information under ordinary law. In this context, the employees are not parties to the procedure. The representatives have the rights resulting from ordinary law. We have provided for a procedure to inform the workers if there are changes to the working conditions (Art. 13 (3) of the Directive).

Netherlands

Spain

In the case of a restructuring plan or an agreement to continue the business, there is an obligation to inform and consult the workers' representatives of the decision to implement a restructuring plan, insofar as that is provided for by the labour regulations and, when it is, before the approval or the confirmation of the plan. In this context, they are not parties. Employees' representatives do not have a particular position with regard to the employees.

- **Are different measures planned according to whether the procedure is confidential or not?**

Belgium

In the non-judicial context, there is no non-public procedure that allows a plan to be imposed (except for the terms and time limits specified in Article 1244 of the Civil Code).

In the context of public collective agreement proceedings, the plan may be imposed. In public amicable collective agreement proceedings, it is possible for the non-signatories of the agreement who were involved in the proceedings to ask for more time to pay. In private reorganisation proceedings, the measures will not normally be binding on the parties joined to the proceedings.

France

Yes, before approval, the court must hear the creditors who are parties to the agreement as well as the public prosecutor

Germany: Not applicable.

Italy

The absolutely confidential nature of the proceedings cannot be maintained when interim measures are invoked. The court must give its ruling after hearing all parties, i.e. the interested creditors.

Netherlands

Spain:

Once the plan has been approved by the creditors, it will be approved by the court. If the plan has been approved by all the categories of affected parties and by the debtor or, when it provides for measures that requires the approval of the shareholders ("consensual plan"), it will be approved by the judge and effects will affect all the creditors concerned. Likewise, it is possible to confirm a restructuring plan that has not been approved by all the categories of creditors or by the debtor's shareholders ("non-consensual plan"), when their rights are affected ("*cross-class cram-down"*).

- **Does the confidentiality or non-confidentiality of the proceedings lead to different effects on their international recognition?**

Belgium

Yes, under Regulation (EU) 2015/848 or Regulation (EU) 1215/2012.

France

Only the approval judgment (which is published) is recognised in the other States under Regulation (EU) 2015/848. An amicable agreement, which is contractual, is not officially recognised by the courts; likewise an amicable agreement recorded by the president of the court is not published or recognised under Regulation (EU) 2015/848

Germany

Italy

Application of Regulation (EU) 2015/848 or Regulation (EU) 1215/2012.

Netherlands

Spain:

1. Judicial decisions of the Member States of the European Union will be recognised in Spain under Regulation (EU) 2015/848.

2. Foreign (not Community) judicial decisions will be recognised in Spain via the exequatur procedure regulated by Law 29/2015 of 30 July, on international judicial cooperation in civil matters.

******

I.2-7. How are the roles divided between the different parties: divested debtor/debtor in possession, creditors, other affected parties, employees?

Belgium

Unless a provisional administrator is appointed as part of interim measures, the director alone has the power to act when in a non-judicial situation. The debtor therefore normally remains in possession unless exceptional measures linked to gross or wilful misconduct leading to the appointment of an administrator (*mandataire*) or in the face of unmanageable situations.

In judicial reorganisation proceedings (whether public or not), the creditors could not file a plan. The law of June 2023 allows them to request the appointment of a practitioner could file a plan (alternative). Even if a plan is not filed in their name, the creditors can seek the appointment of a reorganisation practitioner to assist the debtor.

A creditor may also request the revocation of the general stay of enforcement actions, which leads to the closure of the proceedings.

A creditor may individually request that the stay of enforcement actions against it be ended.

Previously the workers could only ask for the appointment of a provisional administrator in a very limited number of cases. The Law of 25 May 2023 considerably reinforced their rights to information, although still without granting them the status of a party.

Creditors and interested third parties may introduce an application for a transfer under judicial authority if the debtor has not introduced a request for reorganisation by collective agreement or if that procedure fails.

France

The debtor is in possession. They are assisted by a practitioner (the conciliator) under the control of the court (appointment of the practitioner, investigative measures, stay of enforcement actions, confirmation of an amicable agreement).

Germany

Italy

Normally the debtor is "in possession". It is the only party that can request the opening of any proceedings. The creditors may file an alternative plan only in a pre-bankruptcy composition (*concordato preventivo*) with continuation of the business. In any case when provisional measures are provided for, they can request the revocation of the partial or general stay of enforcement actions. In accordance with the Directive, enforcement actions cannot be stayed for wage debts. In a pre-bankruptcy composition (*concordato preventivo*), the workers have a right to vote if the plan does not provide for their claims to be paid within thirty days of the approval.

Netherlands

Spain

Normally the debtor is "in possession". It is the only party that can request the opening of any proceedings. The creditors and the workers cannot file a draft plan.

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I.2-8. Specific questions on the role of the judicial authority

- **Can the judicial authority appoint a practitioner to assist the debtor? If yes, what powers do they have? If this is the case, what role can be given to the administrator?**

Belgium

Practitioner with divestment:

The court may appoint a provisional administrator in the event of gross or wilful misconduct on the part of the debtor or the corporate bodies, at the request of any interested party or the public prosecutor. The president of the court can also appoint a reorganisation practitioner if the protection of the parties' interests requires it, to assist the debtor and the creditors in drafting the plan. If this request is supported by the majority of the creditors who agree to bear the cost of this service, the court will make the appointment.

In connection with preventive amicable agreements (conciliation and amicable agreement outside judicial reorganisation), the court may also appoint a reorganisation practitioner who will take over the tasks previously entrusted to the business mediator (*médiateur d'entreprises*).

France

The judicial authority has a role to play. It appoints an *ad hoc* representative with a mission of assistance in ad hoc proceedings or a conciliator with a mission of assistance and negotiation in conciliation proceedings.

The judicial authority may take investigative measures, rule on a stay of enforcement actions, grant extra time at the debtor's request, record an amicable agreement (role of the president of the court) or approve it (role of the court).

Germany

Italy

The judicial authority appoints a receiver (*commissario giudiziale*) in restructuring agreements (second phase), restructuring plans subject to approval and compositions with creditors (*concordato preventivo*). The receiver has a role of monitoring the administration of the debtor. They are considered by the court as its representative. The feasibility of the plan must be certified by an independent expert appointed by the debtor, and the receiver gives their opinion. In the pre-bankruptcy composition and the restructuring plan subject to approval, the creditors vote after reading the report of the expert appointed by the debtor and the receiver's opinion. With the reform, it has been established that if the debtor takes advantage of the possibility of requesting extra time (up to 60 days) to submit the plan or to request a stay of enforcement actions, the receiver may participate in the negotiation of the plan between the debtor and the creditors (see Art. 5, par. 3 of the Directive).

Netherlands

Spain

1. In the case of a *preconcurso*, a restructuring expert is only appointed in the following cases:

a) At the debtor's request.

b) At the request of creditors representing more than 50% of the liabilities who, at the time of the request, might be concerned by the restructuring plan.

c) When the debtor requests a general stay of the individual enforcement measures or an extension of such a stay, if the judge considers that the appointment is necessary to safeguard the interests of the persons potentially affected by the suspension.

d) When the debtor or any party with a legitimate interest requests judicial approval of a restructuring plan whose effects extend to a category of creditors or shareholders who did not vote in favour of the plan.

2. The expert will assist the debtor and the creditors in the negotiations and in the drafting of the restructuring plan, prepare and present the reports required by law to the judge as well as any that the judge deems necessary or expedient.

3. The appointment by the judge of a restructuring expert, where appropriate, will not have any effect on the powers of administration and disposal of the property and rights making up the debtor's assets.

- **What is the role of the judicial authority?**

Belgium

Check public policy and compliance with the law. To enforce the agreements made.

In non-judicial proceedings, the court will ensure that the agreements reached and which it renders enforceable do not interfere with the economic fabric.

In reorganisation proceedings the control will be less for reasons of public policy in the classic sense than for economic public policy reasons which are closer to the interests of the creditors and guaranteeing competition.

In a transfer under judicial authority the court is very present, to protect both the workers and the creditors.

France

The *ad hoc* representative has a mission of assistance in *ad hoc* proceedings (Comm. Code, Art. L 611-3)

The conciliator has a mission of assistance and negotiation in conciliation proceedings (Comm. Code, Art. L 611-7)

The conciliator has the task of preparing an amicable agreement by negotiation and, if necessary, of preparing a sale of the company or of one branch.

Germany

Italy

The Court of First Instance delivers the approval judgment in restructuring agreements. The creditors can object to the approval.

In the negotiated settlement process, the court authorises the financing and sale of the business (to grant priority to the corresponding claims and so that the buyer is not liable for the earlier liabilities) and confirms the interim measures (stay of enforcement actions).

In the pre-bankruptcy composition and in the restructuring plan subject to approval, the court admits the debtor to the proceedings, appoints the judicial receiver (*commissario guidiziale*), confirms the interim measures, authorises the extraordinary administrative acts and the debtor's new financing, approves the composition with the creditors after they have voted in favour of it and hears the objections of the creditors and third parties who are against the approval.

Netherlands

Spain

The commercial court judge (*Juzgado de lo Mercantil*) is responsible for approving restructuring agreements. Throughout the insolvency proceedings, the court admits the debtor to the proceedings, appoints the expert and the insolvency administrator, confirms the interim measures, authorises the extraordinary administrative acts, approves the composition with the creditors after they have voted in favour of it and hears the objections of the creditors and third parties who are against the approval.

- **Will there be a stay of enforcement actions?**

Belgium

In non-judicial proceedings, no stay is imposed.

In public reorganisation proceedings, Article XX.50 organises an almost across-the-board stay. The debtor cannot be declared bankrupt and the court cannot order its dissolution. The stay does not affect the rights of creditors with a specific pledge. The direct action of subcontractors is not hindered. The stay does allow, however, the debtor to enter into public contracts notwithstanding any institutional debts.

Article 6.2 of the Directive provides that the States shall ensure that a stay of individual enforcement actions can cover **all types of claims**, including secured claims and preferential claims Article XX.65 allows payment deadlines to be imposed on pledged creditors and authorises the plan à to set a time limit of 12 months. This raises the question of the compatibility of a law that does not concern direct action of subcontractors or the specifically pledged claims.

Voluntary payments to certain deferred creditors are possible if they are necessary to the objective of the plan.

In private reorganisation proceedings, a new provision provides that the reorganisation practitioner appointed may, in light of the debtor's situation and the ongoing negotiations and taking into account the damage caused by the measures to the creditors concerned as well as the public interest, obtain a stay with regard to the identified affected creditors that they are dealing with. The president of the court has the power to end this stay at any time, of their own motion or at the initiative of an interested creditor or the practitioner, in a decision giving the reasons.

France

No general automatic stay of the enforcement actions, but grace periods can be envisaged in conciliation proceedings. In the event of a refusal by the creditor or creditors concerned, the debtor may issue the creditor with a writ of summons (Comm. Code, Art. R. 611-35) to ask the president of the court for extra time, under the conditions provided for by Article 1343-5 of the Civil Code, within the limit of the duration of the proceedings, for claims not yet due. For due debts, it is possible to spread them over two years. The system is a bit like a sort of stay of the enforcement actions, during the conciliation negotiations.

Germany

Italy

Yes. It takes effect as soon as the debtor asks to benefit from the procedure, but must be confirmed by the court.

Netherlands

Spain

1. Preconcurso: as soon as they receive the court's decision recording that it has been informed of the start of negotiations with the creditors, the authorities that are aware of the judicial or non-judicial enforcement measures concerning the assets or rights necessary to the status of the company or professional activity as a going concern, automatically stay them. The stay applies until the expiry of a period of three months from the time when the debtor informs the court with jurisdiction, unless the debtor can prove that it has requested an extension.

