

LEGAL UPDATE

EU recognition of the Dutch public restructuring procedure

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The Dutch Act on Court Confirmation of Extrajudicial Restructuring Plans (*Wet homologatie onderhands akkoord*) (“CERP”) entered into force on 1 January 2021. It provides struggling businesses with an instrument to bind non-consenting creditors to an out-of-court restructuring plan and thus prevent value destructive bankruptcies.

Amendment to the EU Insolvency Regulation

A recent amendment to the EU Insolvency Regulation ([Regulation \(EU\) 2015/848](#)) resulted in the addition of the Dutch public restructuring procedure (*openbare WHOA-procedure*) to Annex A. Thanks to this amendment, the Dutch public restructuring procedure enjoys automatic recognition in all EU Member States (except Denmark and Ireland) with effect from 9 January 2022.

The CERP also has a private procedure. The private procedure transpires at the behest of the court but takes place out of the public eye (i.e. court documents are not made public). The private procedure has not been added to Annex A of the EU Insolvency Regulation and thus does not enjoy automatic in other EU jurisdictions.

Benefits of automatic recognition of the Dutch public restructuring procedure

Automatic recognition of the Dutch public restructuring procedure binds all of the debtor's European creditors to cooling-off periods, class formations and amendments to rights sanctioned by Dutch courts on the basis of the CERP. Thus creditors (and/ or shareholders) from other Member States cannot bypass a Dutch CERP-plan by enforcing a title obtained from a domestic court.

Foreign group companies qualify for the Dutch restructuring procedure if the activities of at least one of the group entities has a sufficient nexus to the Netherlands. Together with the flexibility of the tool and its EU-wide recognition, this makes the Dutch CERP-procedure an attractive option for internationally operating business to restructure their European debts.

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