

**MOLDOVA**  
**M-GROW TECHNICAL ASSISTANCE PROGRAM**

**TECHNICAL NOTE:**

**RECOMMENDATIONS FOR  
IMPLEMENTATION OF THE  
EU RESTRUCTURING DIRECTIVE  
2019/1023 IN MOLDOVA**



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## Abbreviations

<b>APR</b>	absolute priority rule
<b>ARP</b>	Accelerated Restructuring Procedure
<b>BIOC</b>	best-interest-of-creditors
<b>CCCD</b>	cross-class cram-down
<b>COMI</b>	center of main interests
<b>EU</b>	European Union
<b>EU Directive</b>	Directive (EU) 2019/1023
<b>EWT</b>	early warning tool
<b>MIAL</b>	Moldovan Insolvency Administrators Law (Law 161/2014)
<b>MIL</b>	Moldovan Insolvency Law (Law 149/2012)
<b>MOEDD</b>	Ministry of Economic Development and Digitalization
<b>MOJ</b>	Ministry of Justice
<b>SMEs</b>	small and medium enterprises
<b>WBG</b>	World Bank Group

## ABSTRACT

This technical note, prepared for Moldova’s Ministry of Economic Development and Digitalization (MOEDD), assesses the Moldovan Insolvency Law (MIL) against the European Union (EU) Preventive Restructuring Directive (2019/1023) and provides a road map to bring Moldovan legislation in line with the standards in the Directive. Its ultimate objective is to inform the Moldovan authorities’ views on the different options available to successfully complete the transposition process. The note finds that the existing Accelerated Restructuring Procedure (ARP) is already compliant with various requirements of the EU Directive as it can be considered a preventive procedure. However, a closer analysis of the ARP provisions shows critical gaps that require legislative improvement, including key areas such as creditor class formation and mechanisms to overcome shareholder holdout. To illustrate these gaps and guide the authorities throughout the legislative process, this note includes an article-by-article analysis of the standards set in the EU Directive against the provisions in the MIL currently in force. The note recommends a phased approach: short-term legislative amendments to the ARP followed by medium- to long-term measures to establish early warning systems and deliver sustained judicial training. Successful transposition of the Directive will require relying on a sound institutional system, including specialized judicial capacity and improved insolvency data collection to monitor outcomes and guide practice. When adopted, transposition of the EU Directive is expected to lead to earlier, more efficient restructuring for viable debtors, better value preservation and increased recoveries for creditors, and reduced case duration and clearer standards for courts. Ultimately, the reform aims to develop a rescue culture in Moldova that preserves jobs, maximizes going-concern value, and enhances overall system efficiency and confidence.

# INTRODUCTION

This report has been prepared by the World Bank Group at the request of Moldova’s Ministry of Economic Development and Digitalization (MOEDD). It has been funded under a technical cooperation project funded by the Moldova Growth, Resilience and Opportunities for Well-Being (M-GROW) Program Multi-Donor Trust Fund. The objective of this report is to assist Moldovan authorities in implementing the EU Directive with the final objective of increasing the effectiveness of the insolvency framework and fostering sustainable growth and investment.

Several important factors influence the scope of this report. First, the report deals only with possible reforms to the insolvency regime as it applies to commercial entities and individual entrepreneurs. No measures aimed at the insolvency of consumers are considered, except for the scope of the debt discharge discussed under Pillar III. Second, the focus of this report has been on possible reforms to the Moldovan Insolvency Law (MIL) to implement European Union (EU) Restructuring Directive 1023/2019, a key milestone under Moldova’s Growth Plan. Other aspects and reforms necessary to improve current practices have not been covered in this report.

In the preparation of this report, the World Bank Group team<sup>1</sup> has not carried out a consultation process with local stakeholders. Views from local law and accounting firms, financial institutions, public agencies, and other insolvency stakeholders have not been incorporated in the report’s findings. The report’s recommendations should therefore be considered preliminary.

The first part of this report deals with the main principles in EU restructuring law, which have inspired the adoption of the 2019 EU Restructuring Directive. The second part presents a short summary of the main features of the MIL, especially those considered most relevant for implementing the EU Directive. The last part deals with the analysis and recommendations required to ensure adequate transposition of the EU Directive.

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# EXECUTIVE SUMMARY

**1. Directive (EU) 2019/1023 (hereinafter the Directive) represents an opportunity to improve the Moldovan insolvency system.** The Directive is the latest attempt of the European Commission to harmonize insolvency law in the European Union (EU), a critical pillar for the Capital Markets Union and the effective functioning of the Single Market. To achieve its harmonization objective, the Directive establishes minimum standards for preventive debt restructuring mechanisms and debt discharge for entrepreneurs, introducing the so-called second chance policy. Notably, the core focus of the Directive is on preventive procedures; these are the procedures that apply to firms where there is a likelihood of insolvency but where insolvency has not materialized yet.

**2. The Moldovan insolvency system already features a modern restructuring regime.** The Moldovan Insolvency Law (MIL) complied with many international standards at the time it was enacted (2012) and has since been updated several times (2020 and 2024), resulting in a high level of alignment with international standards. While already adopting a modern approach to restructuring and corporate rescue, the MIL also reflects specific features of the Moldovan legal tradition, including a strong preference for judicial procedures and a debtor-friendly approach. Most importantly, the MIL already features a preventive restructuring procedure: the Accelerated Restructuring Procedure (ARP), which addresses the needs of financially distressed firms that are not yet insolvent.

**3. Implementing the EU Directive will require a significant reform of the MIL.** Considering its preventive nature, upgrading the ARP is the most logical and efficient way forward to transpose the Directive. In parallel, transposition of the provisions on the discharge of debts will also require amendments to the liquidation procedure. Transposing the Directive will not require major changes to other procedures existing in the MIL, although such changes may be advisable because the ARP relies on the reorganization procedure in several instances, including the stay of proceedings, the formation of classes, and the criteria to approve and confirm a plan. The enhancement of the institutional framework will also be a necessary focus area, as the Directive requires improvements in the court system and the regulation and supervision of insolvency professionals.

**4. Areas beyond the scope of the Directive also require urgent attention.** Several shortcomings have recently arisen in the implementation of the MIL, including the prevalence of excessively long procedures and the predominance of no-asset cases that are channeled through the simplified liquidation procedure. The rights and priorities of secured creditors are not always respected, and, reportedly, some instances of abuse have been identified, particularly in large cases. Transposing the EU Directive will not solve all these issues; therefore, it seems advisable that a potential reform also incorporate additional provisions addressing current practices. These provisions should be identified in a separate assessment.

<b>Table 1. Key Recommendations</b>		
<b>Recommendations to implement the EU restructuring directive</b>	<b>Authority</b>	<b>Timeline*</b>
<b><i>(A) Early Warning Systems</i></b>		
1. Establish an early warning tool that relies either on a self-assessment or on a third party that monitors and alerts the debtor’s management of the existence of financial difficulties.	MOEDD	Near-term
2. Reinforce internal corporate governance mechanisms by providing specific duties to corporate bodies so that they monitor the business’s financial situation, prompting action when necessary.	MOJ/ MOEDD	Immediate
<b><i>(B) Preventive Restructurings</i></b>		
3. Consider further developing the definitions of financial difficulties as the key criteria to access the ARP, potentially relying on objective presumptions.	MOJ/ MOEDD	Immediate
4. Clarify the scope of application of the stay under the ARP and the reasons to grant (or reject) it, extend its maximum duration to 12 months, and introduce new grounds of relief for certain types of creditors.	MOJ/ MOEDD	Immediate
5. Extend the treatment of executory contracts and ipso facto clauses currently available under reorganization procedures to the ARP.	MOJ/ MOEDD	Immediate
6. Further develop the minimum requirements that ARP plans should comply with, tailoring their complexity to the needs of SMEs.	MOJ/ MOEDD	Immediate
7. Clarify that the debtor may file an ARP plan without prior agreement with creditors, as their consent seems required.	MOJ/ MOEDD	Immediate
8. Introduce greater flexibility into the rules applicable to the creation of classes under the ARP.	MOJ/ MOEDD	Immediate
9. Enhance the requirements applicable to the court confirmation of the plan by strengthening the BIOC test and the negative viability test.	MOJ/ MOEDD	Immediate
10. Improve the criteria applicable to CCCDs, revising the number of dissenting classes that must vote in favor of the plan.	MOJ/ MOEDD	Immediate
11. Allow company directors to submit, obtain confirmation of, and implement a restructuring plan without the consent of shareholders.	MOJ/ MOEDD	Immediate
12. Provide workers with protections throughout the ARP.	MOJ/ MOEDD	Immediate
13. Allow the appellate court to confirm the restructuring plan, either with or without amendments.	MOJ/ MOEDD	Immediate

14. Establish a comprehensive framework for interim and new financing, including protections and safe harbors from potential avoidance and from civil and criminal liability.	MOJ/ MOEDD	Immediate
15. Introduce new obligations for company directors during the pre-insolvency period, with the aim of minimizing the effects of insolvency.	MOJ/ MOEDD	Immediate
<b><i>(C) Second Chance and Discharge of Debt</i></b>		
16. Provide for a maximum of three years from the opening of bankruptcy proceedings for a debtor to obtain discharge.	MOJ/ MOEDD	Immediate
17. Introduce the possibility of discharging in the same procedure both (a) debts arising from the debtor's economic activity and (b) personal debts.	MOJ/ MOEDD	Immediate
18. Consider whether, in the case of natural person entrepreneurs, a discharge could be made available and conditional upon compliance with a repayment plan.	MOJ/ MOEDD	Immediate
<b><i>(D) Measures to Increase the Efficiency</i></b>		
19. Provide for a permanent training program for judges of Moldovan courts dealing with insolvency and restructuring cases.	MOJ/ MOEDD	Medium-term
20. Strengthen the system of appointment of insolvency administrators, requiring that their skills and experience be relevant and adequate given the specific features of the case.	MOJ/ MOEDD	Medium-term
21. Complete the electronic case management process already underway for restructuring, insolvency, and debt discharge procedures.	MOJ/ MOEDD	Near-term
22. Collect and aggregate at the national level data on procedures concerning restructuring, insolvency, and discharge of debt.	MOJ/ MOEDD	Near-term

Note: ARP = Accelerated Restructuring Procedure; BIOC = best-interest-of-creditors; CCCD = cross-class cram-down; EU = European Union; MOEDD = Ministry of Economic Development and Digitalization; MOJ = Ministry of Justice; SMEs = small and medium enterprises.

