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Public Consultation Report

Transposition of Directive 2019/1023 on restructuring and insolvency

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1. Introduction

The Department of Enterprise, Trade and Employment launched a public consultation on the transposition of the Preventive Restructuring Directive on 17 January 2020.

The focus of the consultation was on the use of Member State options, being matters in respect of which Member States can or must make a choice. Interested parties were asked to bear in mind that, except for the exercise of options, Member States are obliged to implement the mandatory articles in the Directive.

The responses on the optional articles cover a range of different views and put forward a range of different, and in some cases conflicting solutions. Before decisions can be taken on such complex matters, it is important that the Department has the fullest possible understanding of the issues and interests at stake and the widest possible debate on the policy measures that may be adopted.

To this end the Department is adopting a two phased approach to reviewing and amending the State's examinership process:

- *Phase 1* provides for transposition of the *mandatory articles* by the deadline of 17 July 2022. While the current examinership regime is largely aligned with requirements set out in the PRD there are a number of mandatory articles which will necessitate amendments to the Companies Act 2014; such amendments will be made by way of regulations under the European Communities Act 1972.
- Under *Phase 2* the Department will examine the *optional articles* as part of a wider review of the State's examinership regime. Some of the more significant optional provisions relate to extending worker's rights and providing State support to workers and their representatives to enable them to independently assess the economic situation of their employer. Some of these optional provisions would mark a significant change from the existing examinership framework both in terms of its scope and operation and such policy changes would require more time for further consideration, consultation and engagement. The role of employees and their representatives is also impacted by some of the optional articles and this phased approach will allow for consultation and engagement with the proposed Employment Rights Law Review Group.

This phase-based approach to reviewing and amending the State's examinership laws informed the Department's consideration of the responses received. Responses which were related to the mandatory elements were considered in the first instance and have informed policy decisions regarding potential derogation from mandatory articles. Those which related

to the optional articles have also been considered and will inform future policy development in the area of examinership.

2. Background

Directive (EU) 2019/1023 (PRD) sets down minimum rules for Member State preventative restructuring frameworks, in order to remove barriers to effective preventive restructuring of viable debtors in financial difficulties across the EU.

Ireland, in common with other EU Member States, has availed of a one-year extension to the 17 July 2022 for the implementation of the Directive, given the disruption and additional legislative requirements arising from Covid-19.

The Directive will ensure that across the EU viable enterprises that are in financial difficulties have access to effective national preventive restructuring frameworks that will enable them to continue to operate. Its aim is not to interfere with what already works well in a Member State but to establish an EU-wide framework to ensure effective restructuring processes that are efficient both at national and cross border level.

The Commission has confirmed that where a Member State has multiple restructuring frameworks it is sufficient that one such framework meets the requirements of the Directive. Ireland's examinership framework is generally viewed internationally as an example of best practice on preventative restructuring and it already complies in numerous respects with the requirements of the Directive.

The approach the Department is taking is focused on transposing the mandatory articles of the Directive in the examinership process.

3. Overview of public consultation process

Five submissions were received in response to the public consultation process. Submissions were received from the Consultative Committee of Accountancy Bodies-Ireland (CCAB-I), the Office of the Revenue Commissioners, the Irish Congress of Trade Unions (ICTU), the Office of the Director Corporate Enforcement and a private individual.

In general, the nature of the comments reflects the background of the organisations making them. Many of the submissions note the merits of Ireland's long standing existing examinership framework.

The Department specified it was consulting on the use of Member State options, being matters in respect of which Member States can or must make a choice. Interested parties were asked to bear in mind that, except for the exercise of options, Member States are obliged to implement the Directive.

While this consultation was focused on Member State options, views were welcomed from respondents on any aspect of the Directive they wished to raise. The provision of such views has facilitated the Department's consideration of transposition of the mandatory measures.

The consultation did not seek views on the personal insolvency aspects of the Directive, namely Articles within Title III. Separately, the Department did not seek views on Articles 2 (definitions) or Articles 25, 28, Titles V and VI as they fall to the Department of Justice to transpose.

4. Proposed Policy Responses

The views and opinions offered by stakeholders are summarised at Appendix 1.

Examinership is a rescue process which seeks to provide companies breathing space within which to restructure so as to ensure the long-term viability of the company and preserve employment. An examinership involves the court placing a company under its protection to enable a court appointed examiner to investigate its affairs and to report to the court on the prospects of its survival. A key point raised in one of the submissions was that it is imperative that the operation of the examinership process continue to be transparent and flexible, with court supervision and implementation by regulated insolvency practitioners.

There was also some criticism of the examinership process in relation to small companies. Views were expressed that it is unaffordable to most small companies who are in difficulty. It is important to note that the public consultation was conducted in 2020 ahead of the development and enactment of the Companies (Rescue Process for Small and Micro Companies) Act 2021. The legislation which was signed into law on 22 July 2021 and commenced on 7 December 2021 provides a new simplified restructuring process for viable small and micro companies. The Small Companies Administrative Rescue Process mirrors key elements of examinership in an administrative context thereby reducing court oversight, resulting in efficiencies and lower comparable costs. It has limited court involvement where creditors are engaged in the process and positively disposed to a rescue plan.

Set out below is an overview of the overarching points raised by stakeholders as part of the Public Consultation Process in respect of the mandatory provisions and proposed policy approach.

ARTICLE 3: EARLY WARNING SYSTEM AND ACCESS TO INFORMATIONS

Under Article 3 companies will have access to early warning tools that can enable them to detect a deteriorating business and lead to more restructurings at an early stage.

Feedback from Respondents

While Article 3 requires Member States to have an Early Warning System (EWS), the Directive neither defines the concepts, nor includes detailed prescriptions on the characteristics of such a system or how it should operate. Thus, the submissions, while supportive of the proposal, sought greater clarification on what such a system would look like.

Department's view

The Department has explored the options set out in the Directive for an EWS. It considers the self-assessment model provides a timely and cost-effective mechanism to support viable businesses and protect jobs. This model provides for publication and access to guidance information. It has broad reach and application across companies of all sizes and structures, with specific relevance to SMEs which represent a large cohort of Irish companies.

