



Údarás Forfheidhmithe Corparáideach
Corporate Enforcement Authority

Public consultation on draft Information Note
European Union (Preventive Restructuring) Regulations 2022
Early Warning Tools & Restructuring Frameworks

FEEDBACK STATEMENT

1. Background

The EU Directive 2019/1023, known as the Preventive Restructuring Directive (“the PRD”), was transposed into Irish law by the European Union (Preventive Restructuring) Regulations 2022 (“the Regulations”) with effect from 27 July 2022¹.

The CEA, in a public consultation on its draft Information Note, invited responses to three questions. The consultation opened for submissions on 14 October 2022 with a deadline of 01 November 2022.

Four submissions were received by the deadline with one submission received afterwards which was also considered.

Submissions were received from:

1. The Corporate & Insolvency Bar Association
2. Dentons Ireland LLP
3. The Revenue Commissioners
4. The Consultative Committee of Accountancy Bodies-Ireland
5. Restructuring & Insolvency Ireland

2. Feedback Report

Set out below are matters on which the CEA sought interested parties’ views. The question is included as well as a summary of the responses received. Responses are not attributed. Responses that relate to matters falling outside the scope of the document are not reflected below but may, depending upon the nature of same, be addressed by the CEA through engagement with relevant parties.

No.	Question
1.	<p data-bbox="300 1151 1390 1305"><i>In the absence of the term “early warning tool” having been defined in the PRD, do you consider the CEA’s currently proposed approach of offering company directors a non-exhaustive list of indicators to be an appropriate means of assisting directors to identify potential financial difficulties at a suitably early stage in order that restructuring options can be explored in good time?</i></p> <p data-bbox="300 1335 1090 1368"><i>If no, what alternative approach(es) would you advocate and why?</i></p> <p data-bbox="300 1397 1386 1458"><i>If yes, would you nevertheless suggest amendments to Appendix 1 as currently drafted and, if so, how would you so amend?</i></p> <p data-bbox="300 1487 472 1520">RESPONSES</p> <p data-bbox="300 1550 1390 1615">Text regarding issues of over reliance on individual suppliers and other force majeure events was suggested for inclusion in Appendix 1.</p> <p data-bbox="300 1653 1390 1718">Text regarding issues of failure to meet obligations to the Revenue Commissioners was suggested for inclusion in Appendix 1.</p> <p data-bbox="300 1756 1390 1899">Several submissions suggested that an early warning signs document, of itself, was not a sufficient tool and that early engagement with professional advisers (including perhaps placing on obligation on those advisers to flag the early warning tool for consideration) was necessary.</p>

¹ S.I. 380 of 2022 (available at <https://enterprise.gov.ie/en/legislation/legislation-files/si-no-380-of-2022.pdf>)

2.	<p><i>Do you consider the information provided in the draft Information Note on directors' restructuring options to be accurate, fair and balanced? If no, what amendments or additions would you propose?</i></p> <p>RESPONSES</p> <p>Several submissions noted the distinction between financial difficulties and insolvency.</p> <p>One submission noted the text regarding '<i>approaching financial difficulties beyond</i>' was beyond the remit of the PRD and was removed based on submissions received.</p> <p>Several submissions noted the different 'trigger' points for s. 224A and 228 obligations and text has been inserted.</p> <p>One submission suggested the Note should include reference to other restructuring options e.g., Informal restructuring arrangements and statutory Schemes of Arrangement and text has been inserted reflecting this.</p> <p>Several submissions regarding textual consistency and the hyperlinking of external materials were included in the revised text.</p>
3.	<p><i>Do you have any other suggestions, or proposed amendments to the draft Information Notes that would, in your assessment, enhance its value to company directors? If so, please provide full details of same.</i></p> <p>RESPONSES</p> <p>A number of points raised in one submission under this head sought that the CEA would describe how it would deal with given circumstances e.g. regarding the operation of the 'deeming provision' where a debt is disputed, and regarding the treatment of contingent and prospective liabilities as if they were currently due.</p> <p>The CEA cannot offer such guidance generally as each case must be considered on its own merits and it is not possible to be prescriptive in this regard.</p>

3. Acknowledgements

The CEA would like to thank those who responded to the consultation exercise for their thoughtful and helpful contributions.

CORPORATE ENFORCEMENT AUTHORITY
3 JANUARY 2023