\* Immediate = within one year; Near-term = 1–3 years; Medium-term = 3–5 years.

# MAIN PRINCIPLES OF EU INSOLVENCY AND RESTRUCTURING LAW

## A. Introduction

Insolvency law is an evolving topic where harmonization of domestic laws is being pursued gradually by the European Commission. The provisions directly regulating the legal procedures applicable to insolvency and restructuring of debtors are covered by two important pieces of legislation:

- Regulation (EU) 2015/848.
- Directive (EU) 2019/1023.

It is expected that further EU directives will be adopted in the future. In fact, following adoption of EU Directive 2019/1023, the European Commission proposed a new insolvency directive on December 7, 2022, to harmonize additional aspects of insolvency law.<sup>2</sup> The proposal is currently under discussion in the relevant EU institutions.<sup>3</sup> In the absence of a final text, it has not been considered for this report.

### A.1. Regulation (EU) 2015/848

The purpose of Regulation (EU) 2015/848 is to enable coordination among the different insolvency and restructuring proceedings provided by the various EU Member States<sup>4</sup> by enhancing the effective administration of cross-border insolvency proceedings within the EU. The Regulation includes the following:

- Provisions governing jurisdiction for opening insolvency proceedings, which should take place where the debtor has its center-of-main-interests (COMI), and actions that are directly derived from insolvency proceedings and are closely linked with them;
- Provisions regarding the recognition and enforcement of judgments issued in such proceedings;
- Provisions regarding the law applicable to insolvency proceedings; and
- Provisions concerning the coordination of insolvency proceedings that relate to the same debtor or to several members of the same group of companies.

With minimal exceptions, the Regulation does not impose substantive rules but merely sets out coordination rules that enable the European Single Market to function smoothly and ensure that

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<sup>2</sup> The proposal aims to lay down common rules on (a) avoidance actions; (b) the tracing of assets belonging to the insolvency estate; (c) prepack proceedings; (d) the duty of directors to submit a request for the opening of insolvency proceedings; (e) simplified winding-up proceedings for microenterprises; (f) creditors' committees; and (g) the creation of a key information fact sheet by Member States on certain elements of their national law on insolvency proceedings.

<sup>3</sup> As of November 2025, the Council of the European Union (representing Member States) and the European Parliament had reached a provisional political agreement on the text of the new Directive. The agreement still needs formal adoption by both institutions (Council and Parliament) before it becomes law.

<sup>4</sup> Except for Denmark.

European companies with cross-border operations enjoy greater predictability, whether they are restructuring as debtors or dealing with debtors in distress.

## **A.2. Directive (EU) 2019/1023**

In 2019, the European Union intervened in the field of insolvency law for the first time, imposing rules to harmonize the laws of EU Member States, rather than just rules to coordinate procedures with cross-border aspects. Directive (EU) 2019/1023 imposes substantive rules requiring Member States to make their insolvency systems more efficient and consistent with certain core values. The core principles that have inspired the Directive are (a) the second chance policy and (b) early access and restructuring through preventive procedures. Both principles are further described in the following sections.

## **B. Second chance policy**

Entrepreneurship is inherently risky and requires self-confidence, autonomy, and a risk-taking attitude, as success and failure are inherent to the reality of the market economy. To support entrepreneurship, EU Member States are encouraged to create a supportive environment for both firms at risk and those that have experienced business failure.

For this reason, the EU has for many years recommended that Member States remove the stigma of failure by creating (or strengthening) a second chance culture within the EU framework. This second chance policy is applicable to both individuals and businesses that engage in economic activities. Creating or strengthening such a culture is done both by (a) reducing the disqualifications resulting from bankruptcy, limiting them to cases where the debtor has acted fraudulently, and by (b) allowing a debtor who is a natural person to have access to the discharge of debts that have not been satisfied after completion of the liquidation procedure.

## **C. Early access and preventive restructuring**

Early access to restructuring is particularly important in the EU context. If entrepreneurs have early access to restructuring tools in the event of financial difficulties, this can allow them to avoid the unnecessary liquidation of viable businesses; to avoid the loss of jobs, know-how, and skills; and to maximize the overall value for creditors as well as for entrepreneurs and the economy.

For this to happen, a rescue culture needs to emerge, which requires entrepreneurs to have access to early warning tools and, where necessary, to tools and procedures that enable them to restructure effectively at an early stage and avoid insolvency.

# OVERVIEW OF MOLDOVAN LAW FROM THE PERSPECTIVE OF EU PRINCIPLES

## A. Introduction

The Moldovan insolvency framework has evolved significantly in recent years. Modernization of the insolvency system started in 2012 with the adoption of Insolvency Law No. 149 (MIL). Since then, several reforms have been introduced,<sup>5</sup> mostly with the intention of aligning the local framework with the recommendations provided by the World Bank Group and the European Union. These amendments have taken a partial approach and addressed a variety of issues but overall have improved the system significantly.

Critically for the purposes of implementing the EU Directive, Law No. 141/2020 reformed the ARP to bring it closer to the EU Directive, which was already in force at the time in the EU. This was a key development that explains the large degree of alignment between the MIL and the EU Directive observed today.

## B. Insolvency proceedings. Bankruptcy

### (a) Initiation

Bankruptcy proceedings in Moldova are designed to liquidate an insolvent debtor's assets to satisfy creditors' claims. The procedure begins with a court decision based on a petition filed by creditors or the debtor (Arts. 9–20).

In case of a debtor's application, the debtor must file a preliminary request within 30 days from the moment one of the following circumstances occurs:

- a. The debtor is unable to pay its debts as they fall due (general ground for opening insolvency proceedings) (Art. 10, par. 2);
- b. In case the debtor is overindebted (special ground for opening insolvency proceedings) (Art. 10, par. 3); or
- c. In case enforcement actions initiated by one creditor make full and timely payment to other creditors unlikely, or when such a circumstance arises during the liquidation procedure opened under other laws (Art. 14, par. 2, letters a and b).

In addition, the MIL also allows the debtor to access the system in case of imminent insolvency, as it may file a preliminary request when there is a risk that it shall not be able to fulfill its pecuniary obligations in due time (Art. 13).

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<sup>5</sup> These include laws No. 161/2014, No. 141/2020, and No. 313/2024.

In turn, creditors may file a preliminary request in cases (a) and (b) above; this is based on the general and special grounds to open insolvency proceedings. A reform to the MIL enacted in February 2025 has introduced a debt threshold that applies to all creditors' filings, as well as a pre-requirement that certain collection efforts, including mediation, be attempted before resorting to insolvency (Art. 18.4).

### **(b) Effects**

Once the insolvency proceeding has commenced (Art. 34), the court issues a decision triggering an automatic stay (180 days) of creditors' enforcement actions, to prevent the dissipation of assets during the proceedings (Art. 81). Simultaneously, the court appoints an insolvency administrator, who is responsible for managing the debtor's estate, valuing claims, and liquidating assets (Arts. 63–68). The administrator prepares a comprehensive inventory of the debtor's assets to ensure accurate asset valuation and transparent liquidation or restructuring. The liquidation follows statutory priority rules, with secured creditors being paid first, followed by unsecured claims (Art. 132). Creditors must register their claims within a specified time frame. The insolvency administrator verifies the validity of claims, with disputed claims being resolved by the court (Arts. 142–144).

After the sale of assets, the proceeds are distributed according to the statutory order of priority. Administrative expenses and estate obligations (including post-commencement financings) receive priority, followed by secured or unsecured creditors, based on ranking and depending on whether the asset is encumbered (Arts. 43, 52, and 132). The bankruptcy proceedings end when the distribution of proceeds from liquidation has been completed (Art. 161).

Despite a clear legal structure, several challenges seem to persist and have arisen in practice, including delays in the liquidation of assets, valuation disputes, limited judicial capacity, and occasional creditor distrust in the insolvency administration process.

### **(c) Discharge of debts and disqualifications**

Moldovan law provides that at the end of the bankruptcy procedure, the debtor is discharged from the obligations he or she had before the opening of the procedure, except for "*subsidiary liability in the manner provided by law*" (Art. 135, in simplified bankruptcy). There are statutory exceptions for "*claims of creditors for recovery of alimony, compensation for damage to health, other personal claims that have not been filed, have not been satisfied or have been partially satisfied in the insolvency proceedings,*" which shall remain valid even after the termination of the proceedings and may be filed in full or in the unsatisfied part, respectively (Art. 229, pars. 1 and 2, in bankruptcy).

The MIL also provides for the disqualification of the insolvent debtor and of the directors of an insolvent company if they have contributed to the insolvency through fault or negligence (Arts. 227 and 228). The period of disqualification ranges from a minimum of 12 months to a maximum of 5 years.

## C. Ordinary restructuring procedure

In the event of insolvency or the risk of insolvency, the MIL features a restructuring process aimed at settling debts by means of a plan approved by creditors, through a court-supervised process that takes place within the general insolvency proceedings (Art. 182 et seq.). The restructuring plan may provide for the continuation of the business or its sale, in whole or in part.

The restructuring plan may include the following (Art. 182):

- Operational and/or financial restructuring of the debtor
- Corporate restructuring by changing the share capital structure
- Reducing the perimeter of the business by liquidating part of the debtor's assets
- Any other measure not prohibited by law.

If the debtor intends to opt for restructuring, in its petition for insolvency or the response to the creditor's petition (Art. 21, par. 6, or Art. 28, par. 4), the debtor must file a detailed plan of reorganization, supported by credible financial projections. Once the court accepts the petition, the debtor enters an observation period during which its management continues to operate under court supervision. A provisional administrator is appointed to monitor activities and ensure the protection of the debtor's estate (Arts. 23 and 25).