Notwithstanding this communication, the holders of real security, even for third parties' claims when the debtor their debtor is a company in the same group as the company that informed the court, can proceed with judicial or non-judicial measures on the encumbered assets or rights. If the guarantee concerns assets or rights necessary to the status of the debtor's business or professional activity as a going concern, the enforcement proceedings, once they have been begun, will be stayed by the judge seised until the expiry of a three-month period counting from the communication. When the enforcement measure is non-judicial, the stay will be ordered by the judge to which the communication was presented.

2. Restructuring plan: once the application for approval of the restructuring plan has been received, the judge, if they consider that they have jurisdiction, will issue an order admitting it

for treatment. In the judgment, the judge will set out the grounds for their having jurisdiction, in particular if it is based on the location of the centre of main interests or a place of business of the debtor within his territory, and will issue a prohibition on undertaking judicial or non-judicial measures on the debtor's assets and the stay of the enforcement measures already begun already until a ruling has been given on the approval.

3. The stay of enforcement actions does not apply to execution measures taken by public creditors, since this is a category of creditors that will not be affected by the stay of individual enforcement actions.

- **Duration of the stay? How is it lifted?**

Belgium

The stay is normally 4 months, but may be extended. The judge may, at the request of a creditor, lift this collective stay if this creditor is manifestly impaired by the stay on its means of enforcement if its status as a going concern is threatened by said stay and said lifting of the stay does not jeopardise the status of all or part of the debtor's business as a going concern.

Stays in the case of a transfer under judicial authority are subject to specific provisions.

France

The duration of the stay and lifting of the stay must be within the limit of the duration of the conciliator's mission.

Germany

Italy

Negotiated settlement process: from 30 to 120 days, which may be extended up to 240 days

Restructuring agreement, pre-bankruptcy composition and restructuring plan subject to approval : 4 months, extendible. The stay may not exceed 12 months, even if there are interruptions. The court can always lift the measures at the request of the debtor or the creditors.

Netherlands

Spain

1. Duration of the stay: a period of three months from the time when the debtor informs the court with jurisdiction, unless the debtor can prove that it has requested an extension.

2. Extension of the stay: before the expiry of the three-month period after the court was informed of the opening of the negotiations with the creditors, the debtor or the debtors representing more than fifty per cent of the debts which, at the time of the extension, may be affected by the restructuring plan, minus the amount of the claims, which in the event of

insolvency, would be considered as subordinate, may ask the judge to grant an extension of the effects of this measure for a period of up to three months following on from the period already granted. The application for an extension must be accompanied by a favourable report from restructuring expert, if one has been appointed.

3. Lifting of the stay: enforcement measures not begun or stayed can be started or resumed if the judge, following the application to reopen proceedings against the advice of the lawyer of the justice considering that the communication has been made, decides that the assets or rights are not necessary to the status of the debtor's business or professional activity as a going concern, unless the effects of the communication have not been extended to said assets in accordance with the provisions of this chapter.

Enforcement measures not begun or stayed can be started or resumed three months after the communication, unless their effects are extended.

- **Are different measures planned according to whether the proceedings are confidential or not?**

Belgium

Yes, a general stay is published, whilst an individual stay is not published, although the interested parties are notified of it.

France

The proceedings are confidential, except in the approval phase. In the event of the sale of all or part of the company, this will be public due to the opening of receivership proceedings (*redressement judiciaire*).

Germany:

Italy

No. The debtor may request that the stay of enforcement actions be limited to certain creditors or certain categories of creditors.

Netherlands

Spain

No.

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I.2-9. Questions on the role of the public prosecutor:

- **If confidentiality is breached, can the debtor request that it be lifted?**

Belgium: Not applicable.

France: No.

Germany:

Italy: No.

Netherlands

Spain: Not applicable.

- **If the procedure is confidential, is the practitioner obliged to inform the public prosecutor's office or another prosecuting agency of any facts revealed by the prevention procedure which could constitute offences?**

Belgium

The provisional administrator (*administrateur provisoire*) has an obligation to report any signs of offence under the Code of Criminal Procedure (Article 29). The same principle applies to the reorganisation practitioner and the liquidation practitioner of the except that the practitioner does not represent the entity as the provisional administrator does.

France: Yes.

Germany:**Italy**

Yes, with just one exception in the negotiated settlement process, which is not a procedure. The expert is not obliged to disclose the information they have obtained in the course of their mission. They are treated in the same way as a defence lawyer in a criminal trial.

Netherlands: No.

Spain

The insolvency administrator has an obligation to report, as provided for by the Criminal Code if there are signs of an offence, but they are not involved in the confidential negotiations. They are appointed once the insolvency proceedings are open.

- **Does the public prosecutor's office or other prosecuting agency have a right to intervene in the preventive proceedings: application to the court, presence at hearings, right of appeal, other?**

Belgium

Not in the non-judicial phase, but it can attend, if it deems it useful, the hearings relating to public judicial proceedings and submit an opinion. It is not involved in private judicial proceedings.

France

Yes if approval is granted (Comm. Code, Art L 611-9).

Germany

Italy

No, in the negotiated settlement process, except for the phase before the court, if there is one, if there is a stay of enforcement actions. Yes in the other procedures, but only in the judicial phase.

Netherlands

Spain

Not in the non-judicial phase, but can have a presence in the judicial proceedings. When, in the context of proceedings for crimes against assets and the socio-economic order signs of the insolvency of a presumed perpetrator are revealed, the public prosecutor will invite the judge seised of the case to pass on these facts to the creditors identified in the ongoing criminal proceedings, so that, where appropriate, they can apply for the declaration of insolvency or bring the actions incumbent upon them. The public prosecutor also intervenes in the event of challenge to international jurisdiction and for the "culpable" qualification phase of the insolvency proceedings.

- **Are different measures planned according to whether the proceedings are confidential or not?**

Belgium: See above.

France

No. The public prosecutor can only intervene on the subject of the remuneration of the conciliator, for a procedure to approve an amicable agreement.

Germany:

Italy: See above.

Netherlands: No.

Spain: See above.

- **Is the agreement merely contractual?**

Belgium

The amicable agreement outside of proceedings is initially contractual, but it is subject to approval and so its nature changes.

France

Approval is always optional.

Germany

Italy

In the certified plan, an exemption is admitted for avoidance actions and a limit on criminal liability for bankruptcy, except in cases of fraud or serious misconduct by the debtor or the expert. In restructuring agreements there is court approval.

Netherlands: See above.

Spain

The agreement in the new debt restructuring plan is contractual in the first phase and judicial in the second phase when it goes to the court for approval.

- **Is there provision for approval by a court? If so, is it mandatory or optional?**

Belgium

Yes, in out-of-court agreements and judicial agreements. It is always optional, but the *erga omnes* effect will only apply when approval is granted.

France

Approval is always optional.

Germany

Italy: See above.

Netherlands: See above.

Spain

Approval of the plan is mandatory.

- **Is an agreement approved by the judicial authority recognised by the other Member States?**

Belgium

The amicable agreement approved will be recognised on the basis of the ordinary law on the recognition of judicial acts. The list in Regulation 2015/848 was adapted in 2023 and does not contain private reorganisation proceedings even if they have been approved by a court.

France

Yes, for the judgment approving an amicable agreement that has been published

Germany

Italy

Yes. Restructuring agreements are included Annex A of Regulation (EU) 2015/848.

Netherlands

Spain

Restructuring agreements will be included in Annex A of Regulation (EU) 2015/848 when Spain has provided the European Commission with the changes that came into effect with the new Law 16/2022.

- **Does the confidentiality or non-confidentiality of the procedure lead to different effects on its international recognition?**

Belgium

Yes, under Regulation (EU) 2015/848.

France

Yes, for the judgment approving an amicable agreement that has been published

Germany

Italy

Yes, under Regulation (EU) 2015/848.

Netherlands: See above.

Spain

Judicial decisions of the Member States of the European Union will be recognised in Spain under Regulation (EU) 2015/848.

Foreign (not Community) judicial decisions will be recognised in Spain via the exequatur procedure regulated by Law 29/2015 of 30 July, on international judicial cooperation in civil matters.

- **What guarantees are offered to the affected parties who provide financing or contributions (new money privilege)?**

Belgium

No *New Money* lien in the non-judicial phase.

A lien outside the global bankruptcy process the base for which will be in competition with several creditors for debts arising during the judicial proceedings.

France

One payment per lien in the case of insolvency proceedings after the exception of the shareholders' contributions to the capital.

Maintaining of guarantees given to the creditors under an agreement even if the amicable agreement is rescinded (Comm. Code, Art. L 611-10-4).

Germany

Italy

In general in restructuring agreements and in the pre-bankruptcy composition with continuation of the company, the financing authorised by the court gives a right of precedence (*prededuzione)* to the corresponding claims. This term does not refer to a lien, but to a procedural priority in the payments in the event of compulsory liquidation if the restructuring proceedings fail. This rule applies in the restructuring agreements, in the pre-bankruptcy composition and in the restructuring plan subject to approval. It also applies in the negotiated settlement process for the financing authorised by the court.

Netherlands

Spain

Fifty per cent of the amount of claims arising from new financing granted as part of an approved restructuring plan will have general lien, when the claims concerned by this plan represent at least fifty-one per cent of the total liabilities.

- **Is there any particular responsibility attached to new money privilege?**

Belgium: Not relevant.

France: No.

Germany

Italy

The "*prededuzione*" is not recognised if the debtor has submitted false data, omitted relevant information or committed acts of fraud.

Netherlands

Spain

The new financing obtained for a restructuring plan, including money granted by persons specially connected to the debtor, will not be able to be cancelled, except if it is proven that it was granted fraudulently in breach of the creditors' rights.

- **Can deadlines be imposed on a creditor who opposes an agreement or moratorium?**

Belgium

In the non-judicial agreement, not as such except by an abuse of rights under ordinary law or the terms and time limits of ordinary law (Civ. Code., Art. 1244).

In the judicial amicable agreement, a creditor that did not want to sign an amicable agreement in the public proceedings may have limited payment deadlines imposed on it.

France

Yes, up to two years for the creditor that does not agree to waive the enforceability of its claim. There is a possibility of rescheduling the payment of debts over the duration of the conciliator's mission.

Germany

Italy

Yes, in extended effectiveness restructuring agreements and in a moratorium agreement. In the same class of creditors (homogeneous claims) if there is a 75% majority, the remainder (25%) is obliged to comply with the agreement. These creditors may oppose approval.

If the restructuring agreement is the result of a negotiated settlement process, the expert has declared that the parties have negotiated in good faith and the agreement is the result of negotiations, the percentage for the majority is reduced to 60%.

Netherlands

Spain

Within fifteen days of the registration of the approval with the Public Bankruptcy Register, the holders of the claims concerned that did not vote in favour of the restructuring plan whereas it was approved by all the categories of creditors may contest the decision on the following grounds:

1. If the required conditions of communication, content and form are not met.

2. If the formation of the classes of creditors and the approval of the plan did not take place in accordance with provisions of the law.

3. If the debtor is not faced with probable insolvency, imminent insolvency or already subject to ongoing insolvency proceedings.

4. If the plan does not offer a reasonable prospect of avoiding bankruptcy and guaranteeing the viability of the company in the short and medium term.

5. If their claims were not treated on an equal footing with the other claims of their class.

6. If the reduction in the value of their claims is manifestly greater than that which is necessary to guarantee the viability of the company. If claims have been assigned, it will be presumed that this circumstance does not occur when the contesting creditor acquired the claim with a discount greater than the reduction in its value.

7. If the plan does not meet the best interests of creditors test.

- **Is it possible to provide for a disposal in an agreement?**

Belgium

Yes, in an amicable agreement outside proceedings, approved or in a collective agreement.

France

Yes, in receivership proceedings following on from an amicable agreement, whether it was accepted or not.