The Department is currently scoping a suitable self-assessment model which may involve leveraging other gov.ie resources to ensure depth and breadth of access and visibility for all business classifications, particularly SMEs.

ARTICLE 4.2 AVAILABILITY OF PREVENTIVE RESTRUCTURING FRAMEWORKS

Where there is a likelihood of insolvency, Member States must provide debtors with access to a preventive restructuring framework or procedures. The framework is intended to enable them to restructure, with a view to preventing insolvency and ensuring their viability. A consequence of this is intended to be the protection of jobs and the continuation of business activity.

Ireland has a well-developed and robust examinership process as well as the Small Company Administrative Rescue Process, a new rescue process for small and micro companies. These combine a level of curtailment of the rights of creditors, which is necessary in order to rescue a failing company, with considerable oversight and safeguards to protect those creditors.

Feedback from respondents

Some respondents indicated they would welcome an opportunity to review current examinership process and legislation.

Department's response

The Department is adopting a phase-based approach to implementing the Directive and will in due course conduct a wider review of the State's examinership regime.

ARTICLE 6 STAY OF INDIVIDUAL ENFORCEMENT ACTIONS

A key feature of any preventive restructuring framework is the stay against individual enforcement actions. The stay is intended to give debtors a respite on claims from creditors and to facilitate negotiations on a restructuring plan.

Article 6(2) provides that the stay shall cover all types of claims; it may cover all creditors or be limited to only certain creditors. Article 6(5) specifically excludes the claims of workers,

unless by derogation workers claims are stayed, but provides that in this case payments to workers must be guaranteed in the relevant preventive restructuring framework to a similar level of protection which they otherwise enjoy.

Feedback from Respondents

While one respondent believes the derogation is reasonable, most do not on the grounds that the Redundancy Payments and Insolvency Payments Schemes would need to satisfy the conditions for such derogation.

Department's view

There is no specific carve-out for workers' claims from the stay in the Companies Act thus it will need to be amended to ensure workers cannot be prevented from seeking to enforce any claim against the company. It is worth noting that in practice, workers claims are rarely affected and are often the subject of parallel negotiations. Therefore, carving out workers claims from the process may in fact be a more accurate reflection of current commercial practice. Thus, the Department does not intend to avail of the derogation

In circumstances whereby a rescue attempt fails, and the company is subject to a subsequent insolvent liquidation, workers claims will continue to enjoy the priority afforded by the Companies Act. Should there be insufficient funds in the liquidation to pay employees' claims, the State's Redundancy Payments and Insolvency Payments Schemes will guarantee all statutory entitlements.

ARTICLE 7 CONSEQUENCE OF THE STAY OF INDIVIDUAL ENFORCEMENT ACTIONS

Article 7 provides that the commencement of the stay suspends the opening of insolvency proceedings and any obligation on the part of directors to file for the opening of insolvency proceedings.

Creditors subject to the stay and with unpaid claims from the commencement of the preventive restructuring framework are precluded from withholding performance, or terminating or otherwise modifying essential executory contracts solely because the debts had not been paid. 'Essential executory contract' is understood to be an executory contract which is necessary for the continuation of the day-to-day operations of the business, including contracts concerning supplies, the suspension of which would lead to the debtor's activities coming to a standstill.

Feedback from Respondents

There was general support for this mandatory requirement. The absence of a rule preventing creditors from terminating contracts for essential supplies was noted by one respondent as a

major lacuna in the examinership legislation and compared the current situation with the position under Chapter 11 in the US where legislation prohibits the enforcement of ipso facto claims in such contracts and provides that the business cannot be held to ransom by essential suppliers. It was also noted that there is adequate protection in the examinership legislation to protect creditors continuing to supply as the examiner can certify liabilities incurred during the protection period.

One respondent recommended that the option of including non-essential contracts be considered.

Department's view

The mandatory provisions in the Directive concerning executory contracts and the withholding of performance are not presently part of the Irish law on examinership, and thus will need to be provided for to ensure examinership aligns with PRD. The Department notes that creditors are already protected under Irish law as it is possible for the examiner to apply to the court to seek permission to pay pre-petition liabilities and to pay liabilities arising during the period of protection if their payment is crucial to the conduct and survival of the business during the period of protection.

ARTICLE 11 CROSS-CLASS CRAM-DOWN

The cross-class cram-down is essentially a process where a restructuring plan can become binding on dissenting classes of creditors provided it is approved by other classes of creditors.

Examinership contains a cross-class cram-down mechanism in terms that closely align with the PRD in that court-confirmed proposals are binding on all classes of creditors.

The cross-class cram-down in the PRD is predominantly governed by Article 11. Article 11(1) sets a list of minimum conditions for the confirmation via cross-class cram-down, including the *Absolute Priority* Rule in Article 11(1)(c).

By way of derogation from 11(1)(c), Member States may provide that 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.

Member States may maintain or introduce provisions derogating from the first subparagraph where they are necessary in order to achieve the aims of the restructuring plan and where the restructuring plan does not unfairly prejudice the rights or interests of any affected parties.

Feedback from Respondents

In response to whether Ireland should avail of derogation from the Absolute Priority rule some respondents considered that it should be availed of to maintain the State's examinership process where there is "a juggling of priorities" to achieve a level of equity and balance for the various stakeholders, which is better than they would achieve on a winding up.

On the other hand, employee representatives believed that the Absolute Priority should be followed and there should be no derogation in order to prevent any leap frogging or preferential claims.

Others considered both the Absolute and Relative Priority Rules. One stated that in examinership, a judicial test of unfair prejudice stands as a prudent intermediate stance between what are two very contrasting options in "Absolute" and "Relative" and that examinership has been shown to navigate a path between both approaches by weighing up the interests of affected parties. Another respondent considered there are arguments to be made for both rules - that an absolute rule could better protect the already precarious claims of unsecured creditors who might be unwilling to support a plan in priority to shareholders, while a relative rule could conceivably allow a restructuring a better probability of progressing at the expense of dissenting claims, even if such interests could be needed to keep a company trading as a going concern during restructuring.

Department's view:

While Irish examinership law is aligned with many of the requirements set out in the Directive there are some subtle differences when it comes to the cross-class cram-down. A key one is that under the Directive the court will be required to ensure that creditors of the same rank are treated as favourably as each other. Ireland applies a type of *Relative Priority* rule that relies as well on whether creditors are unfairly prejudiced.