The debtor or creditors may submit a restructuring plan outlining debt repayment schedules and operational adjustments (Art. 190). The proposal for the plan is subject to approval of the creditors through a structured voting procedure (Arts. 201 and 202) based on classes of creditors (Art. 191). The plan is considered accepted by a class of creditors if creditors representing more than half of the value of the claims in that class vote in favor of the plan (Art. 202). The plan may also be deemed accepted by a dissenting class if the creditors of that class are not placed in a less favorable position than they would have been in the absence of the plan, and if a majority of the voting classes of creditors vote in favor of the plan ("prohibition of obstruction" under Art. 203).

The court shall confirm the plan (Art. 204) if at least half plus one of the classes of creditors have accepted the plan in accordance with Article 202 or are deemed to have accepted it in accordance with Article 203. If there are only two classes of creditors, the plan is deemed to have been accepted if the class with the highest total amount of claims votes in favor of the plan (Art. 204, par. 4b). Any class of "disadvantaged" creditors that has rejected the plan must receive fair and equitable treatment under the plan (Art. 204, par. 4c), which means that the value will be distributed according to the absolute priority rule under the plan.<sup>6</sup>

After the creditors' approval, the court examines the legality, feasibility, and fairness of the plan. If the court confirms the plan, it becomes binding on all creditors, including those who voted against the

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<sup>6</sup> Article 204, par. 5: "Fair and equitable treatment exists when the following conditions are cumulatively fulfilled: a) no class or claim that rejects the plan receives less than it would receive in bankruptcy; b) no class and no claim of a class shall receive more than the value of the claim; c) where a disadvantaged class of creditors rejects the plan, no class of creditors with claims ranking lower than the disadvantaged class not accepted, as resulting from the hierarchy provided for in paragraph (2) Article 191, shall receive more than it would receive in the event of bankruptcy."

plan (Art. 208).<sup>7</sup> A court-appointed insolvency practitioner oversees the implementation of the plan. Regular progress reports are required to ensure compliance (Art. 211). If the debtor fails to comply with the obligations arising from the plan, the creditors' committee or any creditor may file a petition "which will result in the bankruptcy and liquidation of the debtor's estate without the need to prove his insolvency" (Art. 217).

#### **D. Accelerated restructuring procedure**

The accelerated restructuring procedure (Arts. 218–226), introduced in its current form by the 2020 amendments, is an alternative to the general restructuring procedure. The stated purpose of the accelerated restructuring procedure is to "safeguard the financially distressed debtor so that it can continue its business, preserve jobs and repay debts by implementing a plan" (Art. 218). It is aimed at debtors in financial difficulty<sup>8</sup> and allows them to obtain confirmation of a restructuring plan through a procedure with minimal judicial involvement. The debtor may access this procedure by filing the accelerated restructuring notice within the 30-day insolvency petition filing term (Art. 14).

Unlike the general restructuring procedure, which requires a detailed business plan and extensive consultation with creditors, the accelerated procedure can be initiated quickly based on a debtor's notice of financial difficulties, to be filed with the insolvency court. Specifically, the debtor is entitled to file a notice of the "commencement of negotiations with creditors on a plan for accelerated out-of-court restructuring procedure" with the court, together with all the documents proving that the debtor is in financial difficulties and that "failure to take safeguard measures would lead to the debtor's insolvency" (Art. 219, par. 1). A two-month moratorium on enforcement actions is granted upon request of the debtor and an ex officio verification by the court of the financial difficulties of the debtor (Art. 219, par. 6).

If negotiations succeed and an agreement with creditors is reached during the initial stay, the debtor must file a preliminary request with the court, which will lead to the opening of the court-supervised portion of the procedure and the appointment of an administrator (Art. 220, par. 1). Thereafter, the restructuring plan submitted to the creditors together with the report of the provisional administrator on the feasibility of the proposed plan (Art. 220, par. 6) becomes binding upon approval by the affected classes of creditors (Art. 223) and confirmation by the court (Arts. 224 and 225). The voting and court confirmation procedures in the accelerated restructuring procedure are governed by the same rules as in the general restructuring procedure (see section C above, provided that "the creditors not affected by the plan are paid in the ordinary course of the debtor's business and the plan does not affect their rights without their consent" (Art. 224, par. 2b).

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<sup>7</sup> Article 208: "After confirmation of the restructuring plan, the debtor's activity shall be restructured accordingly. The claims and rights of creditors and other interested parties shall be modified in accordance with the plan."

<sup>8</sup> This refers to those who are in the imminence of the insolvency, even if performing or able to perform their obligations as they fall due; see Article 3 of the MIL.

# PROPOSED MEASURES TO ALIGN MOLDOVAN LAW WITH THE EU DIRECTIVE

## A. Pillar I: Early warning and access to information (Art. 3)

### (a) Definition of early warning tools (EWTs)

The EU Directive places significant emphasis on the early management of financial difficulties, requiring the implementation of EWTs capable of detecting circumstances that could give rise to a likelihood of insolvency and signaling the need for immediate action.

The guidance provided in the EU Directive is, however, scarce. In fact, the Directive does not define this concept and does not include any instructions or mandatory features of EWTs. Rather, it only indicates a series of examples of such systems, including the following:

- Alert mechanisms: automated alerts triggered by nonpayment of specific obligations, typically with public creditors
- Advisory services: publicly or privately funded advisory services aimed at assisting distressed businesses with tailored financial and legal advice
- Third-party reporting: incentives for third parties, including tax authorities and social security agencies, to notify debtors of negative developments.

Besides the examples provided in the EU Directive, the objectives of EWTs can also be achieved by leveraging the companies' internal governance mechanisms, specifically tasking executive directors with reporting to the board on the company's financial situation and tasking the internal control bodies, including auditors, with monitoring the situation and prompting action when necessary.

### (b) Design of the EWT

Further to the examples included in the Directive, EWTs can be based on one of the following two approaches, which are not mutually exclusive. Funding available to introduce either of these options (or both) will be a critical factor to consider before choosing one model over the other.

- A self-assessment (inbound model): Under this approach, the EWT would encourage entrepreneurs (and their corporate bodies) to assess their own situation. As such, it is a first line of defense: Before third parties become involved, the system prefers to place the responsibility of detecting financial distress on the ultimate beneficiaries of such information. The underlying principle is that it is in the debtor's own interest to detect these difficulties as soon as they arise, and when they are not detected by management, other bodies within the business should alert or seek an explanation from management as to the severity of the potential distress. Such an assessment can be done by a business's own corporate bodies, whenever access to the required information is possible, or by a public agency that would conduct the assessment at the business's request.

- An advisory agency combined with qualified volunteers (outbound model): A more ambitious approach would imply the involvement of a public or private agency that, at a minimum, would be responsible for (a) designing and operating the EWT, as well as for (b) notifying debtors that their business might be facing difficulties in the short term. The system could also include the offer of advisory services following notification to the debtor to assist them in the restructuring of the business or in any other measures that are considered relevant.

The MIL does not provide any early warning tools at present and will require legislative and institutional changes. Considering the urgency to transpose the Directive in the near term, an EWT based on the inbound model seems to be preferable in Moldova, as it will require fewer resources and could be established earlier. Alternatively, a system based on a simplified outbound model, in which a third party (such as the tax authority) provides the alert, could also be appropriate. More sophisticated versions of the outbound model would also ensure compliance with the Directive but feature more complications if they are to be established in the short term.

Regardless of the EWT selected by the authorities, publicly accessible online platforms should be developed to provide clear and user-friendly information on which tools are available and how to access them. Special attention should be given to small and medium enterprises (SMEs), ensuring that EWTs are presented in a user-friendly format tailored to their capacities.

## **B. Pillar II: Preventive restructuring frameworks (Arts. 4 to 18)**

### **B.1. What procedure to amend?**

Preventive restructuring procedures are the key focus of the Directive. They are defined as procedures that allow enterprises to restructure their debt (a) without full intervention of the courts and (b) before enterprises are insolvent.

To incorporate the features of preventive procedures, a key question that arises is which procedure(s) should be amended to incorporate the requirements of the Directive. EU Member States have different options to achieve this objective:<sup>9</sup>

- Introduce a new pre-insolvency procedure (or adapt an existing one). Under this option, the preventive procedure would stand side by side with the existing procedures under national insolvency law (typically, liquidation and reorganization).
- Introduce a single pre-insolvency procedure and targeted amendments to the existing (judicial) reorganization procedure. This option requires a broader and more complex reform of insolvency law as it involves reforms to reorganization procedures, but it can ensure consistency between pre-insolvency and reorganization procedures.

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<sup>9</sup> Options based on the classification described in "Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive," IMF Working Paper 21/152 (Washington, DC: International Monetary Fund, 2021), <https://www.imf.org/en/publications/wp/issues/2021/05/27/restructuring-and-insolvency-in-europe-policy-options-in-the-implementation-of-the-eu-50235>.

- Introduce the Directive’s rules throughout several already existing restructuring procedures. This option can be used to accommodate Member States that feature a system with several restructuring procedures, such as France or Italy.

Moldova is ideally placed to implement the Directive through the first option, potentially with elements of the second option. This is because the MIL already features a pre-insolvency procedure (the ARP) that could be easily upgraded to accommodate the standards of the Directive without requiring substantive changes to the reorganization procedure. In instances where the ARP relies on the ordinary reorganization procedure to regulate certain stages or tools,<sup>10</sup> the authorities will have a choice to either (a) amend the reorganization procedure as well, maximizing alignment and consistency among the ARP and the reorganization procedure, or (b) accommodate the EU standards in the ARP only, maintaining the current treatment envisaged under the reorganization procedure. These options are further described in the following article-by-article analysis.

### **B.2. Access to preventive restructuring frameworks (Art. 4)**

Under the MIL, the debtor may initiate an accelerated restructuring procedure in the event of financial difficulties. This is fully in line with Article 4 of the Directive, which prescribes that debtors should have access to a preventive restructuring framework where there is a “*likelihood of insolvency*.”<sup>11</sup> Although the terms used to define the entry criteria are different, both can be considered materially aligned, and therefore the MIL does not need any amendments.