Germany

Italy

The debtor may make a disposal if it is not has not been divested. The problems are avoidance actions and the liability for bankruptcy. In the negotiated settlement process, the court may authorise the disposal and avoid the buyer being liable for earlier liabilities. Obviously the disposal depends on an agreement. The court is expected to give indications on the use of the proceeds from the sale. Exemption from avoidance actions and criminal liability is provided for.

In the certified plan and restructuring agreements, the plan may provide for the disposal, but there are no specific rules. However, from the tax point of view, the Ministry of the Economy accepts that the buyer if not a co-debtor jointly liable with the seller.

Netherlands

Spain

During the pre-insolvency phase, the sale of production units is regulated in detail in order to receive potential purchase offers. The law provides for the appointment of an expert to do this by the judge. A restructuring plan may also include a carve-out (sale of one branch of the business).

- **What rights do the employees have?**

Belgium

Those mentioned in the Directive relating to the protection of workers' rights.

Employees have a particular position in all the types of preventive proceedings:

a. In a transfer, the employees may negotiate both collectively and individually subject to precise conditions

b. In a public reorganisation, the employees are not formally a party in the proceedings, but they do benefit at once from right to intervene in the proceedings, to receive privileged information and an obligation to honour debts new.

c. In a private reorganisation, the employee will not necessarily be at risk Current liabilities must be paid.

France

The employees' representatives (in particular through the social and economic council (works council) are not informed of the content of the agreement, unless the debtor is seeking its approval.

In this case, they must be heard by the court before the amicable agreement is approved.

The employees' representatives have a particular position in the proceedings: the social and economic committee that represents them is informed of the content of the agreement and must be heard by the court before approval (Comm. Code, Art. L 611-8-1 and L 611-9).

Germany

Italy

The 2019 Directive and the other specific work-related Directives are applied. Workers have the right to:
a) continue their employment contract unless it is terminated in the manner in line with the provisions of labour law;
b) be paid for their claims without a stay of their enforcement rights,
c) vote on the debtor's proposals in the pre-bankruptcy composition and the plan subject to approval if their claim is not paid within 30 days of the approval of the plan;
d) be informed of any change in the employment contract or the organisation of the work, even minor changes, with a specific procedure involving the unions.

Netherlands

Spain

All the Directives and specific labour laws are applied.

The decisions that the judge makes in connection with the sale of the company or of one or more production units must be delivered after hearing the workers' representatives within fifteen days.

- **Are particular tax provisions planned?**

Belgium

Yes, tax neutralisation of the debt waiver.

France: No.

Germany:

Italy:

Tax neutralisation of the debt waiver.

In the negotiated settlement process, the conclusion of an agreement with the creditors or the subsequent opening of a restructuring procedure leads to a reduction in the interest rate on tax debts as well as the possibility of spreading the reimbursement of the debt subject to certain conditions.

Netherlands

Spain: See above.

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I.2-10. Specific questions concerning employees:

- **What rights do the employees have?**

Belgium

Those of ordinary law except in the event of a transfer, where they have specific rights to information on top of those resulting from the ordinary law on social consultation.

France

If the approval of an amicable agreement is requested by the debtor: the conciliator must inform the staff representatives (Comm. Code, Art. L 611–8-1).

Germany: See above (last question but one).

Italy

Employees have the right to:
a) continue their employment contract unless it is terminated in the manner in line with the provisions of labour law;
b) be paid for their claims without a stay of their enforcement rights,
c) vote on the debtor's proposals in the pre-bankruptcy composition and the plan subject to approval if their claim is not paid within 30 days of the approval of the plan;
d) be informed of any change in the employment contract or the organisation of the work, even minor changes, with a specific procedure involving the unions.

Netherlands

Spain: See above.

- **Are they considered as parties to the procedure?**

Belgium

They may intervene voluntarily to become parties. At the hearing, the workers' representatives may give an opinion without being a party to the procedure.

France

Yes, indirectly, through their representative bodies with difficulties linked to their convocation. They are not strictly speaking parties to the proceedings.

Germany: See above.

Italy

Like any creditor.

Netherlands

Spain

The judicial bankruptcy administration must notify the workers' representatives of the declaration of insolvency without delay, where applicable, informing them of their right to present themselves as parties to the proceedings.

- **Do employees' representatives have a particular position in the procedure?**

Belgium

The system identifies the workers' representatives who have the right to be informed directly by consulting the register and of course by the contacts with the debtor, the provisional administrator or the reorganisation practitioner who must inform the workers' representatives of the content of the plan.

France

There is an obligation to inform the staff representatives, if the approval of an amicable agreement is requested by the debtor; the conciliator must inform the staff representatives (Comm. Code, Art. L 611–8-1).

Germany

Italy: No.

Netherlands

Spain: No.

- **Is a wage guarantee organisation involved in the prevention procedure?**

Belgium:

No, except in the case of a transfer under judicial authority which ends in liquidation. Furthermore, the benefits paid to the self-employed may be granted in certain cases.

France

No, except as a creditor.

Germany:

Italy: No.

Netherlands

No, since the rights of employees may not be affected by the plan.

******

Any further information or comments you would like to add?

Germany

Spain: No.

******

II. Constitution of classes of affected parties and adoption of restructuring plans

1. Reference text in the European Directive: Art. 9.
2. Questions

II.2-1. As a preliminary point: Define the procedures concerned by the classes of affected parties (scope of the transposition into national law)

Belgium

The PRJ by collective agreement for companies with more than 250 workers and a turnover of more than €40 million (excluding VAT) and a balance sheet total of €20 million. Companies below this threshold may choose use this procedure (opt-in at the beginning of the proceedings), or, in the case of related undertakings allowing these thresholds to be met, they can be obliged to use it.

France

The French procedures concerned by the forming of the classes of affected parties are the safeguard procedure (*sauvegarde*), the fast-track safeguard procedure and receivership (*redressement judiciaire*). The use of the classes is optional in safeguard proceedings and in receivership for all the debtors. It is mandatory above certain thresholds: 250 employees and €20 million net turnover; or €40 million euros net turnover. These thresholds are appreciated on the date of the application to open the proceedings (Comm. Code, Art. R. 626-52).

Germany

Italy

Pre-bankruptcy composition with continuation of the company. Restructuring plan subject to approval.

NB: in extended effectiveness restructuring agreements and the moratorium agreement, there are "categories" of creditors which are similar to the classes, but which governed by the affected parties regime.

Netherlands

Spain

The restructuring plan subject to judicial approval is the procedure concerned by the classes of affected parties.

******

II.2-2. How can the different national procedures be defined in comparison to the type of procedure envisaged by the Directive:

- **Confidential procedure, public procedure**

Belgium

1. Confidential proceedings that can prepare for reorganisation proceedings or render them superfluous:
   - Conciliation: discussion between the debtor and certain creditors before the Business Court's chamber for companies in economic difficulties
   - Amicable agreement possibly facilitated by the reorganisation practitioner
2. Public proceedings (SMEs)
3. Amicable agreement proceedings (reorganisation)
4. Public collective agreement proceedings
5. Private proceedings (SMEs)
6. Amicable agreement proceedings (reorganisation)
7. Collective agreement procedure
8. Public proceedings (large companies)
9. Private proceedings (large companies)
10. Business transfer (public)

France

The forming of the classes may be prepared as part of a conciliation which is a confidential procedure (see above). They are formed in fast-track safeguard proceedings, they can be formed in safeguard proceedings or receivership, which are public collective procedures.

Germany

Italy

Negotiated settlement process: conciliation process confidential

Certified plan: confidential.

Restructuring agreements and moratorium agreement: proceedings confidential in the first phase, public in the judicial approval or opposition phase.

Pre-bankruptcy composition with continuation of the company: public proceedings.

Restructuring plan subject to approval: public proceedings

Netherlands

Spain

The new debt restructuring plan is semi-collective: confidential proceedings in the first phase, and judicial and public in the second phase when it goes to court for approval.

- **Procedure automatically leading to a stay of enforcement actions, procedure concerning only certain creditors or certain claims**

Belgium

Reorganisation with public collective agreement: general stay.

Reorganisation with a non-public collective agreement: specific stay. In theory, in every private procedure, the stay must be requested by a special application.

France

The law only excludes employees from the formation of the classes. In practice, as the classes are made up of the parties affected by a plan, the proceedings are collective insofar as the creditors are affected by the plan.

Germany

Italy

Negotiated settlement process, restructuring agreements, pre-bankruptcy composition and restructuring plan subject to approval all automatically lead to a stay of all individual enforcement actions.

NB: the debtor can still limit its application to certain creditors or a category of claims. The creditors can request the lifting of the measure, generally or only for themselves.

Netherlands

Spain

1. *Preconcurso*: as soon as they receive the court's decision mentioning that it has been informed of the start of negotiations with the creditors, the authorities that are aware of the judicial or non-judicial enforcement measures concerning the assets or rights necessary to the status of the company or professional activity as a going concern, automatically stay them until the expiry of a period of three months from the time when the debtor informs the court with jurisdiction (communication), unless the debtor can prove that it has requested an extension..

Notwithstanding the communication, the holders of real security, even for third parties' claims when the debtor their debtor is a company in the same group as the company that informed the court, can proceed with s judicial or non-judicial measure on the encumbered assets or

rights. If the guarantee concerns assets or rights necessary to the status of the debtor's business or professional activity as a going concern, the enforcement proceedings, once they have been begun, will be stayed by the judge seised until the expiry of a three-month period counting from the communication. When the enforcement measure is non-judicial, the stay will be ordered by the judge to which the communication was presented.

2. Restructuring plan: once the application for approval of the restructuring plan has been received, the judge, if they consider that they have jurisdiction, will issue an order admitting it for treatment. In the judgment, the judge will set out the grounds for their having jurisdiction, in particular if it is based on the location of the centre of main interests or a place of business of the debtor within his territory, and will issue a prohibition on undertaking judicial or non-judicial measures on the debtor's assets and the stay of the enforcement measures already begun already until a ruling has been given on the approval.

3. The stay of enforcement actions does not apply to execution measures taken by public creditors, since this is a category of creditors that will not be affected by the stay of individual enforcement actions.

- **Procedure that may only concern certain creditors or procedures necessarily involving all the creditors.**

Belgium

Non-judicial proceedings, as a general rule, only concern certain creditors. Reorganisation by a public collective agreement necessarily concerns all the creditors: at the start all the creditors are concerned, then the vote concerns only the affected creditors

Reorganisation by a private collective agreement: only the creditors selected by the debtor are concerned.

The judicial amicable agreement proceedings (public or private) will concern certain creditors.

France

The conciliation procedure is a confidential, semi-collective procedure: it is limited to the main creditors of the debtor, who determines the creditors involved themself. A stay of individual enforcement actions can be ordered at the request of the debtor for certain claims, and for a limited period. In fact, the involvement of the creditors depends of the impact of the plan on them: only those affected by the safeguard or recovery plan are affected by the proceedings.

Germany: No answer.

Italy

There are no procedures that are limited to certain creditors. Even in restructuring agreements where there is an agreement with a majority of the creditors and where the others must stay outside it, there are effects, such as the stay of enforcement actions, which extend even to the latter.

Netherlands

Spain

Debt restructuring proceedings necessarily involve all the creditors.

Where the plan has been approved by all the categories of affected creditors and the debtor, when it provides for measures that require the approval of the shareholders, ("consensual plan"), it will be approved by the judge and effects will affect all the creditors concerned.

Likewise, it is possible to approve a restructuring plan that has not been approved by all the categories of creditors or by the debtor's shareholders ("*non-consensual plan*"), when their rights are affected (cross-class cram-down).

Even in restructuring agreements approved by a majority of the creditors and where the others creditors must stay outside it, certain effects, such as the stay of enforcement actions, extend to the latter.

******

II.2-3. Did the notion of classes of affected parties already exist in the national law before transposition?

