

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (Text with EEA relevance)

TITLE II

PREVENTIVE RESTRUCTURING FRAMEWORKS

CHAPTER 4

Protection for new financing, interim financing and other restructuring related transactions

Article 17

Protection for new financing and interim financing

1 Member States shall ensure that new financing and interim financing are adequately protected. As a minimum, in the case of any subsequent insolvency of the debtor:

- a new financing and interim financing shall not be declared void, voidable or unenforceable; and
- b the grantors of such financing shall not incur civil, administrative or criminal liability, on the ground that such financing is detrimental to the general body of creditors, unless other additional grounds laid down by national law are present.

2 Member States may provide that paragraph 1 shall only apply to new financing if the restructuring plan has been confirmed by a judicial or administrative authority, and to interim financing which has been subject to *ex ante* control.

3 Member States may exclude from the application of paragraph 1 interim financing which is granted after the debtor has become unable to pay its debts as they fall due.

4 Member States may provide that grantors of new or interim financing are entitled to receive payment with priority in the context of subsequent insolvency procedures in relation to other creditors that would otherwise have superior or equal claims.

Article 18

Protection for other restructuring related transactions

1 Without prejudice to Article 17, Member States shall ensure that, in the event of any subsequent insolvency of a debtor, transactions that are reasonable and immediately necessary for the negotiation of a restructuring plan are not declared void, voidable or unenforceable on the ground that such transactions are detrimental to the general body of creditors, unless other additional grounds laid down by national law are present.

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2 Member States may provide that paragraph 1 only applies where the plan is confirmed by a judicial or administrative authority or where such transactions were subject to *ex ante* control.

3 Member States may exclude from the application of paragraph 1 transactions that are carried out after the debtor has become unable to pay its debts as they fall due.

4 Transactions referred to in paragraph 1 shall include, as a minimum:

- a the payment of fees for and costs of negotiating, adopting or confirming a restructuring plan;
- b the payment of fees for and costs of seeking professional advice closely connected with the restructuring;
- c the payment of workers' wages for work already carried out without prejudice to other protection provided in Union or national law;
- d any payments and disbursements made in the ordinary course of business other than those referred to in points (a) to (c).

5 Without prejudice to Article 17, Member States shall ensure that, in the event of any subsequent insolvency of the debtor, transactions that are reasonable and immediately necessary for the implementation of a restructuring plan, and that are carried out in accordance with the restructuring plan confirmed by a judicial or administrative authority, are not declared void, voidable or unenforceable on the ground that such transactions are detrimental to the general body of creditors, unless other additional grounds laid down by national law are present.