There may, however, be value in revisiting the contents of the definition of *financial difficulties* in the MIL,<sup>12</sup> and specifically the term *on the verge*, as the latter term may generate controversy and lead to litigation, especially as it will determine eligibility to file under the ARP or under the ordinary reorganization procedure. Recent practices have been observed in Moldova, where the opening of two procedures (the ARP and reorganization) over the same debtor suggests there could be value in exploring this option. A potential solution would be amending the definition of *financial difficulties* and incorporating a period after which the debtor will irremediably start missing payments.

Similarly, the authorities could consider (a) whether creditors and/or employees’ representatives could have the ability to file for the initiation of the ARP, subject to the agreement of the debtor, and (b) excluding certain debts from the scope of restructuring, including future claims of workers, alimonies, and tort claims. These are options offered by the Directive (Arts. 1.5 and 4.8).

### **B.3. Debtor in possession and appointment of administrators (Art. 5)**

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<sup>10</sup> This applies to areas such as the stay or the formation of creditors’ classes; see sections B.4 and B.7.

<sup>11</sup> The EU Directive does not provide a definition of this term, leaving it to national law. The Directive only defines the moment when there is no longer a “*likelihood of insolvency*,” and this happens when it is considered insolvent.

<sup>12</sup> Article 3 of the MIL defines *financially distressed debtor* as a debtor who, although fulfilling or capable of fulfilling due obligations, is on the verge of insolvency.

The Directive requires that, when accessing preventive restructuring frameworks, debtors remain totally or partially in control of their assets and the day-to-day operation of their business. This is already the case under the ARP.

Although the debtor-in-possession remains the general rule, the same article of the Directive also provides for the mandatory appointment of a practitioner assisting the debtor and creditors in negotiating and drafting the plan, at least in three different instances (Art. 5, par. 3):

- Where there is a general stay of individual enforcement actions and the judicial or administrative authority decides that such a practitioner is necessary;
- Where the restructuring plan needs to be confirmed by a judicial or administrative authority by means of a cross-class cram-down; and
- Where it is requested by the debtor or by a majority of the creditors, provided that in the latter case, the creditors bear the cost of the practitioner.

In all these cases, the role of the insolvency practitioner must not be limited to supervising the debtor but must extend to assisting the debtor and creditors in preparing the plan.

In this regard, the MIL provides for the following:

- The possibility that the debtor requests that the insolvency court appoint a provisional administrator to assist in negotiations with creditors (Art. 219.5 of the MIL)
- The obligation that the insolvency court put the debtor under observation by appointing a provisional administrator, even in those cases where the debtor did not request the appointment in the earlier part of the procedure (Art. 220.4 of the MIL).

As a result, the ARP is also largely compliant with this article of the Directive, as it provides for the appointment of the administrator in all cases. This is largely because a stay of enforcement actions applies and a selective stay is not a real option (although it could be—see section B.4 below). There is, however, the need to bring further alignment to the EU Directive, and provide for the following:

- Extending the mandatory appointment of the administrator not only to the confirmation stage of the ARP (under Art. 220), but also to the earlier stages of the ARP covering the negotiation of the plan with a minority of creditors (under Art. 219).
- Clarifying that the role of the administrator is limited to assisting the debtor and the creditors in negotiating and drafting the restructuring plan, as the ARP currently assumes an oversight role that largely mirrors the role of the administrator in the reorganization procedure, blurring the boundaries between both procedures.

When an insolvency administrator is appointed, certain safeguards should also be adopted, ensuring the administrator's competence and impartiality. These are discussed in section D, "Pillar IV: Increase the efficiency and monitoring of the system" (see discussion on Arts. 26 and 27).

#### **B.4. Stay of individual enforcement actions (Arts. 6 and 7)**

To facilitate the negotiation of a restructuring plan, the Directive provides that the debtor may, upon request, obtain a temporary stay of individual enforcement measures (Art. 6.1). The stay suspends the debtor's obligation to file for bankruptcy, as well as the creditors' right to request the opening of bankruptcy proceedings (Arts. 7.1 and 7.2). The stay is automatic upon the debtor's request, although Member States may decide to make the stay subject to prior judicial or administrative scrutiny. The grounds for refusal of the stay must be limited to cases where it is not necessary (for example, where there are no assets on which creditors may foreclose) or would not support the negotiations of a restructuring plan (Art. 6, par. 1, second subparagraph).

The initial duration of the stay is limited to a maximum of 4 months (Art. 6, par. 6), although judicial or administrative authorities may extend the stay upon request if certain conditions justify doing so. These conditions include (a) significant progress in the restructuring negotiations, (b) the absence of unfair prejudice to the parties concerned, or (c) the absence of liquidation proceedings opened against the debtor. In any event, the total duration of the stay, including extensions, may not exceed 12 months (Art. 6, par. 8).

The Directive also provides that a stay should be lifted in several conditions, including (a) when the stay no longer supports restructuring negotiations, (b) when the debtor or the insolvency practitioner requests it, (c) when one or more creditors would be unfairly prejudiced by the stay, or (d) when the stay gives rise to the insolvency of the creditor.

In contrast, the ARP under the MIL provides that:

- Pursuant to Article 219, paragraph 1, the debtor, together with the filing of the notice of the commencement of negotiations, may *"request the insolvency court to suspend the enforcement of the debtor's estate during the negotiations for a period not exceeding 2 months"*; the debtor does not seem to have any possibility of extension or renewal;
- Pursuant to Article 219, paragraph 6, the insolvency court *"shall verify whether the requirements of paragraph (1) are met [that is, 'that the debtor is in financial difficulties and that failure to take safeguard measures would lead to the debtor's insolvency'] and shall, ex officio, issue a decision on the suspension of enforcement"*; and
- No express references with respect to lifting the stay exist in the ARP, but it is understood that the grounds for relief listed in the reorganization procedure pursuant to Art. 81, par. 4, are also applicable under the ARP.

To bring the MIL fully in line with the Directive, it appears necessary to do the following:

- Allow the extension of the initial stay (2 months) if certain conditions are observed (see second paragraph above), but clarify that it may not last more than 12 months;
- Modify the requirements that Art. 219 imposes for the stay to apply, as it should not be necessary to demonstrate that the stay is essential to avoid insolvency, but rather that it serves the purpose of facilitating the restructuring;
- Expressly state that the reasons for lifting the stay in reorganization procedures apply in the ARP, or include new grounds of relief in the ARP that are different from those in reorganization that include, at a minimum, those listed in Article 6.9 of the Directive;

- Provide an exemption from the scope of the stay with respect to workers' claims.<sup>13</sup>

In addition, there is an amendment that is recommended, although not necessary in terms of strict compliance with the Directive: The MIL does not allow for a selective stay, where its effects are limited to specific creditors or categories of creditors. While the Directive offers this possibility as an option, it would be prudent to include a similar provision for the debtor, as it would help reduce the number of creditors affected by the stay and, ultimately, enhance the proportionality of the framework, allowing debtors to access the ARP while at the same time not affecting the entire network in which the business operates.

#### **B.5. Executory contracts (Art. 7)**

During the stay, the debtor must be able to continue operating the business, in the best interests of all stakeholders. Therefore, the effects of the stay include also the suspension of certain rights of counterparties to "*essential executory contracts*," to be intended as contracts that are "*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*" (Art. 7, par. 4). Member States may provide that the stay's effects apply also to "*non-essential executory contracts*" (Art. 7, par. 4, third subparagraph).

Specifically, for the duration of the stay, contractual counterparties cannot exercise the right to do the following:

- Withhold performance of their contractual obligations, or
- Unilaterally terminate, accelerate, or in any other way modify the contract.

Further, the Directive addresses the treatment of executory contracts (both essential and nonessential) by sterilizing so-called ipso facto clauses (that is, contractual clauses that are triggered by the mere request for the opening or the actual opening of restructuring proceedings, as well as associated events such as the request or the granting of the stay) (Art. 7, par. 5). Therefore, the occurrence of any of these events cannot determine the right of the counterparty to withhold performance or to terminate, accelerate or, in any way amend the contract with the debtor.

The ARP does not foresee any rules concerning executory contracts,<sup>14</sup> and therefore, to bring MIL fully in line with the Directive, it appears necessary to do the following:

- Provide for the suspension of legal and contractual remedies for at least essential executory contracts triggered by unpaid debts incurred prior to the stay
- Provide for the sterilization of ipso facto clauses with respect to all executory contracts.

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<sup>13</sup> As an alternative to such an exemption, the rules applicable to the accelerated restructuring procedure should require that the plan provide workers with a level of protection similar to what they would have received as a result of the exemption from the stay.

<sup>14</sup> As opposed to the treatment of executory contracts in reorganization, which is aligned with best practice, but which does not apply in the context of accelerated restructuring (see article 89 of the MIL).

In addition, certain amendments are strongly recommended, although not necessary. Executory contracts can be either a burden for a restructured business or a valuable asset to be included in a potential sale of the business. The Directive explicitly provides only for the possibility of preserving the contract notwithstanding the stay. Insolvency law best practices go further.<sup>15</sup> They provide the following:

- Where the continuation of the contract would place an undue burden on the debtor (thereby reducing the value for other creditors), the possibility for the debtor to be authorized, through a process that guarantees fairness, to reject the contract. Damages arising from the rejection of a preexisting contract should be determined in accordance with applicable law and should be treated as an ordinary unsecured claim
- Where, on the contrary, the contract is an asset for the restructuring, the contract may be assigned notwithstanding any restrictions in the contract, provided that the rights of the counterparty to the contract are sufficiently guaranteed.

## **B.6 Content of restructuring plans (Art. 8)**

The Directive requires that restructuring plans contain some fundamental information, establishing a minimum standard. Such information includes the items on the list featured in Article 8.1 of the Directive. The same article also provides that the plan should specify the terms of the restructuring plan, including those listed in Article 8.1.d) of the Directive. Finally, Article 8, paragraph 1 also requires that restructuring plans contain a statement regarding the prospects of the restructuring, explaining why the restructuring plan has a reasonable prospect of "*preventing the insolvency of the debtor and ensuring the viability of the business, including the necessary pre-conditions for the success of the plan.*" It is left to the Member States to decide whether to require that such a statement is made or validated by an external expert or insolvency practitioner.