Belgium

There were categories of creditors – secured creditors and unsecured creditors – but they all voted in a single college.

Another distinction was made, that of public creditors. The payment proposals were different for the different categories by virtue of the law (public creditors could not be disadvantaged compared to unsecured creditors).

The debtor could - and can still - differentiate between the groups of creditors according to their usefulness to the company or of the minimal nature of the claim.

These distinctions still exist for the procedures that apply to SMEs.

The concept of classes as it is defined in the Directive did not exist in Belgian law.

France: No

Germany

Italy: No

Netherlands

Yes, it is in the DCC and in the DBA.

Spain

No, there were categories of creditors for the purpose of voting on a composition.

- **If not, what was the closest notion?**

Belgium

The categories of creditors.

France

French law knew only creditors' committees (credit institutions and main suppliers) and the general meeting of bondholders for the largest companies.

Germany

Italy

The notion of "class" understood as all the creditors holding similar claims; but the notion of affected party did not exist.

Netherlands

Spain

The notion of "class" understood as all the creditors holding similar claims; but the notion of affected party did not exist.

- **What is the scope of the transposition (all debtors, certain debtors, conditions relating to the size of the company, other criteria)?**

Belgium

The old provisions have not been modified and concern enterprises that are either **a)** any natural person exercising a professional activity on a self-employed basis; **b)** any legal person, including non-profit associations. They apply to the "liberal professions", to hospitals, non-profit associations etc.

c) The law concerns any other organisation without a legal personality.

It excludes:

1. organisations without legal personality which pursue a distribution purpose and do not distribute to their members or to persons who have a decisive influence on the organisation's policy,
2. any public entity that does not offer goods or services on a market,

3. the State and entities to be considered as public organisations within the meaning of the Directive.

The legislator did not decide, when this law was drafted, to include non-entrepreneur natural persons governed by a law of 5 July 1998 on collective debt settlement.

The exclusions are those proposed by the Directive (credit institutions, etc.).

France

It is mandatory in safeguard proceedings and above certain thresholds in safeguard and receivership proceedings. The thresholds are: 250 employees and €20 million net turnover; or €40 million euros net turnover. These thresholds are appreciated on the date of the application to open the proceedings (Comm. Code, Art. R. 626-52). Below these thresholds it is an option available to all debtors.

Germany

Italy

All debtors except commercial entrepreneurs "below the threshold", agricultural entrepreneurs, consumers, professionals, certain specific enterprises (*startup*s), civil debtors. For all of those, there is the small business composition procedure, the composition procedure reserved for consumers, controlled liquidation (a sort of limited compulsory liquidation). The threshold for commercial entrepreneurs requires that the following conditions all be met: assets with an annual total not exceeding €300,000 over the three previous years; income of a total annual amount not exceeding €200,000 over the three previous years; an amount of debt, even not yet due, not exceeding €500,000.

Netherlands

Spain

Any natural or legal person that carries on a commercial or professional activity can notify creditors of the opening of negotiations or directly seek the approval of a restructuring plan in accordance with provisions of this book.

The following debtors are excluded from this type of proceeding:

a) insurance or reinsurance companies.

b) credit institutions.

c) investment companies or mutual funds.

d) central securities depositories

e) entities that make up the territorial organisation of the State and the public entities.

- **Are special arrangements planned for SMEs?**

Belgium

Companies with fewer than 250 workers, a turnover of less than €40 million and a balance sheet total of €20 million can choose between the procedure based on the Directive (classes) or the old procedure (revisited).

France

The forming of the classes is an option for SMEs, but it is mandatory if opt for the fast-track safeguard procedure.

Germany

Italy

No. See also previous answer.

Netherlands

Spain

There is no derogation for SMEs. But a new special fast-track procedure was introduced for "micro-enterprises" (enterprises with fewer than 10 employees and with an annual turnover of less than €700,000 or liabilities of less than €350,000 as posted in the last financial statements for the year before the submission of the declaration of insolvency).

******

II.2-4. Concerning the classes of affected parties,

- **What are the criteria used for the formation of the classes of affected parties?**

Belgium

The explanatory statement indicates that the legislator has chosen to give the class a national definition.

Creditors and equity holders are grouped into separate classes. The criterion is to check whether the entitlement they could receive in the event of the liquidation of the debtor's assets **or** that they would receive on the basis of the agreement would differ to such an extent that the positions could never be considered comparable.

The extraordinary deferred creditors (secured and with special liens) and the ordinary deferred creditors (unsecured, subordinated and with general liens) are part of a separate class.

The extraordinary deferred creditors (secured and with special liens) are only included in a class for the part of their claim for which a priority right applies on the basis of the value that would have been obtained by this creditor by virtue of the legal priority rank that would be conferred on it by the real security interest in the eventuality of a bankruptcy or of compulsory liquidation proceedings.

The remainder of their claim is included in a class of ordinary deferred creditors.

The purely economic interest does not come into play, but the judge must check if the grouping is correct and if there is a sufficient community of interest.

The explanatory statement gives some examples but which are not unambiguous, separating for example the unsecured creditors from the intra-group creditors, two ordinary and extraordinary classes, separating the unsecured on the base of the payment proposal, separating the creditors with special liens from the secured creditors.

France

Claims dating from before the judgment opening proceedings and affected by the plan are concerned. The division rests on verifiable objective criteria so that each class forms a sufficient community of economic interest (Comm. Code, Art. L. 626-30). It is provided that there will be at least one class of claims secured by real security interests concerning the debtor's assets and one class of unsecured claims. The equity holders can be grouped into classes.

Germany

Italy

Attention must be paid to the homogeneity of the claims according to the legal position and to homogeneous economic interests.

Netherlands

Spain

1. The criterion for forming the classes is the existence of an interest common to the creditors that are members of each class, determined by objective criteria.

2. It is considered that there is a common interest between claims of equal rank, determined by the order of payment of the body of creditors.

3. Claims of the same rank can be separated into different classes when there are sufficient reasons to justify it. To this end, attention may be paid, in particular, to the financial or non-financial nature of a claim, to the conflict of interest that might exist between creditors belonging to different categories or to the way credit will be affected by the restructuring plan. When the creditors are small or medium-sized enterprises and the restructuring plan implies a sacrifice for them due to a debt waiver of 50%, they must constitute a separate class of creditors.

- **Is the notion of affected party defined by law?**

Belgium

Yes, these are parties whose claims or interests are directly affected by a reorganisation plan; the workers can only be considered as an affected party in their capacity as creditors.

France

No, as in the Directive, the law only refers to the criterion of the allocation to a class of the claim by the plan.

Germany

Italy

Only creditors holding a security interest or a lien and for the employees. The former do not vote if they are paid in full within 180 days of the approval. The latter do not vote if they are paid within 30 days of the approval.

NB: in the restructuring agreements, the unaffected creditors are those that do not participate in the agreement in accordance with Art. 9, par. 7 of the Directive.

Netherlands

Spain

No. The law states that the creditors with claims concerned by the restructuring plan will vote grouped into classes of creditors.

- **Is the holding of security that could affect the allocation of creditors to a given class defined by law?**

Belgium

Yes, these are cases de real security interests within the meaning of Article 3.3 of the Civil Code.

France

A distinction is made between the real security interests in the debtor's assets and guarantees. Compliance with subordination agreements is required (Comm. Code, Art. L. 626-30).

Germany

Italy

Yes. Creditors that hold a real security interest or a lien for the part of their claim that is not satisfied must be considered as unsecured and are included in a different class.

Netherlands

Spain

Pledged claims on the debtor's assets will constitute one class, unless the heterogeneity of the encumbered assets or rights justifies their being separated into two or more classes.

- **What happens to the equity holders?**

Belgium

They can be allocated and included in one or more classes.

The approval of the reorganisation plan makes it binding on the equity holders.

France

They can be grouped into one or more classes as long as the plan includes a reorganisation of the capital (Comm. Code, Art. L. 626-30, 3°).

Germany

Italy

They are entitled to vote. Classes of shareholders must be formed if they are affected by the plan. They vote in proportion to the amount of their participation in the company's capital.

If the plan provides that the value resulting from the restructuring is also reserved for the shareholders, if one or more classes of creditors votes no, it may be approved if it appears that the treatment proposed for each of the dissenting classes would also be favourable compared to that proposed to classes of the same rank and more favourable than that proposed to lower ranking classes, even if the overall value reserved for the shareholders was intended for those classes.

If there are no classes of creditors of an equal or lower rank than the dissenting creditors, the composition may only be approved when the value intended to satisfy the creditors belonging to the dissenting class if higher overall than that reserved for the shareholders.

The company's board members may decide to request the opening of restructuring proceedings without requesting the agreement of the general meeting. They may also propose changes to the corporate status including an increase or reduction in capital and the removal of option rights. The shareholders are entitled to be informed; In this case, as in the

merger or demerger hypothesis provided for in the plan, the shareholders are only entitled to object to the approval.

Netherlands

Spain

1. If the debtor is a legal person, the approval of the restructuring plan requires that it be approved by the shareholders legally liable for the company's debts. If there are no such shareholders and the plan contains measures requiring the agreement of the shareholders' meeting, the restructuring plan may be approved even if it has not been approved by the shareholders if the company is in a situation of insolvency or imminent insolvency.

2. Judicial approval of the restructuring plan will be necessary when it is intended to extend its effects to the shareholders of the debtor legal person.

- **Is there provision to deal with equity holders as affected parties, such as debt-to-equity swaps, changes to the capital, changes to the shareholders' rights under the articles or agreements, agreements with shareholders, other?**

Belgium

Not explicitly, except in the rule that provides that: "The plan does not deviate from the legal or contractual position mentioned in paragraph 1, c), if the equity holders undertake to maintain an interest in a legal person in exchange for re-financing or if the equity holders prove crucial to the company's status as a going concern and undertake to maintain their holding in the company for a reasonable period of time".

France

The practitioner (*administrateur judiciaire*) forms the class or classes of equity holders as they see fit. There are no specific provisions on this point.

Germany

Spain

1. When the approval of a restructuring plan is requested in a state when the debtor company is in a current or imminent state of insolvency, the shareholders will not have a preferential right to subscribe for new shares or in taking up new holdings, in particular when it provides for the reduction of the share capital to zero or below the legal minimum and an increase in capital at the same time.

2. The order confirming a restructuring plan that has not been approved by all the classes of creditors may be contested by the holders of claims concerned that did not vote in favour of the plan and belong to a class which also did not approve it if the class to which the contesting creditor or creditors belong retains or receives rights, shares or holdings of a value lower than

the amount of their claims or if a lower ranking class or the shareholders receive no payment or retain no rights, shares or interests in the debtor company under the restructuring plan.

Italy: See previous answer.

Netherlands

There are no special provisions in the law. However, their rights will be affected by the plan. In case the reorganisation value does not break in their favour their shares may be withdrawn/cancelled. In some plans other creditors might agree to a debt-for-equity swap, which will dilute the value for the existing equity holders. The rights of equity holders may be changed in restructuring plan.

- **Is there provision to protect against abuses and the violation of minority shareholders' rights?**

Belgium

No, not explicitly in the law on insolvency. The law specifies, however, an exception to the absolute priority rule for shareholders which undertake to retain an interest in the legal person in exchange for re-financing or if they prove crucial to the company's status as a going concern, undertaking to maintain their holding in the company for a reasonable period of time.

It should be noted that in the procedure for SMEs, which is therefore not an application of the Directive, a new provision says that the court may refuse to approve a collective agreement when it considers in this system without classes there is an unreasonable infringement of rights and interests of the creditors (decree .XX.79).

France

Particular provisions apply in the case of forced disposals. The plan subject to a cross-class cram-down must not provide for the disposal of all or part of the rights of the class or classes of equity holders who did not approve the draft plan. Article L. 626-32 5° of Commercial Code lays down specific provisions for when one or more classes of equity holders have not approved the plan.