The Directive offers two optional derogations from this mandatory provision. Thus, it is intended that the derogation (i.e. the unfair prejudice test) will be availed of.

ARTICLE 13 WORKERS

Article 13 pertains to workers and specifies five social Directives that all jurisdictions should continue to apply in relation to the development of preventive restructuring frameworks. These directives include the Works Councils and Information and Consultation Directives, the Collective Redundancies, Acquired Rights, and Employers in Insolvency Directives.

Feedback from Respondents

While some respondents commented that the examinership legislation has no provisions that affect the statutory rights of workers, others articulated that the Article needs to be

fleshed out to include the protection of both individual and collective rights of workers and to give effect Ireland's commitments under the European Pillar of Social Rights, particularly principle 8.

Department's view

There is nothing in the Companies Act nor in any sectoral legislation precluding or excluding the application of collective labour rights in the context of examinership. Neither Irish law nor collective agreements provide for mandatory voting by workers in measures leading to changes in work organisation, and so the provision of Article 13(2) does not apply. Therefore, no change to Irish law is required as a result of this Article.

ARTICLE 19 DIRECTORS DUTIES WHERE THERE IS A LIKELIHOOD OF INSOLVENCY

Article 19 provides that Member States are obliged to ensure that, where there is a likelihood of insolvency, directors as a minimum have regard to the interests of creditors, shareholders and other stakeholders; the need to take steps to avoid insolvency; and the need to avoid deliberately negligent conduct that threatens the viability of the business

Feedback from Respondents

While some believed Irish law appears to adequately cover this Article, others articulated that company law requires strengthening.

Department's view

Common law does provide that in the case of an insolvent company, the duty owed by the directors to the company is effectively transposed into a duty to act in the interests of the company's creditors. The Company Law Review Group (CLRG) considered the matter in its 2017 report¹ and recommended that a specific duty of directors to creditors be provided in statute.

The Department is examining the codification of existing case law taking into account the requirements of Article 19.

¹ [Company Law Review Group - Report on the Protection of Employees and Unsecured Creditors - DETE \(enterprise.gov.ie\)](https://www.enterprise.gov.ie)

ARTICLE 29 DATA COLLECTION

Article 29 provides for the collation and provision of insolvency data.

Feedback from Respondents

Respondents commented on the general current availability of such data. While some noted that much of the mandatory data is available from the Companies Registration Office, there are evident gaps in particular on the optional data.

Department's view

The Department intends to form a working group of stakeholders and to develop an action plan to implement the requirements of this Article.

Appendix 1 – Summary of responses received

Subject Matter and Scope					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
1	5	Member States may provide that the following claims are excluded from, or are not affected by, preventive restructuring frameworks referred to in point (a) of paragraph 1: (a) existing and future claims of existing or former workers; (b) maintenance claims arising from a family relationship, parentage, marriage, or affinity; or (c) claims that arise from tortious liability of the debtor.	Optional	Should all or any of these claims be explicitly excluded from preventive restructuring frameworks for corporate entities? Please provide reasons for your answer.	<p>CCABI Disagree with exclusion of (a) to assist facilitating survival of company and (c) so that supply of defective product can be dealt with. Agree with the exclusion of (b).</p> <p>Private Individual All these claims should be explicitly excluded. Would correspond with protections afforded under s.621.</p> <p>Revenue Claims should not be explicitly excluded (a)/(b)/(c) are already included in examinership.</p> <p>ICTU Further detailed analysis required.</p>
1		General Provisions		Please indicate any general comments or recommendations you may have on Article 1.	<p>Private Individual “Likelihood of insolvency, with a view to preventing the insolvency and ensuring the viability of the debtor” is broadly consistent with ‘reasonable prospect of</p>

					survival' requirement under Irish law.
Early Warning and Access to Information					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
3		Member States shall ensure that debtors have access to one or more clear and transparent early warning tools which can detect circumstances that could give rise to a likelihood of insolvency and can signal to them the need to act without delay.	Mandatory	Please indicate any general comments or recommendations you may have on Article 3.	<p>ICTU Article 3.3: Supportive of requirement. Delivery and regular information sharing is important. Article 3.5: Supportive of requirement. Vital that workers have independent expert advice. State and/or employer funding should be provided to this end.</p> <p>Private Individual Clarification required on resourcing, administration and access by SMEs. Clarification required on how employees' representatives may be assisted in "assessing debtors' economic situations".</p> <p>ODCE Unclear who would be responsible for the provision of information.</p>

Availability of Preventive Restructuring Frameworks					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
4	2	Member States may provide that debtors that have been sentenced for serious breaches of accounting or bookkeeping obligations under national law are allowed to access a preventive restructuring framework only after those debtors have taken adequate measures to remedy the issues that gave rise to the sentence, with a view to providing creditors with the necessary information to enable them to take a decision during restructuring negotiations.	Optional	Petitioners for the appointment of an examiner must exercise utmost good faith and the courts have a wide discretion. Is this sufficient or would you suggest any additional provisions? Please provide reasons for your answer.	<p>CCABI Present provision adequate given positive reputation of court system and qualification/supervisory regime for insolvency practitioners.</p> <p>Private Individual Requirement of utmost good faith within s518 is reinforced by sufficient court discretion.</p> <p>Revenue Review examinership processes and legislation with specific emphasis on the independent review. S518 addresses “Duty to act in utmost good faith” but does not address matters that may come to stakeholder attention after examinership. S553 does provide for revocation within 180 days where there is proof of fraud.</p>
4	4	Member States may limit the number of times within a certain period a debtor can access a preventive restructuring framework as	Optional	Should Ireland avail of this option? If so, what limit should be imposed in your view? Please provide reasons for your answer.	<p>CCABI No specific limitation should be implemented. The court can prevent any attempt at abuse and creditors and stakeholders can make submissions to the court in such an instance</p>