Article 222 of the MIL requires that the ARP plan shall set out the following in detail:

- The analytical statement of the debtor's estate and liabilities, as well as the causes of the debtor's financial difficulties;
- The debt extinction program; and
- The expected percentage of claims satisfaction as a result of the implementation of the proposed measures.

To align the MIL's provisions with the requirements set by the Directive in this regard, it should be made mandatory that the restructuring plan envisaged by the ARP contain additional information, specifically the following:

- Those items requested by Article 8, paragraph 1, letters c, d, and e;

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<sup>15</sup> See World Bank, "*Principles for Effective Insolvency and Creditor/Debtor Regimes, Principle C10, 'Treatment of Contractual Obligations'*" (Washington, DC: World Bank, 2021) and United Nations Commission on International Trade Law, "*UNCITRAL Legislative Guide on Insolvency Law,*" Parts I and II, "*E. Treatment of contracts*" and "*Recommendations 69–86,*" [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf).

- The specifications of the terms of the restructuring plan (Art. 8, par. 1, letter g) that are not already envisaged by Article 222, letter c; and
- The statement (by the debtor, possibly validated by an external expert or the provisional administrator) explaining why the restructuring plan has a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business (Art. 8, par. 1 (h)).

Furthermore, the EU Directive also mandates that Member States provide an online, comprehensive checklist for restructuring plans, specifically designed to meet the needs of SMEs. This checklist should include clear, practical guidance on how restructuring plans should be drafted in compliance with national legal frameworks. It appears that Moldova does not provide an online checklist with such characteristics, so this obligation should also be incorporated in the MIL.

### **B.7 Filing, voting, and approving the restructuring plans (Art. 9)**

On the topic of filing a plan, the Directive provides that the debtor has the right to submit a restructuring plan (Art. 9.1), and this is already the case under the MIL (Art. 220.1). Therefore, the key obligation set out in the Directive with respect to filing the plan has been met. However, there could be value in exploring two additional amendments to the approach adopted toward plan filing in the MIL:

- Clarify that the debtor can file a restructuring plan without a prior agreement with creditors, as their consent seems implicitly required in Article 220.1; and
- Consider the possibility that creditors and the insolvency administrator will be able to submit a plan, which is currently not possible under the MIL as it is assumed that an agreement on a restructuring plan has been achieved out-of-court before the formal opening of the ARP.

On the topic of voting on a plan, the Directive states that all those affected by the plan have the right to vote on it (Art. 9.2). This is consistent with the provisions of the MIL, which, for all voting and plan adoption purposes, relies on the judicial general reorganization procedure of the MIL (Arts. 191–195 and Arts. 199–206). When voting, the Directive also states that affected parties must be treated in separate classes that reflect sufficient commonality of interest based on verifiable criteria, providing a significant degree of discretion in the creation of classes (Art. 9.4). As a minimum, the plan is required to place secured and unsecured creditors in two separate classes. The MIL indeed provides for the creation of classes, but it imposes the obligation to create at least four different classes in all cases (as opposed to two classes required by the Directive), depending on priority (Art. 191), without allowing any discretion in their creation to maximize the chances of plan approval.

Therefore, the provisions of the MIL are not aligned with the Directive and require a significant amendment of the rules applicable to the formation of classes, which are based on those applicable

in the judicial reorganization procedure.<sup>16</sup> When amending those rules, or when introducing new ones applicable to preventive procedures only, the objective should be to provide greater flexibility in the creation of classes, which can be more or fewer than four classes of creditors, as currently prescribed by the MIL. The creation of classes should be anchored on the principle of sufficient commonality of interest among affected parties. Furthermore, it should also be possible to treat creditors with the same position differently, assuming they are included in separate classes.

Additionally, there could be value in exploring the following additional amendments to the voting rules, which are optional, but which could greatly benefit the Moldovan practice:

- Exclude certain stakeholders, including equity holders (see section B.11 on treatment of equity holders), subordinated debt holders, and related parties with conflicting interests, from the right to vote on the plan.
- Provide that workers' claims are treated in a separate class of their own.
- Provide that debtors that are SMEs can opt not to treat affected parties in separate classes, establishing special rules for approval of the plan in these cases.<sup>17</sup>
- Require the creation of a separate class to protect the interests of small creditors.

On the topic of approving a plan, the Directive requires that restructuring plans be adopted by affected parties, provided that a majority in the amount of their claims or interests is obtained in each class (see Art. 9.6 of the Directive).<sup>18</sup> This is the same criterion adopted in the MIL, Article 202.3. Therefore, no amendments to the MIL are required in this respect.

## **B.8 Judicial confirmation of plans (Art. 10); Valuation (Art. 14)**

- When is court confirmation required?

The Directive provides that, in certain circumstances,<sup>19</sup> plan confirmation by a judicial or administrative authority is necessary. These circumstances operate as a minimum, and Member States may require court confirmation in additional circumstances. The MIL already requires court confirmation of the plan in all cases (see Art. 224 of the MIL). The procedure thus is in line with the Directive on this point.

- What does court confirmation involve?

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<sup>16</sup> A key decision that would have to be made is on whether a separate regime for the formation of classes should be introduced only for the preventive restructuring procedure, following the standards set in the Directive, or whether the rules in the judicial reorganization procedure should be also amended and brought in line with the Directive.

<sup>17</sup> Even if a single class exists in SME cases, the differentiation between secured and unsecured creditors should still be contemplated. In such a case, the plan is adopted if it receives the vote of a majority of the unsecured creditors. In the event that secured creditors are to be considered "affected" as they are paid with some deferral (as opposed to immediately after confirmation), they must also vote on the plan. In such a case, there must be a separate count for secured and unsecured creditors, even if all creditors vote at the same time in a single meeting. Under the Directive, in cases where there are only two classes, the consent of one class is sufficient (see Recital 54).

<sup>18</sup> As an exception to this rule, see section B.10 on the cross-class cram-down.

<sup>19</sup> These include cases where the plan (a) purports to affect the claims or interests of dissenting affected parties, (b) requires new financing, or (c) involves the loss of more than 25 percent of the workforce.

Confirmation involves a detailed review of the restructuring plan, including judicial or administrative verification that it complies with the following points:

- The restructuring plan has been adopted in accordance with the criteria of Article 9; that is, complying with the class formation and majority requirements explained in the previous section.
- The plan complies with the *“not discriminate unfairly principle”*; that is, creditors with sufficient commonality of interest in the same class are treated equally and in a manner proportionate to their claim.
- Notification of the restructuring plan has been given to all affected parties.
- Where there are dissenting creditors, the restructuring plan satisfies the best-interest-of-creditors test (BIOC) (see section B.9).
- In case new financing is necessary to implement the restructuring plan, it should not unfairly prejudice the interests of already existing creditors (that is, new financing, although treated as an administrative expense and as such having priority over existing creditors, should create value for creditors as a group).
- The plan meets the negative viability test—that is, it is not manifestly unable to prevent the insolvency of the debtor or ensure the viability of the business.<sup>20</sup>

The MIL complies with most of the aforementioned requirements.

- The first requirement has been met under Article 202.3 of the MIL, as previously explained, although improvements could be introduced to the system applicable to the formation of classes.
- The second requirement has also been met under Article 192 of the MIL, which requires that creditors within the same class have equal rights and specifies that they can receive different treatment only if they consent.
- The third requirement has also been met under Articles 35 and 199 of the MIL, which require individual notification to “known creditors.”
- The fourth requirement has also been met under Article 204.5(a) of the MIL, which provides for the BIOC, although its application should be subject to marginal improvements (see section B.9).
- The fifth requirement has also been met, although only partially, and it should be met fully by explicitly requiring the judge to verify that new financing is in the best interests of creditors as a group and does not prejudice any existing creditor.

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<sup>20</sup> It should be highlighted that confirmation does not imply a verification of the viability by the judge; instead, Member States must ensure that judicial or administrative authorities are able to refuse to confirm a restructuring plan if it does not have a reasonable prospect of preventing the insolvency of the debtor or ensuring the viability of the business (Art. 10, par. 3).

- The sixth requirement has not been met by the MIL, and this deserves the attention of the authorities. It should be noted that a positive viability test should not be introduced; this is the requirement that the court verify that the plan will prevent the insolvency of the debtor or ensure the viability of the business. Instead, the MIL should provide that the court may refuse to confirm a restructuring plan only if it does not have a reasonable prospect of preventing the debtor's insolvency or ensuring the viability of the business (negative viability test). Since this will be a difficult determination for the court, it may be useful for the MIL to define the conditions under which a plan would be considered not feasible.

## **B.9 The BIOC test under the Directive**

The BIOC test requires that no dissenting creditor be worse off under the plan than such a creditor would be in the event of liquidation, whether piecemeal or by sale as a going concern.<sup>21</sup> However, considering the complexity and cost associated with assessing compliance with the BIOC test, the Directive prohibits that this be verified in all cases and mandates that it be performed solely at the request of one or more dissenting creditors challenging the plan.

For secured creditors, compliance with the BIOC test implies that no write-downs are permitted if the claim is fully secured (that is, the value of the collateral is equal to or greater than the face value of the claim).<sup>22</sup> Under the Directive, fully secured claims may be rescheduled only if such compulsory rescheduling does not cause prejudice, such as by applying market interest rates, and in that event they are "affected" (although not "impaired") and therefore entitled to vote.<sup>23</sup>

If the value of the collateral is less than the face value of the claim, the Directive allows for the so-called bifurcation. Member States are entitled, although not obligated, to provide that secured claims are split into two parts: the part of the claim covered by the market value of the collateral, and the remaining part of the claim exceeding the value of the collateral, which is treated as an unsecured claim (Recital 44 of the Directive). That bifurcation requires an adequate valuation of the collateral. The BIOC test must be satisfied by treating the part of the claim exceeding the market value of the

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<sup>21</sup> Concerning the counterfactual scenario used to assess compliance with the BIOC, Member States are entitled to replace the liquidation scenario with the "*next-best-alternative scenario if the restructuring plan were not confirmed.*" However, it is to be noted that in most cases, the next-best-alternative scenario is indeed liquidation.

