

# Comparison of the restructuring landscape post-Directive

	UK RESTRUCTURING PLAN	GERMANY – PREVENTIVE RESTRUCTURING PROCESS	FRANCE – ACCELERATED SAFEGUARD	SPAIN – CURRENT POSITION PRE-IMPLEMENTATION	DUTCH WHOA
<b>Debtor in possession?</b>	Yes.	Yes. Appointment of insolvency practitioner only on application of the debtor or in exceptional cases (e.g. consumer claims).	The court-appointed administrator will, exercise ex post facto control over decisions made by the debtor or assist the debtor in making some or all of the management decisions.	Yes.	Yes.
<b>Court involvement</b>	Yes – medium involvement. Like a scheme of arrangement, there is a 2 stage process with court having overall discretion for approval.	Yes – medium involvement.	Yes.	Yes, if the debtor or creditors holding financial claims request the <i>homologation</i> of the restructuring agreement.	Yes – light touch.
<b>Entry criteria</b>	The company must have encountered, or be likely to encounter, financial difficulties affecting its ability to carry on business as a going concern.	Impending illiquidity required; debtor must not be over-indebted or illiquid.	The debtor must (i) be subject to ongoing conciliation proceedings; (ii) face difficulties which it is not in a position to overcome provided that it is not insolvent ; and (iii) have prepared a draft safeguard plan ensuring the continuation of its business as a going concern which is supported by enough of its creditors involved in the proceedings.	Imminent or current insolvency.	Where it can be reasonably expected that a company will be unable to continue to pay its debts.
<b>Basis for jurisdiction</b>	Sufficient connection.	COMI.	COMI. Commercial court where the company's registered office is located.	COMI.	COMI (public); sufficient connection (non-public).
<b>Moratorium</b>	Possibly. No <i>automatic</i> stay or moratorium, although it can be combined with an administration or the separate moratorium under	Moratorium and stay possible on application.	Automatic stay. Moratorium possible.	Moratorium or stay applies if the debtor files a pre-insolvency notice with the court. Protection lasts a	Yes.

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	Part A1 Insolvency Act in certain circumstances.			maximum of four months from the filing of the notice .	
<b>Shareholder approval required?</b>	No although modification of shareholder rights is possible.	Not for content of restructuring plan, although modification of shareholder rights is possible.  Shareholder resolution is required to initiate restructuring proceedings.	No.	No although modification of shareholder rights is possible.	No.
<b>Ipsa facto / onerous contracts</b>	Restrictions on ipso facto clauses in supply contracts.	Ban on ipso facto clauses.	No. Ban on ipso facto clauses.	No. Ban on ipso facto clauses.	No. Ban on ipso facto clauses. Amendment or termination of contracts upon request.
<b>Required majority</b>	75% in value.	75% of voting rights.	Each class must approve by a 2/3 majority of the votes held by its members having cast a vote.	More than 2/3 of the amount of the liabilities ( <i>pasivo</i> ) of that group has voted in favour of the plan. If the group consists of creditors with <i>in rem</i> securities, approved if 3/4 of the amount of the liabilities ( <i>pasivo</i> ) of that group have voted in favour of the plan.	2/3 in value.
<b>Cross class cram down</b>	Yes.	Yes.	Yes.	Yes.	Yes.
<b>Absolute priority rule?</b>	No.	Yes – with certain exceptions.	Yes – although the court may, make exceptions.	To be decided.	Yes – subject to certain limited exceptions.
<b>Recognition</b>	The European Regulation on Insolvency Proceedings does not automatically apply.	Yes - the European Regulation on Insolvency Proceedings applies if the restructuring proceedings are public (this option is only available as of 17 July 2022). If proceedings are not public, no automatic EU recognition.	Yes - the European Regulation on Insolvency Proceedings applies.	Yes - the European Regulation on Insolvency Proceedings applies.	Yes - the European Regulation on Insolvency Proceedings applies if the debtor (or other party initiating the WHOA) makes it applicable. If not made applicable, no automatic EU recognition.