		provided for under this directive.			<p>Private Individual Viable companies should not be unduly inhibited from availing of procedure.</p> <p>Revenue Not in favor of option; support access to justice and fairness.</p>
4	5	The preventive restructuring framework provided for under this Directive may consist of one or more procedures, measures or provisions, some of which may take place out of court, without prejudice to any other restructuring frameworks under national law. Member States shall ensure that such restructuring framework affords debtors and affected parties the rights and safeguards provided for in this Title in a coherent manner.	Optional	<p>Examinership is a preventive restructuring procedure accessible through the court. The court may appoint an examiner to a company with a reasonable prospect of survival after affording creditors an opportunity to be heard. The court must adjudicate on the proposals for a compromise or scheme of arrangement contained in the examiner's report. The court may confirm the proposals provided at least one class of creditors whose claims would be impaired by the proposals has accepted them. Do you believe any amendments or changes are required to the current provisions?</p>	<p>CCABI No requirement for changes; involvement of court meets the necessary and proportionate test.</p> <p>Private Individual Court confirmation essential. Without it, any compromise would be vulnerable to creditors' enforcement actions and would, almost inevitably, bring about the end of a debtor company.</p> <p>Revenue No change required, Ireland already provides for schemes of arrangement.</p>

				Please provide reasons for your answer.	
4	6	Member States may put in place provisions limiting the involvement of a judicial or administrative authority in a preventive restructuring framework to where it is necessary and proportionate while ensuring that rights of any affected parties and relevant stakeholders are safeguarded.	Optional		
4	8	Member States may also provide that preventive restructuring frameworks provided for under this Directive are available at the request of creditors and employees' representatives, subject to the agreement of the debtor. Member States may limit that requirement to obtain the debtor's agreement to cases where debtors are SMEs.	Optional	Irish law provides that creditors (which could include employees) may apply for examinership. Do you consider that this option should be extended to employees' representatives? The need to obtain the consent of the debtor is required by the Directive but this can be restricted to cases where the debtor is an SME. Should this option be exercised?	<p>CCABI Sufficient that employees as creditors are entitled to apply for examinership. Consent of debtor should not be required. Examinership has provided a useful tool for achieving restructuring in cases initiated by creditors.</p> <p>ICTU Agree that employee representatives may request the availability of a preventative restructuring framework. The right to request the availability of a preventative restructuring framework should not be subject to debtor agreement.</p> <p>Private Individual Challenge of appropriate definition of</p>

				Please provide reasons for your answers.	'employees' representatives' but should extend the option. Consent is essential when the debtor is an SME. Costs can be prohibitive for smaller companies. Revenue Recommend the retention of existing provisions within the examinership framework.
4		General comments		Please indicate any general comments or recommendations you may have on Article 4.	Private Individual Article 4(5) acknowledges that preventive restructuring does not have to be conveniently added to an existing court based procession.
Debtor in Possession					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
5	2	Where necessary, the appointment by a judicial or administrative authority of a practitioner in the field of restructuring shall be decided on a case-by-case basis, except in certain circumstances where Member States may require the mandatory appointment of	Mandatory	The Companies Act 2014 provides for the mandatory appointment of a practitioner (examiner) and a petition to the court must nominate a person to be appointed as an examiner. If the petition is granted the company will be under court protection for 70 days, "a general stay" as described in the Directive. The court has the ability to confirm	CCABI Current legal requirement for appointment of insolvency practitioner and supervision by court provides high level of comfort. Companies Act 2014 allows examiner to apply to court for transfer of directors' powers to protect stakeholder interests. Would not suggest changes to the current practice. There should not be a mandatory approval from each class of creditor of any restructuring.

		such a practitioner in every case.		the examiner's proposals provided they have been accepted by at least one class of creditors whose interests are impaired (i.e. "a cramdown"). Are there any changes or amendments that you would suggest to the current practice? Please provide reasons for your answer.	<p>Private Individual Current practice should not change, Article 5(3) covers circumstances to which examinership applies and where practitioner appointment will be mandatory.</p> <p>Revenue Examinership process doesn't decide the appointment of a practitioner on a case-by case basis: it is mandatory and should remain so.</p>
5		General comments		Please indicate any general comments or recommendations you may have on Article 5	<p>CCABI Examinership should allow for the protection of new financing (debtor in possession financing (DIP)) to facilitate company. This would be subject to approval of the court.</p> <p>Private Individual Debtor-in-possession is in line with key characteristics of examinership. Management remain in place while examiner prepares and reports on plan. But can also hamper creditor support where they are averse to funding company which will continue under direction of certain individuals.</p>

Stay of Individual Enforcement Actions					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
6	3	Member States may provide that a stay of individual enforcement actions can be general, covering all creditors, or can be limited, covering one or more individual creditors or categories of creditors.	Optional	<p>Examinership provides for a general stay on actions. Do you believe this should be amended?</p> <p>Please provide reasons for your answer</p>	<p>CCABI No amendment to general stay provision. It allows breathing space for formulation of restructuring plan. A more limited stay could result in numerous court applications and diversion of attention/resources from the urgent restructuring work.</p> <p>Private Individual No amendment to general stay provision. Breathing space vital to company to allow rehabilitation or turnaround. Also, proceedings can be brought against a company in examinership with the leave of the court.</p> <p>Revenue General stay provision should not be amended. All stakeholders must be constructive during a re-structuring process.</p>

6	4	<p>Member States may exclude certain claims or categories of claims from the scope of the stay of individual enforcement actions, in well-defined circumstances, where such an exclusion is duly justified and where: (a) enforcement is not likely to jeopardize the restructuring of the business; or (b) the stay would unfairly prejudice the creditors of those claims.</p>	Optional	<p>Irish law generally provides for this option under examinership, do you believe further exclusions should be made?</p> <p>Please provide reasons for your answer.</p>	<p>CCABI No requirement for an amendment; there is a general entitlement for creditors to apply to court.</p> <p>Private Individual No requirement for an amendment; Court discretion also provides flexibility for any claims to be excluded from a stay in examinership.</p> <p>Revenue Do not seek to change a process which works well without concrete justification.</p>
6	5	<p>Paragraph 2 shall not apply to workers' claims.</p> <p>By way of derogation from the first subparagraph, Member States may apply paragraph 2 to workers' claims if, and to the extent that, Member States ensure that the payment of such claims is guaranteed in preventive restructuring frameworks at a similar level of protection.</p>	Optional	<p>Do you believe this option should be taken?</p> <p>Please provide reasons for your answer.</p>	<p>CCABI Not in favor of derogation. While Redundancy Payments Scheme may be available to workers' claims, the Insolvency Payments Scheme would not apply in circumstances where an employee was made redundant during an examinership.</p> <p>ICTU Not in favor of derogation now as would be dependent on the feasibility of any measures, such as the Insolvency Fund or other means, to satisfy the conditions for derogation.</p> <p>Private Individual Reasonable for option to be adopted in view of the preferential treatment</p>