<sup>22</sup> In such a case, the value of the claim is also protected as "property" within the meaning of Article 1 of Additional Protocol No. 1 to the European Convention on Human Rights and Article 17 of the Charter of Fundamental Rights of the European Union.

<sup>23</sup> Parties "affected" by the plan means "*creditors, including, where applicable under national law, workers, or classes of creditors and, where applicable, under national law, equity holders, whose claims or interests, respectively, are directly affected by a restructuring plan*" (that is, who under the plan will not receive exactly what they are entitled to). The plan must identify the affected parties, either individually or by category (Art. 9, par. 1(a)). Only affected parties have the right to vote on the adoption of a restructuring plan (Art. 9, par. 2).

"Impaired" creditors are a subset of affected parties and are those whose claims, under the plan, are to be reduced in value (Recital 54). This notion is of limited importance in the Directive, and it emerges only as an option for Member States to consider creditors' approval relevant for the confirmation of a plan through a cross-class cram-down (Art. 11, par. 1, (b)(ii)). Creditors who are to be fully and promptly satisfied are not affected; creditors that are to be fully satisfied with deferral compensated by interest are affected but not impaired; and creditors who are not to be fully satisfied (or to be satisfied with deferral not compensated by interest) are impaired.

collateral as an unsecured claim. This is already the case under the MIL, which expressly allows for the bifurcation under Article 50.2.

The MIL's provisions on the ARP should be revised to allow the possibility that the BIOC test be verified only upon the challenge of certain dissenting creditors and shareholders who should be given the right to challenge. Furthermore, the MIL should also be amended to expressly state that the court should decide on the valuation of the debtor's business only when a restructuring plan is challenged by a dissenting affected party claiming infringement of the BIOC test or a breach of the conditions of cross-class cram-down (see section B.10).

### **B.10 Cross-class cram-down (Art. 11)**

As an exception to the general rule on plan approval explained above, the Directive provides that restructuring plans may be confirmed despite the opposition of one or more classes, a mechanism known as cross-class cram-down (CCCD).

CCCD is an obligation under the Directive, not an option.

For CCCDs to occur, the Directive requires that, in addition to the conditions listed in section B.8 with respect to plan confirmation (Art. 10), plans comply with the following conditions:

- The plan has been approved by at least one of the affected classes of creditors who are "in the money" with respect to the debtor's value as a going concern<sup>24</sup> (that is, they would receive something if the going concern value were distributed according to the normal ranking of liquidation priorities provided under national law).
- The allocation of value in excess of the liquidation value follows a criterion that ensures a sufficient degree of "fairness" to creditors in the dissenting class(es). Obviously, no class of affected parties can, under the restructuring plan, receive or keep more than the full amount of its claims or interests.

With respect to the latter point of fairness of the distribution of value, the Directive allows Member States to choose between the following:

- The absolute priority rule (APR), which applies the ordinary hierarchy of liquidation priorities to the distribution of the going concern value, requiring 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 (for equity holders) keep any interest under the restructuring plan. If a Member State opts for the APR, it may include those exceptions that are deemed necessary to achieve the objectives of the restructuring plan (Art. 11, par. 2), or
- A more flexible relative priority rule, which allows deviations from the ordinary hierarchy of liquidation priorities if, under the plan, dissenting voting classes of affected creditors are treated at least as favorably as any other class of the same rank and more favorably than

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<sup>24</sup> However, Member States may require a higher minimum number of consenting classes, up to a majority of affected classes. When there are only two classes, the consent of one class is sufficient.

any junior class. Therefore, superior dissenting classes must receive a *better* treatment than lower classes, but this does not imply that lower classes cannot receive any consideration.

It should be highlighted that the option chosen to structure the CCCD has an immense effect on the bargaining power of the various parties to the restructuring process. Two issues stand out as particularly important:

- How the consent (and, conversely, the dissent) of a class is to be considered expressed. The Directive does not provide any specific rule, except that Member States are precluded from adopting majorities “*higher than 75% of the amount of claims or interests in each class or, where applicable, of the number of affected parties in each class*” (Art. 9, par. 6). It is considered consistent with the Directive to calculate the required majority (between 50.01 percent and 75.00 percent) only on the basis of affected parties who have expressed their vote, excluding those who have not appeared and/or voted.<sup>25</sup> Given the constraints that fall into place on the restructuring process when one or more classes do not approve the plan and confirmation of the plan through CCCD is requested, it is necessary to pay great attention to the method by which the consent of a class is considered achieved or denied.
- The role the law allocates to former shareholders in a restructuring plan that is to be confirmed through the CCCD. Shareholders’ ability to participate in the company once it has been restructured through a CCCD is, in fact, limited or excluded altogether by the APR, and it is also limited by the relative priority rule. Shareholders instead have a right to participate in the equity of the restructured company if they contribute to the restructuring with new value, in kind or, for SMEs, through non-monetary contributions.<sup>26</sup>

The MIL allows the CCCD under these conditions:

- With the approval of the majority of classes (although this point remains somewhat unclear).<sup>27</sup> This choice in the MIL is compliant with Article 11, paragraph 1, last subparagraph.<sup>28</sup>

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<sup>25</sup> This is the choice, for example, of French law. Article L626-30-2, fifth paragraph, which states that in the *procédure de sauvegarde*, the decision on the plan “*is taken by each class by a two-thirds majority of the votes held by the members casting a vote*” (“*La décision est prise par chaque classe à la majorité des deux tiers des voix détenues par les membres ayant exprimé un vote*”).

According to a leading commentary on the Directive, “*National law should also lay down rules on how to handle affected parties with a right to vote and which do not exercise that right in a correct manner or are not represented (such as rules allowing those affected parties to be considered for a participation threshold or for the calculation of a majority). In this respect, it would appear appropriate to take into consideration (for voting purposes) affected parties that are present or represented.*” Reinhard Dammann, in *European Preventive Restructuring: An Article-by-Article Commentary*, ed. Christopher G. Paulus and Reinhard Dammann (Munich: Beck/Hart/Nomos, 2021), p. 168.

<sup>26</sup> Cf. Recital 59: “*The restructuring plan should, for the purposes of its implementation, make it possible for equity holders of SMEs to provide non-monetary restructuring assistance by drawing on, for example, their experience, reputation or business contacts.*” This possibility has been admitted by French law (Article L626-30-2, fifth paragraph) and, in a more limited manner, by German law (Article 28 StaRUG).

<sup>27</sup> The text of the MIL appears ambiguous as to whether approval by a majority of classes serves only to trigger the prohibition against obstruction under Article 203 or to obtain the necessary approval of the plan under Article 202.

<sup>28</sup> “*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.*”

- Requiring the value to be distributed according to the APR (MIL, article 204.5). This is also compliant with the Directive.

For the MIL to be fully compliant with the Directive, minimal changes seem necessary:

- The majority of classes must be composed in accordance with Article 11(1)(b) of the Directive, including at least one secured class or, at least, one “in the money” class under Article 11(1)(b)(ii).
- If there are only two classes, approval from one class should be sufficient, regardless of its value.

This opportunity could also be used to clarify whether the majority of classes is required solely to trigger the anti-obstruction rule under Article 203 or to obtain the necessary approval of the plan under Article 202 (see above).

If the APR is maintained as the rule for the distribution of restructuring value in the case of a CCCD, it is recommended to explore the possibility of allowing exceptions to the APR, under Article 11(2), second subparagraph, where such measures are necessary to ensure the success of the restructuring plan (for example, for shareholders, suppliers, and others). This is, however, an option, not an obligation to transpose the Directive.

#### **B.11 Treatment of equity holders (Art. 12)**

If the net value of the company’s assets is negative, the shareholders may have no interest in the restructuring and may even use their rights under company law to frustrate the restructuring. To achieve this objective, the Directive offers the option to integrate shareholders as the last creditors’ class, which obviously remains subject to cram-down. When this option is not selected, the Directive requires Member States to provide mechanisms that, for debtors that have the form of a company, ensure that shareholders cannot unreasonably prevent the adoption of the plan or create obstacles for its adoption or implementation. To do this:

- It is certainly possible to allow company directors to formulate fully consensual plans, that is, plans that include the support of shareholders for restructuring (which is always desirable and often necessary, especially for SMEs);
- Simultaneously, it is also necessary to empower the directors and/or (but only for non-SME companies) creditors by giving them the ability to implement company restructuring even without the consent of the shareholders. The fact that the directors often coincide with the shareholders, or are otherwise very close to them, is on the one hand inevitable, since the entire system of preventive restructuring is based on the fact that the debtor must remain in control of the business; on the other hand, it is not without its counterbalances, since the directors are always subject to civil and criminal liability under the law in the event that they cause unfair damage to creditors.

The MIL does not allow the integration of shareholders as a separate class (Art. 201.1). Additionally, it does not seem to provide for sufficient power to overcome shareholders’ opposition, even when it is

against the BIOC and stakeholders in general.<sup>29</sup> Similarly, there seem to be no rules in the MIL derogating from ordinary company law procedures to implement the required changes to the company structure.

Therefore, to bring MIL fully in line with the Directive, it appears necessary to do the following:

- Expressly provide for the right of the company directors, when it is necessary and appropriate, to submit a restructuring plan that does not require the approval of the shareholders to be filed with the court, approved, and implemented;
- Provide for the necessary derogations from the ordinary procedures of company law to implement the changes in the company's structure required by the plan confirmed by the court.

The MIL can achieve alignment on this article by integrating equity holders in the restructuring plan, subjecting them to the risk of cancellation in the event of CCCD, or providing that the plan may implement the necessary changes to the corporate structure and organization of the company, even without shareholder approval, when the dissent is abusive (that is, aimed only at extracting economic benefits from creditors, who are often very interested in the success of the restructuring). The MIL may also provide for both systems, leaving directors to choose which one to implement.