Germany: No answer.

Italy

Objection to approval. It must be said that this solution is not expressly provided for by the law in the event of abuse by the majority. The law also states that the company directors cannot be dismissed for just cause simply for having submitted an application to open restructuring proceedings.

Netherlands

Spain: No, not explicitly in the current law.

******

II.2-5. Questions concerning the classes of affected parties

- **What criteria are used for the formation of the classes?**

Belgium

The law refers to creditors' rights in the event of liquidation or creditors' rights as they result from the plan.

Germany

- **Do specific provisions apply to equity holders?**

Belgium: No

France

See above. The criteria chosen for the formation of the classes are modelled on those in the Directive: verifiable objective criteria and a sufficient community of interest (Comm. Code, Art. L. 626-30, III).

Germany

Italy

The law provides that several classes of shareholders must be formed if the articles of association provide for different rights, even arising out of the plan.

Netherlands: See above.

Spain: See above.

- **Is there provision to protect against abuses and the violation of minority shareholders' rights?**

Belgium

Not in the insolvency law.

France: See above.

Germany

Italy

Objection to approval. It must be said that this solution is not expressly provided for by the law in the event of abuse by the majority.

Netherlands: See above.

Spain: See above.

- **What happens to employees?**

Belgium

The reorganisation plan cannot include reductions or waivers of deferred claims arising from the performance of work, to the exclusion of contributions or tax or social security debts; workers can only be considered as an affected party in their capacity as creditors. On the other hand, the plan may provide for debts to be spread.

France

The employees are excluded from the classes of affected parties even where there are provisions concerning them in the plan. The rules specific to the fate of the employees remain applicable and are not altered by the transposition of the Directive.

Germany

Italy

The reorganisation plan cannot include reductions or waivers of deferred claims arising from the performance of work. Workers can only be considered as an affected party in their capacity as creditors.

Netherlands

Spain

Any modification or termination of the employment relationship occurring under a restructuring plan will be carried out in accordance with applicable labour legislation, including, in particular, the on the provision of information to and consultation of the workers.

- **What are the practical arrangements for forming the classes of affected parties?**

Belgium

The debtor proposes them in its plan. The delegated judge (*juge délégué*) should "verify" them before the plan is put to the creditors. There is no organised means of appeal concerning this verification or complaints procedure. The role of the delegated judge then becomes important; it will be up to the judge to warn the debtor of any criticism concerning the formation of certain classes.

France

They are formed by the debtor taking into consideration the plan proposed by the latter assisted by the court-appointed administrator (*administrateur judiciaire*) in safeguard proceedings, proposed by the administrator with the debtor In receivership proceedings.

Germany

Italy

Netherlands: See above.

Spain

The debtor proposes them in its plan.

- **Who forms the classes?**

Belgium

The debtor or the restructuring practitioner appointed with the support of the majority of the creditors.

France

The court-appointed administrator with the debtor (Comm. Code, Art. L. 626-30, III).

Germany

Italy

The debtor.

Netherlands

Spain

The debtor proposes them in its plan, but the court has to check the criteria for forming the classes.

- **Can the formation of classes of affected parties be challenged?**

Belgium

By the delegated judge although no specific procedure has been provided to bring the challenge before the court before the approval of the plan.

France

Yes, legal remedies are provided for under strict conditions. They are open to the affected parties, to the debtor, the creditors' representative (*mandataire judiciaire*) and the public prosecutor before the judge-receiver (*juge-commissaire*). The time allowed is short: 10 days to seise the judge-receiver and the same amount of time allowed for them to give a decision. The appeal must be lodged within 5 days and the court of appeal must rule within 15 days of its seisin (Comm. Code, Art., L. 626-30, V and R. 626-58-1).

Germany

Italy

Yes. When making the approval judgment, the court has to check the criteria for forming the classes.

Netherlands

Spain

Yes. When making the approval judgment, the court has to check the criteria for forming the classes

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III. Voting on restructuring plans by creditors and equity holders

1. Reference text in the European Directive: Art. 10
2. Questions

III 2-1. Which has the legislator chosen: absolute or relative priority rule?

Belgium

Absolute priority, but according to the explanatory statement, it "adjusted" to determine it in relation to the reorganisation value.

France

The absolute priority rule (Comm. Code, Art. L. 626-32, 3°).

Germany

Italy:

Absolute priority on the liquidation value. Relative priority on the going concern value.

It applies to pre-bankruptcy composition with continuation of the company.

Netherlands

Spain

The "absolute priority" rule, but with some derogations. When the plan has not been approved by all the classes of creditor or by the shareholders, the law requires that the so-called "absolute priority" rule be respected, which consists of a dual notion, summed up in the principle "no-one may bill more than he is due nor less than he deserves". Opting for the absolute priority rule, which is one of the options offered by the Directive, is justified for two reasons. Firstly, it is fairer, since it respects the bands of credit negotiated *ex ante* by the creditors. And, secondly, it offers a simpler framework for the negotiation between the different classes and for the subsequent judicial approval of the plan.

- **Does the law define the relative priority rule?**

Belgium

No, since the legislator has opted for adapted absolute priority.

France

The law does not define the relative priority rule, which was set aside by the transposition order. Article L. 626-32, 3° of the Commercial Code defines the absolute priority rule: the

claims of affected creditors in a dissenting voting class are satisfied in full by the same or equivalent means where a more junior class is to receive any payment or keep any interest under the restructuring plan.

Germany

Italy

Yes. The value exceeding the liquidation value is distributed so that the claims in the dissenting classes receive a treatment at least equal to that of classes of the same rank and more favourable than more junior classes.

Netherlands:

Spain

Yes. The law allows the approval of plans that apply relative priority. The category or categories of dissenting creditors must simply benefit from treatment more favourable than any lower ranking category, even if the lower ranking creditors or shareholders receive any payment or retain any rights, shares or interests in the debtor company even though one or other of them receives rights, shares or holdings of a value lower than the amount of its assets.

- **Does the law provide for derogations from the absolute priority rule?**

Belgium

For the shareholders, the law allows an exception, specifying that the plan does not deviate from the legal or contractual position mentioned in paragraph 1, c), if the equity holders undertake to maintain an interest in a legal person in exchange for re-financing or if the equity holders prove crucial to the company's status as a going concern and undertake to maintain their holding in the company for a reasonable period of time.

For the creditors, the general exception adapted priority determined based on the reorganisation value.

France

The derogation provided for by the Directive: at the debtor's request or at the administrator's request with the debtor's agreement, the court may decide to waive the absolute priority rule, when such waivers are necessary to achieve the objectives of the plan and if the plan does not unfairly prejudice the rights or interests of the affected parties. The claims of the debtor's suppliers of goods or services, equity holders and debts arising from tortious liability of the debtor, in particular, may benefit from special treatment (Comm. Code, Art. L. 626-32, II).

Germany

Italy: See above.

Netherlands

Spain

In exceptional cases, the plan may derogate from the absolute priority rule and leave something of value to one or more classes of lower ranking creditors or to the shareholders, if it is manifestly necessary to ensure the viability of the company and does not unreasonably prejudice the rights of the categories of creditors concerned which voted against the plan.

- **What content has been given to the best interests of creditors test?**

Belgium

The best interests of creditors criterion is met if none of the dissenting creditors is manifestly impaired compared to a situation in which a normal liquidation procedure had been followed. According to the explanatory statement, this is a hypothetical liquidation value, a sale value per item, without reference to any better scenarios.

France

The definition is in Article L. 626-31, 4° of the Commercial Code: "When affected parties have voted against the draft plan, none of these affected parties finds itself in a situation less favourable, due to the plan, than that which it would have been in if either the order of priority for the distribution of assets in a compulsory liquidation or of the sale price of the company in application of Article L. 642-1, or a better alternative solution if the plan was not confirmed had been applied"

Germany

Italy

It means that each creditor must receive at least what it would receive in the event of compulsory liquidation.

Netherlands

Spain

The plan will be deemed to fail this test when creditors are unfavourably affected by the restructuring plan compared to their situation in the event of bankruptcy and liquidation of the debtor's assets, individually or as a production unit. For the purpose of checking that this test is satisfied, the value of what they receive under the restructuring plan will be compared to the value of what it is reasonable to presume they would have received in the event of

compulsory liquidation. To calculate the latter value, it will be considered that the payment of the liquidation costs occurs two years after the formalisation of the plan.

- **Regarding the implementation of the best interests of creditors test, does the transposition provide for measures relating to the valuation of a company in liquidation and/or still operating or the determination of the best possible scenario?**

Belgium

The judge must make a decision on the value if a dissenting creditor challenges that value.

France: No.

Germany

Italy: No answer.

Netherlands: No.

Spain

The law provides that the value of what they receive under the restructuring plan will be compared to the value of what it is reasonable to presume they would have received in the event of compulsory liquidation.

******

III.3-2. Does the law provide for special arrangements for the experts tasked with the valuation of the business?

Belgium: No.

France: No.

Germany: .

Italy

The valuation of the company may be ordered by the court only if in the event of an objection, the creditor or shareholder contests the advantageous nature of the proposals or the failure to comply with the conditions of across-the-board restructuring.

Netherlands: No.

Spain

The debtor, the creditors or, exceptionally in the cases of particular complexity, the insolvency administrator may request the appointment of an expert for the sole purpose of valuing the company or one or more of its production units. But the law does not provide for special arrangements for the experts tasked with the valuation of the business.

- **Can the practitioner carry out the valuation with or without the involvement of the debtor, with the assistance of the debtor's lawyer, a chartered accountant, a statutory auditor, other?**

Belgium

The law does not prohibit this, but it does not require it. The law provides that the name of reorganisation practitioner may be proposed by the debtor.

France: Yes.

Germany: No answer.

Italy

The law requires the debtor to state in its proposals why they are preferable to compulsory liquidation. This will involve a valuation of the company by the debtor and its experts. The judicial receiver must state in their report - to be filed at least 45 days before the creditors' vote - their opinion on the debtor's proposals. Any valuation by the court must occur as a result of the creditors' objections to the points mentioned in the previous answer.

Netherlands

Spain: No answer.

- **Is it possible to appeal against this valuation?**

Belgium

In the context of an appeal against the final judgment on the approval of the plan, by contesting the cross-class cram-down.

France

Indirectly, with the appeal against the vote on the plan.

Germany: No answer.

Italy: See previous answer.

Netherlands

Spain

Not expressly provided for. Possibility of objecting to the approval decision

Not provided for by the law.

******

III.2-3. What are the voting arrangements and the majority rules?

- **Within each class**

Belgium

In the class 50%+1 on the amount of the claims.

The reorganisation plan is considered as approved as long as a majority is obtained in each class for creditors representing half of the claims in terms of the amount of the principal and interest.

What is taken into account is the creditors and equity holders and the amounts and interest due, taken from the lists of creditors and equity holders filed by the debtor, as well as the creditors whose claims were subsequently provisionally admitted.

The creditors and the equity holders that did not participate in the vote and the claims they hold and the interest are not taken into account when calculating the majorities. The circumstance that a creditor or equity holder does participate in the vote does not mean that the interested party is not bound by the result of the vote.

France

A 2/3 majority of the votes held by the members of the class, without a quorum (Comm. Code, Art. L 626-30-2, al. 5). The equity holders' vote is subject to the rules on shareholders' meetings (Comm. Code, Art. L. 626-30-2, par. 6).

Germany

Italy

Simple majority of those with voting rights or a two thirds majority with a quorum of half of those with voting rights.

Netherlands

.

Spain

The restructuring plan will be considered as approved by a class of creditors concerned if more than two thirds of the amount of the liabilities corresponding to this class voted in favour of it.

If the class consists of claims benefiting from real security interests, the restructuring plan will be considered as approved if three quarters of the amount of the liabilities corresponding to this class voted in favour of it.