					accorded to employees within the payment of creditors' claims in Irish law
6	7	Notwithstanding paragraph 6, Member States may enable judicial or administrative authorities to extend the duration of a stay of individual enforcement actions or to grant a new stay of individual enforcement actions, at the request of the debtor, a creditor or, where applicable, a practitioner in the field of restructuring. Such extension or new stay of individual enforcement actions shall be granted only if well-defined circumstances show that such extension or new stay is duly justified, such as: (a) relevant progress has been made in the negotiations on the restructuring plan; (b) the continuation of the stay of individual enforcement actions does not unfairly prejudice the rights or interests of any affected parties; or (c) insolvency proceedings which could end in the liquidation of the debtor under national law	Optional	Irish law currently complies with this option; an extension of 30 days is permissible upon application to the court, and permit proceedings to occur during examinership, with the permission of the court under section 520 of the 2014 Act. Do you believe any amendments are required under this article? Please provide reasons for your answer if so.	<p>CCABI Amendment not required; court can continue protection period beyond 100 day period where examiner has submitted report.</p> <p>Private Individual Defined protection period is confined window of time within which to accomplish a compromise. Examinership strikes proper balance in duration of its stay. Potential 12 month stay under Article 6(8) could carry harsh repercussions for creditors.</p> <p>Revenue Amendment is not required; current 70 day process with an extension of 30 days is sufficient.</p>

		have not yet been opened in respect of the debtor.			
6	9	Member States shall ensure that judicial or administrative authorities can lift a stay of individual enforcement actions in the following cases: a) the stay no longer fulfils the objective of supporting the negotiations on the restructuring plan, for example if it becomes apparent that a proportion of creditors which, under national law, could prevent the adoption of the restructuring plan do not support the continuation of the negotiations; (b) at the request of the debtor or the practitioner in the field of restructuring; (c) where so provided for in national law, if one or more creditors or one or more classes of creditors are, or would be, unfairly prejudiced by a stay of individual enforcement actions; or(d) where so provided for in national law, if	Optional	Creditors' right to be heard is set out in Irish examinership process under section 515 of the 2014 Act, this option is part of Irish law. Do you believe any amendments are required under this article? Please provide reasons for your answer if so.	<p>CCABI</p> <p>No amendment: Court has discretion to lift stay upon creditor application if it is of the opinion that the company no longer has reasonable prospect of survival. 9(a) would not appear to allow examinership to proceed where a single or class of creditor opposes restructuring plan. 9(b) allows for debtor to request the lifting of a stay. Examinership reserves decision to examiner. Ensures independent decision process interest of creditors, in particular where interests of directors may not be aligned with those of general body of creditors.</p> <p>Private Individual S515 fully provides for this option.</p> <p>Revenue No amendment required, Stay can be lifted under s520.</p>

		<p>the stay gives rise to the insolvency of a creditor.</p> <p>Member States may limit the power, under the first subparagraph, to lift the stay of individual enforcement actions to situations where creditors had not had the opportunity to be heard before the stay came into force or before an extension of the period was granted by a judicial or administrative authority.</p> <p>Member States may provide for a minimum period, which does not exceed the period referred to in paragraph 6, during which a stay of individual enforcement actions cannot be lifted.</p>			
6		General comments		Please indicate any general comments or recommendations you may have on Article 6.	<p>CCABI</p> <p>Stay on enforcement actions, and limitation of entitlement of any creditor to veto the process, have significantly contributed to success of examinership.</p>

Consequence of the Stay of Individual Enforcement Actions					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
7	3	Member States may derogate from paragraphs 1 and 2 in situations where a debtor is unable to pay its debts as they fall due. In such cases, Member States shall ensure that a judicial or administrative authority can decide to keep in place the benefit of the stay of individual enforcement actions, if, taking into account the circumstances of the case, the opening of insolvency proceedings which could end in the liquidation of the debtor would not be in the general interest of creditors.	Optional	Irish examinership law provides that so long as a company is under court protection no proceeding for winding up may be commenced (Section 520(4)). The option would be at variance with that section. Do you have views on the use of this option? Please provide reasons for your answer.	<p>CCABI No requirement for derogation.</p> <p>Private Individual Not compatible with examinership's protection period. But consideration be given to whether restructuring procedures be converted to liquidation if company fails viability test at entry stage, or when company unable to pay debts after completion of set period of restructuring.</p> <p>Revenue As little change to current legislation as possible is required.</p>
7	4	The first subparagraph shall not preclude Member States from affording such creditors appropriate safeguards with a view to preventing unfair prejudice being caused to	Optional	Should either or both of these options be adopted? Please provide reasons for your answers. Please refer to recital 41 of the Directive when considering this provision.	<p>CCABI Absence of a rule preventing creditors from terminating contracts for essential supplies is major lacuna in the examinership legislation Should apply to all contracts including non-essential contracts. There is adequate protection in the examinership legislation to protect</p>

		<p>such creditors as a result of that subparagraph.</p> <p>Member States may provide that this paragraph also applies to non-essential executory contracts.</p>			<p>creditors continuing to supply; can require the examiner to certify liabilities incurred during the protection period.</p> <p>Private Individual For essential executory contracts, the option for additional safeguards is warranted in ensuring creditors are not unfairly prejudiced. Care for non essential executory contracts is less convincing.</p>
7	6	<p>Member States may provide that a stay of individual enforcement actions does not apply to netting arrangements, including close-out netting arrangements, on financial markets, energy markets and commodity markets, even in circumstances where Article 31(1) does not apply, if such arrangements are enforceable under national insolvency law. The stay shall, however, apply to the enforcement by a creditor of a claim against a debtor arising as a result of the operation of a netting arrangement.</p>	Optional	<p>Should Ireland avail of this option? Please provide reasons for your answer.</p>	<p>CCABI Provisions for netting arrangements in the Netting of Financial Contracts Act, 1995.</p> <p>Private Individual Could be availed of in Irish law.</p> <p>Revenue Would not amend.</p>

