

Preventive restructuring: how EU rules recast pre-insolvency processes

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Businesses around the world are facing renewed economic uncertainty as global tensions continue to mount. In this environment, it is unsurprising that even well-established European companies are increasingly experiencing financial distress.

But distress need not mean failure, a crisis need not end in an insolvency procedure. When viable companies get into financial difficulty they need a way to avoid insolvency and continue trading, creating the space for recovery and a fresh start. It doesn't suit anybody - owners, investors, employees, customers, or creditors - for good businesses to go bankrupt.

One potential solution is via preventive restructuring. Put simply, preventive restructuring allows businesses facing financial distress to make new agreements with lenders, cut costs, or attract new investment before they face insolvency procedures. The aim is to act early and in alignment with relevant stakeholders to save viable businesses rather than letting them fail.

While preventive restructuring is not new, a confusing divergence of rules across the EU had made it less effective than it might otherwise have been. The EU member states never had unified standards for restructuring proceedings which was considered a barrier to cross-border investments and therefore an essential competitive disadvantage for the EU capital market. In response, the EU adopted Directive (EU) 2019/1023 on preventive restructuring frameworks, often known as the “Preventive Restructuring Directive” or PRD 2019. The Directive’s stated aim is to set common standards and to make financial restructuring rules the same or at least comparable across EU member states. It intends to offer companies a “second chance” by giving them access to efficient restructuring proceedings at an early stage to avoid insolvency and unnecessary job losses. The extended deadline for implementation passed in 2022. However, some “latecomers” among the member states could finalise it only in 2025.

The Directive has now had time to bed in. So, is it working?

In the rest of this article, we’ll discuss PRD 2019’s aims and limitations, and highlight the role of credit insurance in helping cross-border businesses navigate the new landscape of preventive restructuring. Suffice to say for now that PRD 2019 has made the restructuring path a little clearer and more “user-friendly”, but some sections are still shrouded in fog.





What does preventive restructuring do?

A preventive restructuring process has the best of intentions. It aims to protect businesses in financial distress, preserving economic value, protecting jobs, and reducing losses across the company's supply chain. By doing so, it supports stronger financial stability and fosters cross-border investments across the EU.

Broadly, preventive restructuring changes the way a company manages its debts and finances so that it can survive. That can mean renegotiating repayment terms, cutting business costs, selling parts of the business or attracting new sources of finance. At the heart of a preventive restructuring procedure is the company's restructuring plan which contains all measures and creditors' contributions necessary for a successful and sustainable restructuring. The plan is put to the vote by all affected creditors.

PRD 2019 creates a framework to help restructuring happen sooner, quicker, and more smoothly. Here are some of the measures companies in distress can use:

Debtor in possession [DIP]

Debtors keep control of business operations and assets during restructuring procedures, ensuring firms continue to trade. In certain cases, the debtor is supported and supervised by a restructuring practitioner.

Stay of enforcement

Companies are given breathing space from creditor enforcement actions so negotiations can take

place. The stay typically lasts four months, though this can be extended.

Cross-class cram-down

This allows a restructuring plan to be implemented even if one group of creditors votes against it. A minority of creditors can be outvoted and is then bound by the majority voting.

Safe harbour

New and interim finance is specifically protected, giving businesses the opportunity to attract investment even during the restructuring process.

Ultimately, the aim remains the same. According to the Directive, “restructuring should enable debtors in financial difficulties to continue business, in whole or in part, by changing the composition, conditions or structure of their assets and their liabilities...”

Restructuring often happens as the result of private, out-of-court negotiations. Restructuring works best if it is done early, quick, in alignment with all relevant stakeholders, silently, and with the lowest possible court involvement. PRD 2019 gives companies a legal framework to fall back on should that become necessary.



Why was PRD 2019 needed?

Before the arrival of PRD 2019, the jumble of national rules around restructuring created an obstacle to efficient preventive action. In some European countries, preventive restructuring options were rarely used or even unknown. Cross-border companies faced a glut of competing laws slowing the process, creating legal uncertainty, and making it more costly. Investors (and potential investors) struggled to understand the risks and often refrained from a planned investment abroad.

In short, the pre-2019 restructuring landscape in Europe cost firms a lot of time and money - two things distressed businesses don't have much of.

“Prior to PRD 2019, cross-border businesses wanting to implement preventive restructuring sometimes found the process frustratingly slow, confusing and expensive. Therefore, some larger companies even transferred its registered seat to a non-EU country to take advantage of the local restructuring regulations, for example UK Scheme of Arrangement,” says Lutz Jansen, attorney-at-law and Expert Advisor, Special Risk Management at Atradius. “This undoubtedly resulted in companies having no real chance of being holistically restructured and ending up in liquidation that might otherwise have been saved, along with potentially avoidable losses for their supply chains and staff reductions. Unfortunately, some of those issues still exist, despite the EU's best intentions.”

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Lutz Jansen

The rising tide of preventive restructuring

Professional surveys suggest that corporate restructuring activity has been rising across Europe, driven by increased business costs, supply chain disruption, and geopolitical instability.

It's also highly likely that the implementation of PRD 2019 over the last years has led to a spike in preventive restructuring. Take-up is uneven, but more businesses are making use of EU-wide tools to identify financial risk at an earlier stage and take faster action.

Unfortunately, official EU figures can't give a precise figure, because they don't exist. One limitation of PRD 2019 is that it leaves decisions on reporting to member states. Most EU countries don't publish statistics on how many notifications or filings their preventive restructuring frameworks receive. Furthermore, the debtor has the option to handle the proceedings confidentially so that it does not need to be published in general.