- **Between the classes**

Belgium

The plan will be deemed adopted if the vote records the agreement:

- either of one class when the plan only proposed two,
- or of one class of secured creditors with security interests or special liens if there is a majority of the voting classes,
- or by one class if this class is in the value.

France

Simple majority (Comm. Code, Art. L 626-31)

Germany: .

Italy

Unanimity (in this case, the court does not check compliance in terms of the satisfaction of the creditors according to their rank).

Simple majority of classes, as long as at least one class is formed with creditors holding a lien or real security interest.

Vote in favour even of a single class formed by creditors that would partly satisfied by applying the absolute priority rule to the value exceeding the liquidation value.

Netherlands

Spain

Simple majority of the classes.

- **What majority is required to accept an increase in capital proposed by the plan?**

Belgium

Under the plan, the majority required is that necessary for any "crushing".

There are risks of challenges by minority creditors on the rights recognised by insolvency law versus those granted by company law.

France

The rules of company law are applied, by reference to Article L. 626-30-2 par. 5 of the Commercial Code; see above.

Germany

Italy

The majority of the plan.

Netherlands

Spain

No legal provision. When the approval of a restructuring plan is requested when the debtor company is in a current or imminent state of insolvency, the shareholders will not have a preferential right to subscribe for new shares or in taking up new holdings, in particular when the plan provides for the reduction of the share capital to zero or below the legal minimum and an increase in capital at the same time

- **Does the law provide for a hierarchy between the classes?**

Belgium: No.

France

No, it is left to the appreciation of the debtor or the administrator, subject to the subordination agreements.

Germany: .

Italy

Yes, considering the rank of each claim and applying the absolute priority and relative priority rule. The order is the consequence of these three criteria. The classes of shareholders can only be satisfied if their treatment does not tend to prejudice the creditors in the dissenting classes (see II.3-4).

Netherlands.

Spain

Yes, considering the rank of each claim and applying the absolute priority and relative priority rules. The order applicable is the consequence of these three criteria.

- **Is the hierarchy between the classes left to the appreciation of the practitioner tasked with their formation?**

Belgium

The law does not specify, so no answer. Case law is expected to go in the positive direction.

France: Yes.

Germany: No answer.

Italy

Yes. It is the debtor that forms the classes. The free appreciation concerns the choice between classes of the same rank or between the classes where the relative priority rule comes into play.

It should be remembered that if all the classes voted to approve, the court does not check that the rank of the claims is respected, only ensuring, if a creditor objects, that it receives at least the liquidation value.

Netherlands

Spain

Yes, it is the debtor that forms the classes.

******

III.3-4. How do the affected parties vote?

- **At a meeting**

Belgium

The creditor can vote in person, by giving a written proxy filed in the register or through its lawyer, who may act without a special power of attorney. The vote on the plan takes place at a hearing which the creditors, the debtor and the equity holders are invited to attend.

France

The law does not provide for any particular procedure.

Germany

Italy

Yes, considering the rank of each claim and applying the absolute priority and relative priority rule. The order is the consequence of these three criteria. The classes of shareholders can only be satisfied if their treatment does not tend to prejudice the creditors in the dissenting classes (see II.3-4).

Netherlands

Spain

The law has not established any formal or regulated procedure on the way the vote on the plan should take place. It does not provide for any formal call to creditors or regulate the exercising of the voting or the confirmation of the results.

- **By post**

Belgium: No.

France: The law says nothing on this.

Germany:

Italy

Yes. The vote is cast electronically, certified and sent to the judicial receiver.

Netherlands: .

Spain: No provision in the law.

- **By voting online.**

Belgium

The delegated judge decides if remote voting will be authorised; if it is, the court must be able to check the capacity and identity of the creditor or equity holder. The opinion will contain a detailed description of the procedures relating to remote voting.

The creditor or equity holder opting to use this possibility of casting their vote remotely must cast their vote at the latest at the beginning of the hearing mentioned in paragraph 1. Even if they have voted remotely, they may still attend the hearing and change their vote.

France: The law says nothing on this.

Germany

Italy: No.

Netherlands:

Spain: No provision in the law.

******

III.2-5. What are the legal remedies?

Belgium

The debtor and the intervening parties only can appeal against the judgment.

France

The affected parties can appeal within ten days if the absolute priority rule or best interests criterion was not met. The court rules taking account of the valuation of the company after hearing the public prosecutor's opinion; an appeal is possible within the same ten-day period (Comm. Code, Art. R 626-64).

Germany

Italy

Objection to approval.

Netherlands

Spain

Objection to the approval for the intervening parties.

******

III.2-6. Adjustments:

- **Does the law provide for derogations from the principles of the Directive?**

Belgium

The debtor may ask for the vote to be postponed to give it time to draw up an amended plan which will be put to the creditors. The amended plan is filed in the insolvency register and the

clerk notifies the debtor and the creditors, and, where applicable, the equity holders, in a notice stating that the amended plan has been filed in the register and that the amended plan will be voted upon at the hearing to which the vote was postponed.

France: No.

Germany

Italy

In the relationship between the pre-bankruptcy composition and the restructuring plan subject to approval. The plan must be approved by all the classes and may derogate from the ranks of the claims and even from the principle that the debtor is liable for its debts with all of its assets. Opinions differ on whether the Directive allows this latter derogation. Before the creditors' vote and also in the case of a vote against, the debtor may request the conversion of the proceedings into a pre-bankruptcy composition, opening the way to a second vote under the composition rules. It is also possible to go from pre-bankruptcy composition to a plan subject to approval.

Netherlands: .

Spain: No legal provision.

- **Can SMEs be exempted from the formation of classes and the voting arrangements? Is a specific system provided for SMEs? If not and a derogation is allowed for SMEs, how is this organised?**

Belgium

Yes, for those that do not reach the threshold for companies that are obliged to use the system of classes and choose not to follow the procedure transposing the Directive.

France

The thresholds mentioned above apply, but it is possible to use the classes even below these thresholds (see above).

Germany

.

Italy

No. See answer under II.3.3, concerning the scope of the transposition.

Netherlands

Spain

When the creditors are small and medium-sized enterprises and the restructuring plan expects them to sacrifice more than fifty per cent of the amount of their claim, they must form a separate class of creditors.

- **Are there any other derogations? If so, what are they?**

Belgium: No.

France

None (reminder: the employees are not concerned by the classes of affected parties).

Germany: .

Italy: No.

Netherlands: .

Spain: No.

******

Any further information or comments you would like to add?

Italy

It must be clearly understood that the transposition into the Italian law of the possibility of approval of the plan by all the classes has created rules that have little likelihood of being applied.

In the pre-bankruptcy composition, if there is a majority of all the classes, the dissenting creditors do not have the right to discuss the violation of the rank of their claims (according, for the liquidation value, to absolute priority or, for the going concern value, relative priority). They can only object if their claims do not receive what they could have obtained in the event of a compulsory liquidation. That means it is possible to derogate from the order of priority more than is permitted by the relative priority rule.

In the restructuring plan subject to approval, the debtor has even more freedom, as it does not have to comply with the principle that it is liable for its liabilities with all its assets. And there is no real divestment of the debtor.

******

IV. Confirmation of restructuring plans by judicial authorities

1. Reference texts in the European Directive: Articles 11 to 16.
2. Questions

IV.2-1. What are the arrangements for approving a restructuring plan?

Belgium

§1. Within fifteen days of the hearing when the vote takes place, and in any case before the end of this stay, the court decides whether or not to approve the reorganisation plan. The court examines whether:

1°) the reorganisation plan has been adopted in accordance with Article XX.83/14;

2°) the division into classes was done correctly, and whether the creditors and equity holders creditors with sufficient commonality of interest in the same class are treated equally, and in a manner proportionate to their claim;

3°) the notification of the reorganisation plan was file in the register;

4°) when there are dissenting creditors, the reorganisation plan meets the best interests of creditors test; the best interests of creditors criterion is met if none of the dissenting creditors is manifestly impaired compared to a situation in which a normal liquidation procedure had been followed;

5°) where applicable, any new financing is necessary to implement the reorganisation plan and does not unfairly prejudice the interests of the creditors.

§ 2. The court may refuse, at the request of any interested party, to approve a reorganisation plan if it manifestly does not offer a reasonable prospect of avoiding the liquidation or bankruptcy of the debtor or guarantee the viability of the company.

§ 3. Approval cannot be subordinated to a condition that is not provided for in the reorganisation plan, nor make any changes whatsoever.

France

Two stages. Firstly, that of the vote to adopt the plan, unanimously by the classes or via a cross-class cram-down. Then, the confirmation of the plan by the court.

It checks that the conditions mentioned in Article L. 626-31 of the Commercial Code are met:

- Conditions of voting on the plan
- Compliance with the community of interest of the classes and equal treatment of the classes requirements
- Lawful notification of the affected parties of the plan
- Compliance with the absolute priority rule and the best interests criterion
- No unfair prejudice of the interests of the affected parties

- Checking that the interests of all the affected parties are sufficiently protected
- Refusal of the plan possible if it does not offer a reasonable prospect of avoiding a default on payments or guarantee the viability of the company.

Once approved, the plan is enforceable on all concerned.

Germany

Italy

Art. 112.1. The court approves the composition after checking:

a) lawfulness of the procedure;

b) result of the vote;

c) admissibility of the proposal;

d) correct formation of the classes;

e) equal treatment of the creditors within each class;

f) in the case of a composition with continuation of the company, that all the classes voted in favour, that the plan offers a reasonable prospect of preventing or overcoming the insolvency and whether any new is necessary to implement the plan and that it does not unfairly prejudice the interests of the creditors.

Art. 112.2. In the composition with continuation of the company, if one or more classes are dissenting, the court, at the debtor's request or with the debtor's agreement in the event of alternative proposals being put forward, it also approves if the following conditions are met:

a) the liquidation value is distributed in line with the graduation of the legitimate causes of preference;

b) the value exceeding the liquidation value is divided up so that the credits included in the dissenting classes may benefit from overall treatment at least equal to that of the classes of the same rank and more favourable than that of the lower ranking classes, without prejudice to the provisions of Article 84, paragraph 7 (relative priority does not apply to employees - editor's note).

c) no creditor receives more than its claim;

d) the proposal is approved by a majority of the classes, as long as at least one is made up of creditors with preferential rights or, failing that, if the proposal is approved by at least one class of creditors that would be at least partially satisfied by respecting the graduation of the legitimate causes of preference also on the value exceeding the liquidation value.

Art. 64.8 (restructuring plan subject to approval): The court approves the restructuring plan if it has been approved by all the classes.

Netherlands

?

Spain

Court approval. Once the plan has been approved by the creditors, it will be confirmed by the court. Where the plan has been approved by all the categories of affected creditors and the debtor, or when it provides for measures that require the approval of the shareholders, ("*consensual plan*"), it will be approved by the judge and effects will affect all the creditors concerned.

Likewise, it is possible to approve a restructuring plan that has not been approved by all the categories of creditors or by the debtor's shareholders ("*non-consensual plan*"), when their rights are affected (*cross-class cram-down*)

******

IV.2-2. What role is given to the court or the authority designated by the law?

Belgium: See above.

France

The court checks the conditions mentioned above and decides to approve the plan, rendering it enforceable on all concerned.

Germany

Italy

The court rules on the approval of the pre-bankruptcy composition and the restructuring plan subject to approval (see previous answers).

The court also plays a role for the interim measures and the authorisations during the proceedings. These topics have been dealt with in their own section of the questionnaire.

Netherlands

In the WHOA the role of the Court is a flexible one. The Court must be involved when a plan has not been adopted by all creditors whose right are affected by the plan. In order for the plan to be binding on all creditors (including those who oppose the plan or who have refrained from voting at all) it needs to be sanctioned by the Court (*homologatie*).