If the option chosen consists of not integrating equity holders into the restructuring plan, a cap should be placed on the ability of equity holders to retain value without having paid for it through new contributions (in kind or non-monetary; see section B.10 on the cross-class cram-down). This is because, by definition, restructuring increases the value of equity (net assets), from which—unless they are written off or diluted—existing shareholders benefit even if they do not participate in the restructuring. A cap would force the shareholders to share the value of the restructuring with the creditors and would prevent them from keeping all the value that is created thanks to the reduction in the claims of creditors.

## **B.12 Treatment of workers (Art. 13)**

Article 13, paragraph 1 of the Directive provides for the protection of workers in the context of preventive restructuring, requiring Member States to *"ensure that individual and collective workers' rights, under Union and national labor law [...] are not affected by the preventive restructuring framework."* In particular, the Directive refers, at a minimum, to the following:

- The right to collective bargaining and industrial action;

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<sup>29</sup> Under Art. 222 (c), the debtor's restructuring plan must set out in detail *"the expected percentage of claims satisfaction as a result of the implementation of the proposed recovery measures, such as: postponement or rescheduling of the payment of claims, total or partial extinction of some claims or only of interest or late payment penalties by set-off, by confusion, by total or partial remission of the debt, by novation, by conversion of debts into shares in the debtor's statutory capital or into shares, by conversion of bonds and other securities into shares, by other legal means of extinction of claims"*. Debt-for-equity swaps are indeed a very common means of restructuring a company's financial structure. However, they are not the only ones, as other changes in the company's structure can be instrumental in restructuring: Capital increases to bring in new investors and mergers are common examples (for the ordinary restructuring procedure, under Art. 182, the concept of "restructuring" includes *"corporate restructuring by changing the share capital structure"*).

- The right to information and consultation in accordance with Directive 2002/14/EC and Directive 2009/38/EC; and
- The rights guaranteed by Directives 98/59/EC, 2001/23/EC, and 2008/94/EC.

In addition, under Article 13, paragraph 2, if a restructuring plan includes changes affecting work organization or employment contracts, such changes must be approved by the workers, provided that such approval is required under applicable national laws or collective agreements.

Under the ARP provisions in the MIL, there does not appear to be any provision to ensure the respect of the workers' rights provided for by the Directive. The MIL should therefore be amended accordingly.

### **B.13 Effect of judicial confirmation of plans (Art. 15)**

The Directive requires that Member States ensure that restructuring plans that are confirmed by a judicial or administrative authority are binding upon all affected parties named or described in the plan, while also ensuring that creditors that are not involved in the adoption of a restructuring plan are not affected by the plan.

Articles 224 and 225 of the MIL provide for the confirmation of the accelerated restructuring plan and its effects. Article 224, paragraph 5 states: "*As of the date of its pronouncement, the decision of the insolvency court shall produce the effects provided for in Articles 184, 208–214, subject to the exceptions set out in this Section.*" Articles 184 and 208–214, which pertain to the ordinary restructuring procedure, have precisely the effects required by the Directive.

Therefore, it does not seem necessary to make any changes to the MIL in this regard.

### **B.14 Appeals (Art. 16)**

Article 16 of the Directive provides that

- Any appeal against a decision confirming or rejecting a restructuring plan taken by a judicial authority must be reviewed by a higher judicial authority and, if the confirmation is taken by an administrative authority, any appeal against it must be brought before a judicial authority (Art. 16, par. 1); and
- The appeal against the confirmation of the restructuring plan may not have an automatic suspensive effect on the implementation of the plan (Art. 16, par. 3).

The MIL appears to be substantially in line with the Directive, since the decision of the insolvency court on the plan confirmation may be appealed by any creditor within five days from the date of publication (Art. 224, par. 6) and the appeal does not suspend the enforcement of the decisions of the insolvency court (Art. 8, par. 1).

The MIL also provides that upon a "*reasoned request of the interested party,*" the court of appeal may suspend the enforcement of the insolvency court's decisions (Art. 8, par. 3). This provision is in line with Article 16, paragraph 3 of the Directive, which provides that "*judicial authorities can suspend the*

*execution of the restructuring plan or parts thereof where necessary and appropriate to safeguard the interests of a party."*

However, it seems necessary to provide that the appellate court may not only set aside the plan, but also, in the case of its partial invalidity, confirm the restructuring plan, either with amendments or without amendments, and in such case with compensation to any party that incurred monetary losses and whose appeal is upheld (Art. 16, par. 4, of the Directive).

### **B.15 Protection of new (and interim) financing, other transactions (Arts. 17 and 18)**

The Directive aims to facilitate efficient preventive restructuring by ensuring the following:

- During the period necessary to develop and implement a restructuring plan, both the debtor and its counterparties must be able to continue normal business operations and engage in restructuring-related activities without the risk of adverse consequences. This includes protection from avoidance actions or liability should the restructuring fail and insolvency proceedings be subsequently initiated.
- The debtor must have the ability to secure (often much-needed) financing, both during the restructuring process (interim financing) and for the execution of the restructuring plan (new financing). This financing should be obtainable without the concern that, in the event of later insolvency, it could be challenged or result in civil or criminal liability.

With this objective in mind, Articles 17 and 18 of the Directive contain a detailed set of self-explaining provisions.

To fully align the MIL with the Directive, the following adjustments appear necessary:<sup>30</sup>

- Introduce specific exemptions within section 3 of chapter III of the MIL (Arts. 104–106) for restructuring-related transactions as outlined in Article 18 of the Directive. These exemptions would safeguard such transactions from being challenged or reversed in subsequent insolvency proceedings; and
- Establish a comprehensive framework for interim and new financing, modeled on Article 17 of the Directive. This framework should aim to provide legal certainty for such financing, thereby enhancing creditors' confidence—particularly secured creditors—in accepting debt restructuring and extending new financing to businesses in financial distress. Although provisions for such financing currently exist in Moldovan law, they are almost nonutilized, and clearer rules (also on enforcement of collateral) could significantly improve their

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<sup>30</sup> As a complement to the MIL, banking rules could also accommodate the extension of new financing to debtors in financial difficulty, which is often a rational strategy for banks holding exposures to them. In this sense, it could be useful to consider the new Article 178 ("*Default of an obligor*"), paragraph 7, second subparagraph, of Regulation (EU) No. 575/2013 on prudential requirements for credit institutions, introduced by Regulation (EU) 2024/1623, which states: "*By 10 July 2025, EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to update the guidelines referred to in the first subparagraph of this paragraph. In particular, that update shall take due account of the necessity to encourage institutions to engage in proactive, preventive and meaningful debt restructuring to support obligors.*"

practical application. Therefore, the treatment applicable to new financing under the ARP could also be made applicable to new financing under reorganization procedures in the MIL.

### **B.16 Duties of directors in the period approaching insolvency (Art. 19)**

The Directive establishes obligations for directors where there is a likelihood of insolvency, focusing on safeguarding creditors' interests, preserving the business, and ensuring timely action.<sup>31</sup>

The MIL regulates directors' duties in two important articles:

- Article 13 of the MIL,<sup>32</sup> which regulates the debtors' right to file and allows directors to deal promptly with a very serious situation that has not yet developed into a full-blown insolvency
- Article 14 of the MIL, which regulates the debtors' duty to file. It imposes a strict 30-day deadline for filing a preliminary request upon detecting insolvency or over-indebtedness or if "*the integral execution of maturing debts of one or several creditors may result in the impossibility to fully satisfy the claims of other creditors in due time*" (Art. 14, par. 2).

When compared with the standard set in the EU Directive, MIL Articles 13 and 14 do not seem to be sufficient: On the one hand, the rules do not provide for an obligation of directors to take action in case of imminent insolvency (they impose duties only in case of insolvency); on the other hand, they do not provide consequences for the company being in a mere "*likelihood of insolvency*," in which case directors should be under a duty to take action according to the criteria of Article 19 of the Directive.

In conclusion, to bring the MIL fully in line with the Directive, it appears necessary to explicitly state that directors have a duty to take appropriate measures in case of likelihood of insolvency, which may include considering restructuring possibilities, in or out-of-court; negotiating with their creditors; closely monitoring their accounts; initiating accelerated restructuring proceeding; or, if there is no better alternative to protect the interests of creditors, filing for insolvency.

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<sup>31</sup> Article 19 of the Directive provides for the duty of directors to (a) consider creditors' interests, together with equity holders and other stakeholders; (b) avoid deliberate or negligent misconduct that could jeopardize the viability of the business; and (c) take immediate corrective measures to avoid insolvency. Additionally, Recital 70 states that "*Where the company experiences financial difficulties, directors should take steps to minimise losses and to avoid insolvency, (...)*" (see also Recital 71).

<sup>32</sup> The debtor may "*file a preliminary request in the situation, in which there is a risk for him/her to enter into payment default, when, predictably, s/he shall not be able to fulfil his/her pecuniary obligations in due time*" (Art. 13).

## C. Pillar III: Discharge of debts and disqualifications (Arts. 20 to 24)

### (a) The EU Directive

The EU Directive requires that the natural person debtor be discharged at the end of insolvency proceedings. This discharge should be accessible either upon the compliance of a restructuring or repayment plan, or regardless of whether an agreement with creditors has been reached. This is already the case under Moldovan law, as previously explained.

### (b) The Moldovan Insolvency Law

Moldovan law clearly states (Arts. 135, 181, and 229) that at the end of the restructuring or bankruptcy procedures, the debtor is discharged from the obligations he or she had before the opening of the procedure. Some debts are, however, considered nondischargeable, including debts for "*subsidiary liability in the manner provided by law*" (Art. 135). There are also statutory exceptions for "*claims of creditors for recovery of alimony, compensation for damage to health, other personal claims that have not been filed, have not been satisfied or have been partially satisfied in the insolvency proceedings,*" which shall remain valid even after the termination of the proceedings and may be filed in full or in the unsatisfied part, respectively (Art. 229, pars. 1 and 2).

The MIL also provides for the disqualification of the insolvent debtor and of the directors of an insolvent company, although these seem to apply only in cases where they have contributed to the insolvency through fault or negligence (Arts. 227 and 228). The period of disqualification ranges from a minimum of 12 months to a maximum of 5 years.