That said, we see a clear rise in restructuring activity across Europe. Court decisions and professional surveys highlight a growing use of preventive restructuring tools. For example, the German Corporate Stabilisation and Restructuring Act (StaRUG) has seen a number of high-profile cases since implementation. These include restructuring actions involving automotive supplier Leoni AG, fashion

retailer Gerry Weber, energy storage company Varta AG, and agricultural corporation BayWA AG.

Broader datasets, like the European Restructuring Monitor (ERM), also point to high levels of restructuring events. According to the Weil European Distress Index, corporate distress is expected to rise through 2026. This is due to “weaker investment conditions, elevated borrowing costs, and continued uncertainty around trade policy and geopolitical risk.” We can expect preventive restructuring activity to increase in tandem with financial fragility.



The limitations of PRD 2019

The rise in restructuring activity is being driven by tight economic conditions coupled with a growing familiarity with new restructuring frameworks. More businesses are making use of tools to help them restructure earlier, potentially cutting the number that fall into bankruptcy.

Having said that, PRD 2019 is far from perfect. As noted, take up has been uneven, perhaps because the Directive falls short in the key goal of harmonising restructuring rules across the bloc.

The law allowed a large degree of flexibility in how member states implement the new framework and the national rules they build on top of it. PRD 2019 introduced preventive restructuring proceedings with in the detail several implementation options for member states. This is leading to procedures

that continue to differ significantly between countries. We can see this in some of the differences between StaRUG and its equivalent in the Netherlands, the Wet Homologatie Onderhands Akkoord (WHOA). In brief:

Entry requirement

PRD 2019 demands a “likelihood of insolvency” on the debtor’s side (to be understood as defined by national law). In this respect, StaRUG requires imminent insolvency, i.e. if it is likely that the debtor will be unable to meet existing payment obligations on the date of their maturity within a forecast period of 24 months (see section 18 of the German Insolvency Code). WHOA is available if the company in question is highly unlikely to maintain its debt servicing capacity.

Voting

StaRUG requires a 75% majority in each creditor class to approve a restructuring plan. With WHOA, the majority needed is just two thirds (66.7%).

Plan initiation

Under StaRUG, only company management can initiate the proceedings and submit a restructuring plan. Under WHOA, a court-appointed expert can also act as initiator.

Scope

StaRUG is considered more detailed and rigid, WHOA more flexible.

Contracts

WHOA provides for the possibility of terminating current ongoing contracts under certain conditions. Controversially, that option was removed from StaRUG at the last minute. In practice, this has significantly limited StaRUG’s scope of application. Its focus lies on financial restructurings and changes of the shareholder structure whereas WHOA is also being used to restructure operational business activities.

This disharmonisation creates practical problems for businesses considering restructuring, especially those that trade across borders. It also muddies the waters for their creditors.

“Cross-border firms must navigate differing definitions, voting rules, creditor classifications, and levels of court involvement, reducing predictability and complicating risk assessment,” says Wencke Mull, Regional Head, Risk Services at Atradius. “This means that investors and creditors find it harder to predict how much money they will recover, how long procedures will take, how costly they will be, and whether a restructuring will succeed in different countries.”

In PRD 2019 itself, it was announced that it will be evaluated and a report on its application and impact will be presented by July 2026. On the basis of that assessment, the EU Commission shall

submit, if appropriate, a legislative proposal, considering additional measures to consolidate and harmonise the legal restructuring framework. It will be interesting to see if and to which extent the EU will recognise the aforementioned limitations and - if so - what exactly their answer will look like. In any case: Real harmonisation within the EU would require a clear and common definition of “insolvency” and “likelihood of insolvency”. This is considered a long-term plan in the EU. Indeed: As the restructuring and insolvency frameworks within the EU are designed in completely different ways and political interests also significantly differ from one member state to another, there is still a long way to go.

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Wencke Mull

The role of credit insurance

Despite PRD 2019’s issues, the uptake in preventive restructuring provides an opportunity for supplier businesses to reduce the risk of defaults and write-offs. It changes how risk develops and how recoveries are achieved. Earlier and more decisive action is good for both the company undergoing restructuring and its creditors.

Credit insurers are key players here. Insurers bring insight, early warning and experience of different national restructuring and insolvency frameworks. They help clients understand the impact of a buyer entering a procedure such as StaRUG or WHOA. They stay involved in negotiations and, by doing so, may secure higher recoveries.

As more companies enter pre-insolvency procedures, insurers see stress earlier and can protect exposure more effectively. Policyholders are supported throughout a buyer’s restructuring procedures and with guiding through differing national procedures. Credit insurers can clarify how local rules shape recoveries, exposures, and liquidity.

“Credit insurers provide an essential layer of stability for companies operating within preventive restructuring frameworks that remain uneven across the EU,” says Jansen. “We support useful and targeted restructuring activities for the benefit of our policyholders aiming at solid and sustainable future business relationships. It also improves financial transparency at a time when businesses face higher expectations to demonstrate effective risk management.”

This support helps businesses anticipate stress, make informed decisions, and protect liquidity as the legal landscape around restructuring continues to evolve.

What we do

Aradius is far more than a provider of insurance. Our policyholders see us as a strategic risk partner, providing insight, expertise, and support from the moment we detect changing buyer behaviour to the completion of restructuring procedures. We are dedicated to supporting you in recovering outstanding debts in extraordinary situations.

To explore how to strengthen your own credit risk strategy, [get in touch](#) with us and see how we can help you stay ahead.