Spain

It rules on the approval of restructuring plan subject to approval (see previous answers).

******

IV.2-3. Does the law provide for a framework of conditions for the approval of a plan?

Belgium: No conditions other than those mentioned above.

France: Yes, see above

Germany

"**Italy**: See previous answers.

Netherlands: See above.

Spain: See previous answers.

- **Does the law provide a deadline for the approval of a plan by the court?**

Belgium

No, but the law provides that the court will act rapidly.

France

The fast-track safeguard procedure lasts two months, renewable once. Thus it may not last longer than four months (Comm. Code, Art. L. 628-8). The observation period in safeguard proceedings and in receivership is 12 months and 18 months maximum respectively, and the public prosecutor can no longer request an exception extension (Comm. Code, Art. L. 621-3). Exceeding the deadline is not sanctioned.

Germany

Italy

A pre-bankruptcy composition must be approved within twelve months the submission of the application by the debtor (Art. 113). No sanctions are provided for.

Netherlands

Spain

The approval is given in an order that must be issued within fifteen days of the publication of the decision to admit the registration of the insolvency in the public register.

******

IV.2-4. What legal remedies are provided concerning the court's decision to confirm a plan?

Belgium

An appeal against the approval judgment.

France

The objecting affected parties have 10 days to seise the court with an application if the best interests criterion, the absolute priority rule or the order of priority of the distributions is violated. The court gives its decision after hearing the opinion of the public prosecutor. An appeal can be lodged against the judgment within an identical time period of 10 days.

Germany

Italy

Appeal before the court of appeal.

Netherlands

Spain

The restructuring plan approval order may be challenged in the Court of Appeal

- **Is it possible to challenge the voting conditions, the implementation of the priority rule, the best interests of creditors test, other conditions?**

Belgium

Yes, and also compliance with the forms prescribed.

France: Yes, see above.

Germany

Italy

Voting conditions: yes.

Implementation of absolute or relative priority rules: yes, except if the proposals were approved by all the classes.

Best interests of creditors test: yes, in the sense that the creditors must receive at least what they could obtain in the event of a compulsory liquidation.

Formation of classes.

Shareholders' rights.

Netherlands

Spain

1) Voting condition: no, rather a failure to comply with the rules on forming the classes of creditors.

2) Implementation of absolute or relative priority rules: if their claims were not treated on an equal footing with the other claims of their class.

3) Best interests of creditors test: if the reduction in the value of their claims is manifestly greater than that which is necessary to guarantee the viability of the company. If claims have been assigned, it will be presumed that this circumstance does not occur when the contesting creditor acquired the claim with a discount greater than the reduction in its value.

4) If the required conditions of communication (content and form) are not met.

5) The debtor is not faced with probable insolvency, imminent insolvency or already subject to ongoing insolvency proceedings.

6) The plan does not offer a reasonable prospect of avoiding bankruptcy and guaranteeing the viability of the company in the short and medium term.

- **Does the law allow the appeal court to change the plan?**

Belgium: No.

France

No, except during the implementation of the plan, if a substantial change to the plan is deemed necessary to avoid its rescission.

Germany

Italy: No.

Netherlands: Not applicable.

Spain: No.

- **Does the law provide for compensation of a party that suffers a loss when its appeal is successful?**

Belgium: No.

France

No particular provisions, as the Directive allows.

Germany

Italy

In the pre-bankruptcy composition and in the restructuring plan subject to approval, a plan rescue rule has been provided. The Court of Appeal, when ruling on the appeal against the plan approval decision, can confirm the plan, even if the creditors' rights have been infringed, if the general interest of the creditors and workers prevails over the damage to the appellant, whilst recognising that the latter is entitled to compensation for the damage incurred.

Netherlands: .

Spain: No.

******

IV.2-5. Does the law provide for derogations from the principles of the Directive?

- **If so, what are they?**

Belgium: No.

France: No.

Germany: No answer.

Italy: No.

Netherlands

Spain: No.

******

V. Discharge of debts

1. Reference texts in the European Directive: Articles 20 to 23.
2. Questions

V.2-1. What is the scope of the measures adopted:

- **Which debtors?**

Belgium

Discharge of debts applies to the natural person bankrupt who operates a professional enterprise. Natural persons who do not have an activity of this type come under a different regime (collective debt settlement).

France

Any natural person debtor in compulsory liquidation or simplified compulsory liquidation.

Any natural person debtor subject to professional recovery proceedings (very small enterprises).

Any over-indebted consumer, of civil over-indebtedness proceedings are opened by the over-indebtedness committee.

Germany

Italy

All debtors, whether natural or legal persons, to which insolvency procedures apply.

If the debtor is a company or another legal entity, the conditions provided by the law must subsist for the shareholders and the legal representatives.

The discharge of debt for the company is effective for the shareholders with unlimited liability.

Netherlands

Spain

The law supposes a reform of the discharge of debt conditions (*exoneración del pasivo insatisfecho*) for natural persons and self-employed professionals, as long as the debtors are in good faith.

- **Which debts?**

Belgium

The debts that come within the bankruptcy. These are residual debts, whether or not they are linked to the debtor's entrepreneurial activity. Certain debts cannot be discharged (called "*effacement*" (erasure) in Belgian law).

France

The debtor's civil and business debts that are not paid in the course of the compulsory liquidation, except for the exceptions below.

Germany

Italy

Are excluded: upkeep and maintenance obligations, debts compensating for damage resulting from an illegal extra-contractual act and financial criminal and administrative penalties not attached to extinguished debts.

Netherlands

Spain

The debts covered by the personal or professional bankruptcy proceedings, with the exception of the debts mentioned below.

- **Which creditors?**

Belgium

Erasure does not apply to the personal or joint debts of a spouse, ex-spouse, legal cohabitee or ex-legal cohabitee arising out of a contract entered into by them, whether or not they entered into the contract alone or with the bankrupt, and are unconnected to the bankrupt's professional activity.

France

All creditors whose claim dates from before the opening of the proceedings, except for the exceptions below.

Germany

Italy

There are no limitations regarding certain categories of creditors.

The creditors' rights with regard to the co-obligors and guarantors of the debtor and obligors in appeals are safeguarded.

Netherlands

Spain: See previous question.

- **In what procedure?**

Belgium

Erasure is not the subject of a procedure separate to that applicable in a bankruptcy. The effect of the erasure can be challenged by the public prosecutor, the receiver (*curateur*) or any interested party

France

Compulsory liquidation proceedings;

Simplified compulsory liquidation procedure, lasting 6 months in theory;

Individual business recovery procedure (*rétablissement professionnel*) (very small enterprises);

Consumer over-indebtedness procedure.

Germany

Italy

After compulsory liquidation and the controlled liquidation, which applies to entrepreneurs under the threshold and to the other categories mentioned in II 3-3.

Netherlands

Spain

Discharge of debt procedure (*exoneración del pasivo insatisfecho*) with the insolvency judge.

******

V.2-2. Who benefits from the discharge of debts?

Belgium

The debtor will be released from its liability for the balance of its debts towards the creditors. The bankrupt's spouse, ex-spouse, legal cohabitee or ex-legal cohabitee, who is personally

a co-obligor in their debt, incurred by virtue of the law or contract during the marriage or legal cohabitation, is released from that obligation by erasure.

France

Physical person debtor.

Germany

Italy

The debtor.

The discharge of debt for the company is effective for the shareholders with unlimited liability.

Netherlands

Spain

Insolvent natural person debtors and self-employed professionals.

- **Who does not benefit?**

Belgium

Erasure cannot benefit a legal cohabitee whose declaration of legal cohabitation was made in the six months preceding the opening of the bankruptcy proceedings.

France

Spouse who is an obligor in a personal capacity (own personal debts or joint debts).

Germany

Italy

The creditors' rights with regard to the co-obligors and guarantors of the debtor and obligors in appeals are safeguarded.

Netherlands: No answer.

Spain

A debtor who finds themself in one of the following circumstances cannot obtain a waiver of unsatisfied debt:

1) When, in the ten years preceding the application for the waiver, they have been finally sentenced to prison for offences against property and socio-economic order, for forging documents, against the Treasury and the Social Security or against workers' rights.

2) When, in the ten years preceding the application for the waiver, they have been subject to a final administrative sanction for very serious tax, social or social order-related offences.

3) When the insolvency proceedings have been declared fraudulent.

4) When the duties of collaboration and information with regard to the judge-receiver and the insolvency authorities have been violated.

5) When the debtor has provided false or misleading information or if they behaved in an imprudent or manner when contracting debts or perform their obligations.

******

V.2-3. What exceptions does the law provide for?

Belgium

Erasure is granted without prejudice to real security interests given by the bankrupt or a third party.

Erasure does not apply to the bankrupt's maintenance debts and those that result from an obligation to compensate for damage linked to the death or bodily harm of a person caused by their fault.

France

The law lists the claims excluded from the discharge of debts:

- Claims originating in an offence sanctioned by a judgment
- Claims attached to the creditor's rights in personam
- In the event of fraud against social security organisations
- Claims of guarantors who are subrogated to the rights of a creditor
- In the event of professional sanctions (personal bankruptcy) or criminal penalties (bankruptcy)
- If the compulsory liquidation proceeding are territorial proceedings within the meaning of Regulation (EU) 2015/848 (Comm. Code, Art. L 643-11).

Germany

Italy

Are excluded: upkeep and maintenance obligations, debts compensating for damage resulting from an illegal extra-contractual act and financial criminal and administrative penalties not attached to extinguished debts.

The debtor:

a) must not have been finally sentenced for fraudulent bankruptcy or for an offence against the public economy, industry and commerce, or other crimes committed in connection with the operation of the enterprise, unless they have been rehabilitated. If criminal proceedings are pending for any of these crimes or one of the preventive measures mentioned in Legislative Decree no. 159 of 6 September 2011, the benefit may only be recognised at the end of the proceedings in question;

b) must not have withdrawn assets or invoked non-existent liabilities, caused or aggravated the default by rendering the reconstitution of the assets and liabilities and the flow of business seriously difficult, or have had abusive recourse to credit;

c) must not have hindered or slowed the proceedings and must have provided the bodies in charge of said proceedings with all the useful information and the documents necessary to their successful conclusion;

d) must not have benefited from another discharge of debt in the five years preceding the expiry of the discharge period;

e) must not have already benefited twice form a discharge of debt.

Netherlands

Spain

1) Debts for non-contractual civil liability, in the event of death or bodily injury, as well as for compensation resulting from workplace accidents and occupational illnesses, regardless of the date of the court ruling substantiating them.

2) Debts for civil liability, resulting from a crime or misdemeanour punished by a custodial sentence, unless the criminal liability is extinguished and the financial penalties have been paid.

3) Maintenance debts.

4) Wage debts corresponding to the last sixty days of effective work carried out before the declaration of insolvency, of an amount not exceeding three times the inter-professional minimum wage, as well as those acquired during the course of the proceedings, as long as they have not been paid by the Wage Guarantee Fund.

5) Public law debts. However, claims whose recovery management is a matter for the National Agency for the tax authorities and social security debts can be exonerated up to a maximum of ten thousand euros per debtor. For the first five thousand euros of debt, the waiver will be total, and, above that, the waiver will reach fifty per cent of the debt up to an specified maximum.

6) Debts arising from fines imposed on the debtor in connection with criminal proceedings and very heavy administrative penalties.

7) Debts for legal costs and expenses arising from the processing of the application for a waiver.

8) Secured debts, whether owed in principal, interest or any other notion, within the limit of the special lien, calculated in accordance with provisions of this law.

******

V.2-4. Is the discharge of debt automatic or is it granted by a court decision?