7		General comments		Please indicate any general comments or recommendations you may have on Article 7.	CCABI Recital 41 would significantly enhance attractiveness of examinership as a forum for international restructuring.
Content of Restructuring Plan					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
8		General comments		Please indicate any general comments or recommendations you may have on Article 8	<p>CCABI 12 month outer limit on stay is not unreasonable, but needs to be balanced with the requirement to deal expeditiously with restructurings, to avoid prejudice to creditors. Limiting duration of stay to 4 months where COMI of debtor has been transferred from another Member State within 3 months prior to the proceedings may be to discourage forum shopping.</p> <p>ICTU Mandatory provisions of para 1 are minimum requirements. Need for discussion on worker related matters.</p> <p>Private Individual Option under Article 8(1)(h) to require validation of debtors' 'statements of reasons' is a welcome inclusion within the provisions.</p>

Adoption of Restructuring Plan					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
9	1	Member States shall ensure that, irrespective of who applies for a preventive restructuring procedure in accordance with Article 4, debtors have the right to submit restructuring plans for adoption by the affected parties. Member States may also provide that creditors and practitioners in the field of restructuring have the right to submit restructuring plans, and provide for conditions under which they may do so.	Optional	Currently under examinership the examiner (practitioner) submits a restructuring plan on behalf of the debtor company. Allowing creditors to submit restructuring plans would be at variance with this position. Do you have views on this option? Please provide reasons to support your answer.	<p>CCABI Not supportive of amendment as may cause significant disruption, delays and additional costs. Furthermore, it enables a dissatisfied creditor, which has put forward an unsuccessful proposal, to apply to court.</p> <p>Private Individual Rarely creditors propose a plan.</p> <p>Revenue No change required.</p>
9	3	Notwithstanding paragraph 2, Member States may exclude from the right to vote the following: (a) equity holders; (b) creditors whose claims rank below the claims of ordinary unsecured creditors in the normal ranking of liquidation priorities; or (c) any related party of the debtor or	Optional	Examinership does not exclude affected persons from voting, where those persons are members or creditors. Do you propose any amendments under this option? Please provide reasons for your answer.	<p>CCABI 3.a. - No weight is given to members' vote. A moot point as to whether formally excluding them from right to vote is of any consequence. 3. b - In reality, vote of these classes of creditors are of little consequence. There is an argument for excluding their voting rights. 3.c - An argument for excluding related parties with a conflict of interest.</p>

		the debtor's business, with a conflict of interest under national law.			<p>However, SMEs and many larger businesses are family owned, and related party debts are common. May also be difficulty in determining issue of conflict of interest. Further consideration needs to be given.</p> <p>ICTU Article underpins the right of workers to have a vote, and underlines necessity of full advice and information being available to them.</p> <p>Private Individual Not a strong enough argument for removing the voting entitlements of the affected parties identified.</p> <p>Revenue No change required.</p>
9	4	Article 9.4: Member States shall ensure that affected parties are treated in separate classes which reflect sufficient commonality of interest based on verifiable criteria, in accordance with national law. As a minimum, creditors of secured and unsecured claims shall be treated in separate classes for the purposes of adopting a restructuring plan. -	Optional	Section 539 of the Act of 2014 provides that the proposals for compromise must specify each class of members and creditors of the company. Examiners have some latitude in class formation. Do you believe that either or both of these options should be taken? Please provide reasons for your answer.	<p>CCABI Irish law does not currently exercise the additional discretions of Art 9.4. Current classes of member/creditors based upon long-established legal principles and case law. Discretion may require codification to avoid challenge. Requirement to specifically confirm formation of classes should not require judicial or administrative authority.</p> <p>ICTU Supportive of workers treated in a separate class.</p>

		Member States may also provide that workers' claims are treated in a separate class of their own. -Member States may provide that debtors that are SMEs can opt not to treat affected parties in separate classes. -Member States shall put in place appropriate measures to ensure that class formation is done with a particular view to protecting vulnerable creditors such as small suppliers.			<p>Private Individual Irish law does not treat all classes the same (hierarchy of creditors' claims to repayment). Treating all classes the same in a preventive restructuring setting may appear paradoxical and run counter to s539 and necessitate amendment.</p> <p>Revenue No change required.</p>
9	5	Member States may require a judicial or administrative authority to examine and confirm the voting rights and formation of classes at an earlier stage than that referred to in the first subparagraph.	Optional	Do you believe that this option should be taken? Please provide reasons for your answer.	<p>CCABI Legislation provides for court approval on submission of a scheme of arrangement.</p> <p>Private Individual Courts should retain right to determine voting rights and classes at any stage of procedure.</p> <p>Revenue No issue in relation to classes as only one impaired class must vote in favour.</p>
9	7	Notwithstanding paragraphs 2 to 6, Member States may provide that a formal vote on the adoption of a restructuring	Optional	Do you believe that this option should be taken?	<p>CCABI Current system works well and provides focal point for moving towards conclusion of examinership. S540(4)</p>

		plan can be replaced by an agreement with the requisite majority.		Please provide reasons for your answer.	provides for proposals to be voted upon meeting of creditors or of class of creditors, either in person or proxy. Private Individual Option merits adoption and could benefit SMEs in practice. Revenue No reason to amend with optional provision.
9		General comments		Please indicate any general comments or recommendations you may have on Article 9.	CCABI Suggestion under Para 6 requires approval from each class which is unworkable.
Confirmation of Restructuring Plans					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
10		General comments		Please indicate any general comments or recommendations you may have on Article 10.	CCABI No amendment required- examinership provides for confirmation by a court. ICTU The judicial authority continues to be the body to confirm plan. Private Individual Directive's attention towards workers' interests is encapsulated by inclusion in