To bring the MIL fully in line with the provisions of the Directive, the following amendments appear necessary:

- Provide for a maximum of three years from the opening of bankruptcy proceedings to obtain discharge, which should ideally be accommodated in the special regime foreseen in Article 136 of the MIL;
- Introduce the possibility of discharging in the same procedure both (a) debts arising from the debtor's economic activity and (b) personal debts—although this is only an option under the Directive; and
- Consider whether, in addition to the discharge at the end of bankruptcy proceedings, the discharge could be made available and conditional upon compliance with a repayment plan. This is only an option under the Directive, but it would make the discharge more attractive for creditors' interests.

Regarding the disqualifications, no action seems necessary, as disqualifications under the MIL apply only in the case of fault or negligence and not on the sole ground that the entrepreneur is insolvent, as provided for in Article 22 of the Directive.

## D. Pillar IV: Increased efficiency and system monitoring (Arts. 25 to 29)

### (a) The EU Directive

The EU Directive lays down rules aimed at making restructuring, insolvency, and debt discharge procedures more efficient across the EU. To achieve this goal, the qualification and experience of judges and insolvency professionals play a key role, and so does the institutional framework that supports these professionals. The Directive lays out several measures aimed at improving the capacity and skills of the following participants:

1. *Judges.* Insolvency cases are unique in that they require not only knowledge of the law itself but also knowledge of the business aspects of such cases. Generalist judges typically lack the skill and training in the economic issues that are central to the successful resolution of insolvency matters. This is the reason the Directive requires that "*members of the judicial (...) authorities dealing with procedures concerning restructuring, insolvency and discharge of debt receive suitable training and have the necessary expertise for their responsibilities*" and that the same procedures "*are dealt with in an efficient manner*" (Art. 25).

Therefore, while the Directive notes that the creation of specialized courts and the appointment of specialized judges can help improve legal certainty and effectiveness of procedures, it clarifies that there is no requirement that members of a judicial authority must deal exclusively with matters concerning restructuring, insolvency, and discharge of debt.

2. *Practitioners.* The EU Directive prescribes that Member States should ensure the following:
  - *Training:* Practitioners appointed must be trained up to a level adequate to the complexity of the procedures to which they are assigned (Art. 26, par. 1(a)).
  - *Appointment:* The process for the appointment, removal, and resignation of practitioners in procedures concerning restructuring, insolvency, and discharge of debt is clear, transparent, and fair. In appointing a practitioner, due consideration must be given to the practitioner's experience and expertise. Debtors and creditors must have the opportunity to either object to the appointment of a practitioner or request its replacement to avoid conflicts of interest (Art. 26, par. 1(b)–(d)).
  - *Supervision:* Practitioners must be supervised with a view to ensuring that their services are provided in an effective and competent way and that the practitioners act impartially and independently. Measures for the accountability of practitioners who have failed in their duties also must be established (Art. 27, pars. 1–3).
  - *Remuneration:* Remuneration must be governed by rules that are consistent with the objective of an efficient resolution of procedures, and appropriate procedures must be in place to resolve any disputes over remuneration (Art. 27, par. 4). No specific remuneration system is preferred in the Directive.
3. *Efficiency of procedures.* The following areas should be highlighted:

- *Electronic communications:* The Directive seeks to promote the use of electronic means of communication and establishes a minimum set of actions that may be performed using electronic means, including filing of claims, restructuring or repayment plans, notifications to creditors, and challenges and appeals.
- *Data collection:* The Directive also identifies certain data categories that must be collected and aggregated by member states on an annual basis with respect to the restructuring, insolvency, and discharge of debt procedures. These include (a) the number of procedures applied for, opened, pending, or closed; (b) the average length of procedures from submission/opening to closures; (c) the number of applications for restructuring procedures that were declared inadmissible, rejected, or withdrawn; and (d) the number of other procedures broken down by types of outcomes.

**(b) The MIL and the domestic system**

1. *Judges:* After the elimination of the specialized (commercial) courts in 2017, insolvency proceedings in Moldova have been handled by courts of the first instance, which have exclusive jurisdiction over disputes relating to the debtor's estate. These courts hear both civil and commercial cases, although they feature specialized judges who deal mainly with insolvency cases. At the Chisinau Court, there are currently 12 judges who specialize in insolvency cases (out of more than 90 civil judges), all sitting in the Botanica court branch.

A dedicated insolvency training is part of the initial formation curriculum of the National Institute of Justice, where sitting judges have received training, especially after legislative amendments. Reportedly, the most recent training was delivered after enactment of Law 141/2020. Such training scarcity and lack of frequency do not ensure adequate skills and expertise to deal with insolvency cases, failing to meet the standards set in the Directive.

To achieve full compliance with the Directive, Moldovan court organizational rules should ensure that insolvency and, particularly, restructuring cases are concentrated in the hands of specially trained judges. The judges in charge should be able to fully deal with the financial and economic issues arising in such cases, which would lead to efficient and expeditious case management. Therefore, a permanent training program for judges dealing with insolvency and restructuring cases should be established. Such a program should include legal, financial, and economic issues.

Similarly, the long durations observed in insolvency cases, sometimes lasting longer than five years, pose a serious challenge to the efficiency of the system. It has been reported that it takes several months for courts to schedule the first hearing and consider insolvency petitions. The Ministry of Justice should increase efforts to reduce case backlog and drastically shorten average case durations. Measures required to achieve this objective involve the allocation of additional resources to the court system and the appointment of new judges.

2. *Insolvency practitioners*.<sup>33</sup> With respect to the areas referenced in the Directive, the MIL and the MIAL (Law 161/2014 on insolvency administrators) establish the following:

- *Appointment*: The appointment of the administrator in the ARP shall follow the same rules established under the reorganization procedure (Art. 63 of the MIL), which sets out a system in which the administrator is proposed by the party filing the petition. It is therefore a system that is based on the preference of the parties, and the court does not have any discretion to assess the practitioner's experience and expertise, nor whether they fit the specific features of the case, which is the standard required in the Directive. Once selected or appointed, creditors have the right to propose another administrator, who the court may appoint (Art. 65 of the MIL).
- *Eligibility*: Candidates shall meet the legal requirements (education, 3 years of experience, irreproachable reputation, and clear criminal record), receive the 12-month training, and pass the admission exam. (Art. 12 et seq. of the MIAL). After the exam, the MOJ issues the practice authorization and enters the practitioners into the centralized public registry.<sup>34</sup>
- *Supervision*: Insolvency administrators are supervised by the MOJ.<sup>35</sup> The independent Licensing and Disciplinary Commission is created by the MOJ from among MOJ and MEDD officers, practitioners, and members of academia. As supervisor, the MOJ has issued several regulations dealing with the control of the profession and the discipline measures that may be imposed in the exercise of its supervisory functions.<sup>36</sup>
- *Training*: The initial (preadmission) training comprises courses on theory and trainee practice, designed by the Professional Formation Commission of the Union of Authorized Administrators. The MOJ approves the regulations on professional formation, including the entrance testing. The ongoing (postadmission) training is mandatory and requires a minimum of 30 hours per year. Failure to receive the training entitles the formation commission to propose that the MOJ suspend the practitioner's license (Art. 32 of the MIAL).
- *Remuneration*: The practitioner is entitled to the fixed fee and success fee set by the creditors' committee or assembly. The fixed fee may not be lower than the legal threshold (recently amended), being payable from the debtor's estate. The success fee amount is negotiated with the creditors and may not exceed 5 percent, being

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<sup>33</sup> In Moldova, these include the interim administrator, administrator, and liquidator.

<sup>34</sup> Register of Authorized Administrators, <https://www.justice.gov.md/en/advanced-page-type/registru-administratorilor-autorizati>.

<sup>35</sup> See Article 6 of Law 161/2014.

<sup>36</sup> See, among others, Regulation on the Manner of Carrying Out the Control of the Professional Activity of Authorized Administrators, approved by Government Decision No. 332 of May 26, 2017, and Regulation on the Activity of the Commission for Authorization and Discipline of Authorized Administrators, approved by Government Decision No. 817 of November 12, 2015, both available at <https://www.justice.gov.md/ro/content/acte-relevante-1?utm>.

deducted from the sale proceeds.<sup>37</sup> In addition, the creditors' assembly may approve a lump sum payment to the administrator proposing a restructuring plan, confirmed by the court (MIL Art. 70.6).

To achieve full compliance with the Directive, the only area that requires updates to the MIL or the MIAL is the appointment system of the administrator, where special consideration should be given to ensure that the skills and expertise of the candidate selected match the features and requirements of the case. This may be introduced for the ARP only, requiring that the administrator has previous (successful) experience with this type of procedure, or more broadly for all insolvency cases, via amendments to Article 63 of the MIL.

3. *Efficiency of procedures*: With respect to the two key criteria identified in the directive and highlighted above (see D.(a).3) as critical for efficiency:

- *Electronic Communications*: Important progress has been made recently in Moldova in the e-case management, including the larger use of e-filing of claims, challenges and appeals, as well as of the case documents (restructuring or repayment plans, notifications, and others). Progress is less visible in the local (regional) courts, where case management is still predominantly paper-based.
- *Data collection*: Despite recent efforts to create the Insolvency Registry and the MIL enabling regulation (Art. 250), no centralized registry exists and access to data on the pending insolvency proceedings is scarce and nonuniform (courts are obliged to post on the centralized court website the information on the pending cases, but enforcement is still poor).

To implement the standards set out in the Directive, the MIL should allow the main steps in restructuring, insolvency and debt discharge procedures to be carried out by electronic means. Moreover, Moldova should collect and aggregate at the national level, on an annual basis, data on procedures concerning restructuring, insolvency, and discharge of debt, broken down by each type of procedure and covering the main elements of such procedures.

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<sup>37</sup> While the remuneration system currently in place is perceived as generally fair and enabling, some criticism has arisen in recent years regarding the perceived unfairness of the success fee being accrued in those cases where the administrator fails to sell the encumbered assets in the market, which typically results into the mandatory adjudication of the collateral to the secured creditor (MIL Art. 131.10). In those cases, concerns exist as to whether any success fees should accrue in equal terms as to those when the secured asset is sold to a third party. This change would, however, not be necessary to ensure alignment with the Directive.