Belgium

The erasure is normally automatic and necessarily arises from the decision to close the bankruptcy by liquidation or immediate closure. However, any interested party, including the receiver (*curateur*) or the public prosecutor may, in an application forwarded to the bankrupt by the court clerk, from the publication of the bankruptcy closure judgment, request that the erasure only be granted partially or totally refused in a decision giving the reasons, if the debtor has committed acts of gross or wilful misconduct which contributed to the bankruptcy or knowingly omitted to provide information, or provided incorrect information in response to requests from the receiver or the judge-receiver. The same application may be introduced by means of a third party opposition by application at the latest three months after the publication of the bankruptcy closure judgment.

France

The discharge of debt is automatic on the closure of the compulsory liquidation proceedings.

The law expresses the principle of discharge of debt in the form of a prohibition on creditors bringing further individual enforcement proceedings against the debtor (Comm. Code, Art. L 643-11).

Germany

Italy

It is granted by a court decision. The court must order the discharge of debt when it rules on the closure of the liquidation proceedings or in any case three years after their opening.

Netherlands

Spain

It is granted by a court decision.

- **Does the discharge of debt benefit the debtor's guarantors?**

Belgium

Erasure does not apply to co-debtors or grantors of personal security interests (Art.XX.175)

France: No

Germany

Italy

The creditors' rights with regard to the co-obligors and guarantors of the debtor and obligors in appeals are safeguarded.

Netherlands:

Spain

The exoneration will not affect the creditors' rights in respect to persons jointly and severally liable with the debtor and their sureties, guarantors, insurers, non-debtor mortgage creditors or those who, by virtue of statutory or contractual provisions, have an obligation to satisfy all or part of the exonerated debt, and cannot invoke the exoneration of the unpaid debt obtained by the debtor.

- **Is the debtor's marital situation taken into consideration?**

Belgium: Yes

France

Yes, joint debts remain due by the debtor's spouse, unless insolvency or over-indebtedness proceedings are opened concerning them, and they also benefit from the effects of closure for insufficient assets.

Germany: No.

Italy

No. In over-indebtedness proceedings, it is possible to open proceedings for all the members of the same family, but each person's assets must remain separate.

Netherlands

Spain

If the bankrupt benefits from a community of property matrimonial regime or another matrimonial regime and this regime has not been liquidated, the waiver of the unpaid debts that affects the matrimonial debts incurred by the bankrupt's spouse or by both spouses will not be extended, as long as they have not personally been granted the benefit of a waiver of the unsatisfied debt.

- **After what period of time is a discharge of debt granted?**

Belgium

Erasure results from the closure of the bankruptcy proceedings, but if the bankruptcy is not liquidated within the 3 years provide for by the law, erasure will be granted automatically at that time. As soon as the bankruptcy proceedings are opened, erasure is virtual. During the bankruptcy proceedings, an interested party may bring an action to have the court rule that erasure will not be granted.

France

The discharge of debt results from the judgment of closure for insufficient assets (if there are no more realisable assets) (Comm. Code, Art. L 643-9).

Germany

Italy

Three years after the opening of the proceedings or on their closure if earlier.

Netherlands

Spain

If the administration of the bankruptcy and the individual creditors accept the debtor's request or do not object to it within the statutory time limit, the judge-receiver, after checking the coherence of the financial conditions and the requirements of this law, will grant the waiver of the unsatisfied taxpayer in the ruling declaring the closure of the insolvency proceedings.

- **Can it be granted for a claim before the fulfilment of all the obligations that apply when a creditor has been paid off?**

Belgium:

Not relevant. Erasure always concerns all of the residual debts and the partial refusal for a withdrawn part of the debt.

France

Yes, on closing the proceedings when there are no more realisable assets.

Germany

Italy: No.

Netherlands: No answer.

Spain: No legal provisions.

- **Under your law, does the discharge of debt depend on the realisation of all or part of the insolvent debtor's assets?**

Belgium: Yes

France

Yes, all of the assets must be realised, except when assets are too difficult to sell.

Germany

Italy

No. But a discharge of debt is granted to debtors that have no assets to distribute to the creditors. A deserving natural person debtor who is unable to offer the creditors any compensation whatsoever may ask the court for a discharge of debt for once. The amount of the debtor's income is established by a decree of the President of the Council of Ministers.

Netherlands

Spain

The debtor may request the waiver of liability subject to a payment plan and without liquidating their assets ("active mass").

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V.2-5. Is the disqualification of directors limited to the three-year discharge period?

Belgium

If it is established that gross and wilful misconduct by the bankrupt contributed to the bankruptcy, the insolvency court which declared the bankruptcy can, in a judgment setting out the reasons, ban the bankrupt, from running a company either personally or through another person.

If it appears that without any legitimate reason for not doing so, the bankrupt or the company directors and managers of a bankrupt legal person failed to perform the obligations prescribed by Article XX.146, the insolvency court may, in a judgment setting out the reasons, ban those persons from exercising, personally or through another person, the duties of a company director, receiver or manager of a legal person, from holding any position that gives them power to commit a legal person, the duties of a manager of an establishment in Belgium as mentioned in Article 2:149 of the Code on Companies and Associations or the professions of stockbroker or correspondent broker.

[…]

The duration of this ban is set by the court in accordance with paragraphs 1, 3 and 4. It may not exceed ten years.

The duration of the ban mentioned in paragraph 2 is set by the court. It lasts three years.

The court may suspend the ban for a period of three years or defer its delivery for the same period. The court specifies the conditions of the suspension or deferral of the delivery.

France

No, professional disqualification (personal bankruptcy or ban on holding a managerial position) are independent of the compulsory liquidation proceedings; the duration of the sanction is set by the court within the statutory limit of 15 years.

Germany

Italy

There are no longer any professional disqualifications.

Netherlands

Spain

There are no provisions on professional disqualifications linked to the discharge of debt

A professional disqualification is possible in cases fraudulent ("culpable") bankruptcy for a period of two to fifteen years.

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V.2-6. Does the law provide for derogations from the principles of the Directive?

Belgium: No.

France

The French Commercial Code derogates from the principles of the Directive as regards the three-year period for granting a discharge of debt to a debtor: if the proceedings are pronounced closed before this deadline, the discharge applies; otherwise, the debtor may request the closure of the proceedings at any time.

Germany

No. On the contrary, the discharge of debt also applies to debtors who are not entrepreneurs.

Netherlands: No answer.

Spain

No. On the contrary, the discharge of debt regulations also apply to debtors who are not entrepreneurs.

- **If so, what are they?**

Belgium: Not applicable.

France: See above.

Germany

Spain: Not applicable.

Italy: No answer.

Netherlands: No answer.

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VI. Other significant innovations (if necessary)

Early warning tools

Belgium

The judge has access to the national Bank's financial health index, but not to the calculation that determines it, therefore it is not very useful.

A much more efficient measure: the president of the Business Court's chamber for companies in economic difficulties can, by means of specific request giving the reasons, ask for any information relating to the debtor at the National Bank of Belgium's Central Point of Contact. They can also get access to the distressed company's bank accounts by the same means.

The law guarantees access by the debtor to the file kept about them by the Business Court. A Royal Decree currently being approved makes systematises the access possibilities in order to make them a tool available to the debtor and not only an economic policing tool.

France

No significant change except for increased powers for statutory auditors, who can inform the president of the court as soon as the difficulties appear.

Germany

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Italy

Articles 3 and 2086 of the Civil Code provide for the duty of any entrepreneur to organise the company to immediately detect any signs of crisis and to remedy them. The oversight bodies in companies must give their opinions to the company directors if situation arises where there is a risk of a crisis, an actual crisis or insolvency indicating that it would be useful to seek access to the negotiated settlement process. The Tax Agency, managers in charge of collecting taxes, social security organisations must give their opinions to entrepreneurs when the amounts owing to them exceed a certain limit. The Code mentions certain warning signs that should suggest to entrepreneurs that they need to access the negotiated settlement process.

Netherlands: No answer.

Spain: No legal provision.

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Directors' liability

Belgium

Liability for negligence if, in the previous year, a risk to the business's status as a going concern could be envisaged and acts of wrongdoing were committed, or for gross or wilful misconduct.

France

No significant change in the law; a company officer may be personally obliged to contribute in the event of insufficient assets due to management misconduct; their contribution is set by the court according to the scale of the insufficiency of the assets and the misconduct in their management (Comm. Code, Art. L 651-2).

Germany

Italy

Articles 2393, 2394, 2395 of the Civil Code already regulated the liability of company directors of capital companies. This liability also was regulated for groups of companies.

The Code has added that in the negotiated settlement process, an entrepreneur in a state of crisis must administer the company in such a way as to avoid impairing its economic and financial viability. If the company is insolvent, but there are concrete prospects for a recovery, the company director must the manage it in the main interests of the creditors.

Netherlands: No answer.

Spain

When the debtor is a legal person, the jurisdiction of the insolvency judge will also be exclusive for liability actions against the company directors or liquidators, de jure or de facto; against the natural person designated to permanently exercise the duties of a director of a legal person and against the persons, whatever their title, who are vested with powers by the company's top management, when there is no permanent delegation of authority from the board of directors to one or more general managers or to an executive committee, for the damage caused, before or after the judicial declaration of insolvency, to the insolvent legal person.

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Specialisation of the courts

Belgium

Yes; the Business Court is made up of specialised professional judges and lay judges; the delegated judge is a lay judge.

France

No significant change in the law; the commercial court has jurisdiction for traders and tradespeople; the *tribunal judiciaire* has jurisdiction for self-employed professionals and farmers (Comm. Code, Art. L 621-2) ; the over-indebtedness commission has jurisdiction for over-indebted consumers (Consum. Code, Art. L 721-2).

For the largest companies, 18 specialised commercial courts have been created (Comm. Code, Art. L 721-8).

Germany

Italy

Specialisation exists in the main courts of first instance, which have specialist divisions. In the other courts, there is not enough specialisation. There has been a review with a view to reforming the judicial organisation, but the plan failed to win political support.

Netherlands

Spain

Under Spanish law bankruptcy cases are heard by the commercial judge *(Juzgado de lo Mercantil*) in whose territorial jurisdiction the debtor has its centre of main interests, which is presumed to coincide the registered office for legal persons.

With the law transposing the Directive, the commercial courts have regained their jurisdiction to hear insolvency cases involving natural persons.

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Supervision of the activity of insolvency practitioners

Belgium

Not for the reorganisation practitioner except for the control of the judicial mandate concerned. On the other hand, insolvency practitioners (bankruptcy, business transfers) are part of a structured and regulated body.

France

Professionals constitute two bodies of insolvency practitioners: insolvency administrators (*administrateurs judiciaires*) and creditors' representatives (*mandataires judiciaires*). These professions are regulated and subject to the oversight of the public prosecutor and the Ministry of Justice. This oversight concerns the conditions of access to the profession, the procedure for registering on a list of practitioners approved by the courts. Annual and quarterly auditing of their accounts is required. It is facilitated by possibility of imposing professional and criminal sanctions in the event of misconduct (illegal acquisition of a personal interest, abuse of office, complicity in an offence committed by the debtor or by a creditor) and by a professional financial solidarity scheme in the form of a guarantee fund that practitioners pay into.

Germany

Italy

The Code provides for a register of persons charged with administration and control in the proceedings (Art. 356) at the Ministry of Justice. Registration in the register is a necessary condition to practise as a property manager, judicial receiver, etc. Another register exists for the experts appointed in the negotiated settlement process.

Among the conditions for registration: holding a qualification as a lawyer, chartered accountant, administrator of distressed companies (successful recovery), specific experience, taking advanced professional training courses in this field.

Netherlands

Spain

The insolvency administrator (*Administrador concursal*) and the restructuring plan expert are appointed by the insolvency judge. They must be registered with the court. Registration in the register is a necessary condition to practise as a property manager or expert.

In addition to the registration conditions: holding a qualification as a lawyer, chartered accountant, administrator of distressed companies (successful recovery), specific experience, taking advanced professional training courses in this field.

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