					Article 10(1) of confirmation of restructuring plans which involve the loss of more than quarter of the workforce.
Cross Class Cram-Down					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
11	1	By way of derogation from the first subparagraph, Member States may limit the requirement to obtain the debtor's agreement to cases where debtors are SMEs. Member States may increase the minimum number of classes of affected parties or, where so provided under national law, impaired parties, required to approve the plan as laid down in point (b)(ii) of the first subparagraph.	Optional	Should the option to limit the requirement to obtain the debtor's agreement to cases where the debtors are SMEs be taken? In relation to the second option, should there be any increase in the number of classes required to approve the plan? (Such an increase would be at variance with current law). Please provide reasons for your responses.	<p>CCABI Debtors' agreement should not be a statutory requirement. Court's current role in ensuring proposals are equitable, and fair is sufficient. An increased number of classes required to approve proposals not required.</p> <p>Private Individual Increase in number of classes would serve little purpose in ensuring a smooth restructuring of a debtor company.</p> <p>Revenue Examinership is about preserving the business, not protecting the debtor. If applied, there should not be a provision where the debtor has to agree.</p>
11	2	By way of derogation from point (c) of paragraph 1, Member States may provide that the claims of affected	Optional	Irish law would be at variance with the option set out in the first subparagraph which provides for "an absolute	<p>CCABI Absolute priority rule should not apply. Formulation of proposals requires juggling priorities and level of equity/balance for</p>

		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. Member States may maintain or introduce provisions derogating from the first subparagraph where they are necessary in order to achieve the aims of the restructuring plan and where the restructuring plan does not unfairly prejudice the rights or interests of any affected parties		priority rule". The second subparagraph provides for a derogation where it is necessary to achieve the aims of the restructuring plan. Do you consider either option should be taken? Please provide reasons for your responses.	various stakeholders which is better than they would achieve on a winding up. Derogation may not limit the potentially severely detrimental effect of implementing this Rule in the first place for examinerships. ICTU Absolute priority rule should be followed. There should be no derogation to prevent leap frogging of preferential claims. Private Individual Examinership weighs interests of affected parties in confirmation of scheme of arrangement by exercising court discretion. Art 11.2 does not offer constructive alternative to courts' established position. Revenue Maintain existing examinership process by availing of derogation under Art 11.2.2.
11		General Comments		Please indicate any general comments or recommendations you may have on Article 11.	CCABI An Absolute Priority Rule may undermine examinership process. Private Individual Provides little guidance on how to design an efficient framework.

Equity Holders					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
12	3	Member States may adapt what it means to unreasonably prevent or create obstacles under this Article to take into account, inter alia: whether the debtor is an SME or a large enterprise; the proposed restructuring measures touching upon the rights of equity holders; the type of equity holder; whether the debtor is a legal or a natural person; or whether partners in a company have limited or unlimited liability.	Optional	<p>Irish law does not exclude equity holders and members may vote on the examiner's proposals for a compromise or scheme of arrangement. Do you support taking this option under the Directive?</p> <p>Please provide reasons for your response. This option should be considered in conjunction with Article 9(3).</p>	<p>CCABI As a cleanup exercise, exclude provision for members under s540. Under s540 member meetings are provided for to consider proposals but members vote is not taken into account.</p> <p>Private Individual Little basis for excluding equity holders and members from voting on a scheme of arrangement.</p> <p>Revenue No evidence over the last 10 years that equity holders have unreasonably prevented/stalled the process. No justification to change the status quo.</p>
12		General Comments		Please indicate any general comments or recommendations you may have on Article 12.	<p>Private Individual Option for a relative priority rule under Article 11 v option under Article 12 what would be provided to shareholders on one hand, would be taken away on the other.</p>

Workers					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
13		General Comments		Please indicate any general comments or recommendations you may have on Article 13.	<p>CCABI Examinership legislation has no provisions to affect the statutory rights of workers.</p> <p>ICTU Article 13.1 to include protection of both individual and collective rights in terms of Para 1 and Recital 1. Re Para 2, the necessity for a robust framework for participation in decision-making by workers as stakeholders and creditors.</p> <p>Private Individual Greater clarity on how employees' representatives are to be furnished with objective information regarding "the recent and probable development of the undertaking's or the establishment's activities and economic situation.</p>
Validation by the Judicial or Administrative Authority					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
14		General Comments		Please indicate any general comments or	<p>CCABI Amendment not required, legislation already provides for challenge to</p>

				recommendations you may have on Article 14.	proposals by dissenting creditor, including a dispute regarding valuation, which would be heard by the court. Private Individual Underlines importance of examiner's functions in preparing appraisal of company's assets and liabilities.
Effects of Restructuring Plans					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
15		General Comments		Please indicate any general comments or recommendations you may have on Article 15.	CCABI No amendments required. Private Individual Without an enforceable scheme, binding on parties by Court confirmation, the probability of a restructuring succeeding is
Appeals					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
16		General Comments		Please indicate any general comments or recommendations you may have on Article 16.	ICTU Mandatory right of appeal should include the right of workers as affected parties to make such an appeal to the relevant judicial authority.

Protection for New Financing and Interim Financing					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
17	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.	Optional	Proposals for a compromise or scheme of arrangement must be confirmed by a court (section 541 of the Companies Act 2014). Do you think any amendments are required under this option? Please provide reasons for your answer.	<p>CCABI Court confirmation is the surest means by which a functional restructuring plan can be implemented successfully.</p> <p>Private Individual No amendment is required: new financing is adequately protected currently.</p> <p>Revenue New financing is adequately protected currently.</p>
17	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. Member States may exclude from the application of paragraph 1 interim financing which is granted after the	Optional	This option would be at variance with examinership law which requires that for an examiner to be appointed, a company is or is unlikely to be able to pay its debts. Do you have views on whether any change would be appropriate? Please provide reasons for your answer.	<p>CCABI Not a workable amendment given the purpose of examinership.</p> <p>Private Individual No necessity for such an option as a barrier to interim financing which could be decisive to sustaining a company through a restructuring.</p> <p>Revenue No change required. Current process works well without such an exclusion</p>

		debtor has become unable to pay its debts as they fall due.			
17	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.	Optional	Section 554(4) provides a priority for liabilities properly incurred by an examiner over other claims (other than claims secured by a fixed mortgage or charge etc) in a subsequent receivership or winding up of the company. This option is reflected in Irish law. Do you have views on whether any change would be appropriate? Please provide reasons for your answer.	<p>Private Individual No change is required. On balance, it is reasonable to maintain the position under section 554(4) of the 2014 Act.</p> <p>Revenue No change is appropriate.</p>
17		General Comments		Please indicate any general comments or recommendations you may have on Article 17	<p>CCABI Lacuna in the legislation is protection of new financing (debtor in possession financing (DIP)) to facilitate the survival of company during the protection period, and beyond. In contrast with Chapter 11 where the priority of DIP financing is protected by legislation.</p> <p>ICTU Priority protection of interim financing should not lead to worsening of claims of employees in resulting insolvency.</p>

Protection for Other Restructuring Related Transactions					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
18	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.	Optional	Proposals for a compromise or scheme of arrangement must be confirmed by a court (section 541 of the Companies Act 2014). Do you think any amendments are required under this option? Please provide reasons for your answer.	<p>Private Individual Court confirmation is preferable.</p> <p>Revenue No change required. S553/557 examinership goes beyond and allows for look back in respect of fraudulent transactions and essentially unwinding them (return of assets improperly transferred).</p>
18	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.	Optional	<p>This option would be at variance with examinership law which requires that for an examiner to be appointed, a company is or is unlikely to be able to pay its debts. Do you have views on whether any change would be appropriate?</p> <p>Please provide reasons for your answer.</p>	<p>Private Individual Since a company entering examinership could be on the brink of collapse, such excluded transactions could be contrary to the very purposes of the process.</p> <p>Revenue No change recommended. This option may disincentivize directors from seeking proper devices pre-examinership and may limit the existing process.</p> <p>CCABI Amendment not required. Examinership is a court supervised process and transactions envisaged in this Article occur during the protection period in respect of</p>

					which insolvency is a prerequisite.
18		General Comments		Please indicate any general comments or recommendations you may have on Article 18.	<p>ICTU Agree with 18.4 (c) with regard to “the payment of workers’ wages for work already carried out without prejudice to other protection provided in Union or national law “. As transactions referred to are ‘as a minimum’, there may be other worker related payments or obligations which merit inclusion.</p>
Directors Duties where there is a Likelihood of Insolvency					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
19		Member States shall ensure that, where there is a likelihood of insolvency, directors, have due regard, as a minimum, to the following: (a) the interests of creditors, equity holders and other stakeholders; (b) the need to take steps to avoid insolvency; and(c) the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business.	Mandatory	Please indicate any general comments or recommendations you may have on Article 19.	<p>CCABI Company law adequately covers this Article.</p> <p>ICTU Article provisions require strengthening in order to make directors more responsible and therefore answerable.</p> <p>Private Individual Such obligations are reiterated within s227 and s228 in addition to case law. As a corporate offence in Irish law, reckless trading must also be a consideration for company management intending on availing of restructuring.</p>

Practitioners in Procedures concerning Restructuring, Insolvency and Discharge of Debt					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
26	1	Member States shall ensure that: (a) practitioners appointed by a judicial or administrative authority in procedures concerning restructuring, insolvency and discharge of debt ('practitioners') receive suitable training and have the necessary expertise for their responsibilities; b) the conditions for eligibility, as well as the process for the appointment, removal and resignation of practitioners are clear, transparent and fair; (c) in appointing a practitioner for a particular case, including cases with cross-border elements, due consideration is given to the practitioner's experience and expertise, and to the specific features of the case; and (d) in (order to avoid any conflict of interest, debtors	Mandatory	Please indicate any general comments or recommendations you may have on Article 26.	<p>CCABI Company law appears to adequately cover this Article.</p> <p>Private Individual The requirements in s519 and s633 provide ample guidance on practitioner qualifications.</p>

		and creditors have the opportunity to either object to the selection or appointment of a practitioner or request the replacement of the practitioner			
Supervision and Remuneration of Practitioners					
Article	Para	Text	Mandatory/ Optional	Question	Summary of Responses
27	1	Member States shall put in place appropriate oversight and regulatory mechanisms to ensure that the work of practitioners is effectively supervised, with a view to ensuring that their services are provided in an effective and competent way, and, in relation to the parties involved, are provided impartially and independently.	Mandatory	Please indicate any general comments or recommendations you may have on Article 27.	<p>CCABI Provisions of CA 2014 are adequate in this respect.</p> <p>Private Individual Court oversight instrumental to ensuring transparency of practitioner expenses. Possibility of licensing system for corporate insolvency professionals if a largely out-of-court restructuring process is being contemplated.</p>

General Questions	
Question	Response
<p>Do you believe general changes / amendments are required to current examinership procedure? Please provide reasons for your answer.</p>	<p>CCABI Examinership process has contributed significantly to Ireland's reputation as a place to do business.</p> <p>Significant international trading companies have been restructured through the process.</p> <p>Imperative that examinership process continue to be transparent and flexible, with court supervision and implementation by regulated insolvency practitioners.</p> <p>Private Individual Examinership has sufficient checks and balances, defined entry criteria and rigorous protection for debtors. Court confirmation of compromises are essential.</p> <p>However, it fails to meet demands of SMEs; low uptake; costs are a deterrent.</p> <p>Directive opens up possibility for exploring the creation of alternative procedures for SMEs.</p>

	<p>Directive objective is efficiency. Could promote efficiency by directing companies that cannot be salvaged towards liquidation if unable to exhibit viability.</p> <p>ICTU While welcoming EU-wide regulation around pre-insolvency, an opportunity has been missed to improve workers' participation within restructuring and insolvency procedures</p> <p>Transposition of any part of the Directive to be measured against the in-built requirement that it does not affect workers' fundamental rights and freedoms as well as against any other specific measure concerning workers in the body of the text. There is a need to examine the current provisions of the Insolvency Fund</p> <p>Revenue Review current examinership processes and legislation</p> <p>ODCE Balance should be appropriately struck between creditor and debtor; how affording of rights to one company will not imperil the prospect of survival of another company.</p>
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	<p>Issue of costs has a bearing in terms of Article 14, which foresees possibility of a judicial authority seeking a valuation which would protract duration and increase cost.</p> <p>Potential costs in the collection of data on debtors accessing insolvency procedures if options taken up.</p>
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