THE TRANSPOSITION OF THE EU DIRECTIVE ON EARLY CORPORATE RESTRUCTURING AND SECOND CHANCE INTO FRENCH LAW

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ABSTRACT: The transposition of the Directive 2019/1023/UE which was highly anticipated will allow French insolvency law to remain attractive on the European scene. Indeed, France introduced classes of affected parties, comprising also equity holders, allowing the debtor a great deal of flexibility to put together the financial restructuring plan. Hence, the two steps model allows the debtor to confidentially prepare the restructuring plan during conciliation proceedings and to cram-down minority creditors and equity holders who are out of the money. Interestingly, France opted for the absolute priority rule with limited derogations. Thus, it is possible for junior classes (suppliers) and equity holders to keep an interest. In the same vein, classes of creditors having the same ranking can be treated differently.

KEYWORDS: Transposition, Directive, France, Insolvency.

I. INTRODUCTION

The transposition of the Restructuring and Insolvency Directive 2019/1023/UE ("the Directive") will change the insolvency and restructuring landscape in France. Article 196 of the "PACTE" Law of May 22, 2019, allowed the French government to bypass the Parliament and transpose the Directive through a governmental decree (*ordonnance*) dated September 15, 2021, supplemented by an application decree of September 23, 2021. The reform is applicable to insolvency proceedings that have been opened after October 1, 2021.

When transposing the Directive, the French government took a close look at the *StaRUG* transposition made in Germany but choose a more flexible approach[1]. France continues to rely upon its successful two steps model: the financial restructuring plan is prepared in a confidential conciliation and accelerated safeguard proceedings provides for cram-down on minority creditors and shareholders.

French conciliation proceedings remain untouched. The *ordonnance* of September 15, 2021 transposed the Directive at the level of accelerated safeguard proceedings (*sauvegarde accélérée*) which absorbs the former subcategory of the financial accelerated safeguard proceeding (*sauvegarde financière accélérée*). Accelerated safeguard proceedings have a duration of two months renewable once. Since they are mentioned in Annex A of the European Insolvency Regulation[2], the international recognition of the judgements opening proceedings and confirming the restructuring plan is therefore guaranteed.

The reform introduced the new paradigm of classes of affected creditors together with cross-class cram-down, absolute priority rule and forced debt-to-equity swap that was impossible under the former financial safeguard proceedings[3]. France drew the logical consequence to overcome the hold-up value of shareholders whose consent is not required to open an accelerated safeguard proceeding[4]. It is also noteworthy that, as a matter of coherence, these new features also apply in common law safeguard (*procédure de sauvegarde de droit commun*) and rehabilitation proceedings (*redressement judiciaire*)[5] for important companies exceeding certain thresholds[6].

The reform puts an end to the debtor-friendly French insolvency law since it is no longer possible in common law safeguard proceeding for the court to impose a term-out debt rescheduling for a duration up to ten years that was prepared by the debtor. In rehabilitation proceedings, the creditors have the last word and may even impose a debt-to-equity swap to out-of-the money equity holders[7]. With this new approach, the French legislator favors the position of creditors and the rescue of the business at the expense of equity holders who do not want to recapitalize the company[8].

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[1] DAMMANN, R. (2021), "The transposition of the EU Directive: a great Franco-German convergence", in *Eurofenix*, 86, p. 20.

[2] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

[3] DAMMANN, R., BOS, T. (2021a.), "Le nouveau droit de la restructuration financière: les classes de parties affectées", in *Recueil Dalloz*, 37, p. 1931-1940.

[4] The solution is debated in German law (see SKAURADSZUN, D. (2021) "Grundfragen zum StaRUG – Ziele, Rechtsnatur, Rechtfertigung, Schutzmechanismen" in *Zeitschrift für Insolvenzrecht* (*KTS)*, 1, p.48).

[5] POUJADE, H., SAINT-ALARY-HOUIN, C. (2021), "L'instauration des classes de parties affectées » in *Revue des procédures collectives*, 6, p. 63-67.

[6] Articles L.626-29 et R. 626-52 of the French commercial code. The alternative thresholds are 250 employees and 20 million euros turnover or 40 million euros turnover on a consolidated basis.

[7] DAMMANN, R., BOS, T. (2021.b), "Le debt-to-equity swap change la donne des restructurations financières" in *Bulletin Joly Sociétés*, 10, p. 1.

[8] DAMMANN, R., BOS, T. (2021.b), p. 1.

Indeed, France needed to stay competitive with respect to the new restructuring plan known as the "Super Scheme of Arrangement"[9] which was introduced in the United Kingdom on June 25, 2020, the Dutch *Wet Homologatie Onderhands* Akkoord (*WHOA*) published on January 1, 2021[10] and the German *Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen* (*StaRUG*) which came into effect also on January 1, 2021[11].

It will be very interesting to compare the transposition of the Directive by Spain, which is due to happen prior to July 17, 2022, with the principles retained by the French *ordonnance* of September 15, 2021.

II. MAIN FEATURES OF THE NEW ACCELERATED SAFEGUARD PROCEEDING

1. Creation of classes of affected parties

1.1. The scope

Following the approach of the Directive, there is no threshold for the opening of accelerated safeguard proceedings which apply to all debtors, whether SMEs or large corporations. Thus, in every accelerated safeguard proceeding, the creation of classes of affected parties is mandatory[12]. But, as a derogation, cross-class cram-down on equity holders is limited to debtors who have at least, on a consolidated basis[13], 250 employees and 20 million euros turnover or alternatively only 40 million euros turnover[14]. It is noteworthy that the French government did not opt for a balance sheet criterion i.e. the amount of debts and therefore, debt-to-equity swap is excluded in the case of special purpose companies in financial restructuring cases that do not usually employ workers and do rarely achieve a turnover that is over 40 million euros[15]. This loophole is likely to be closed when the ordinance is ratified by Parliament.

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[9] DAMMANN, R., KLEIDER, E. (2021), "Restructuration financière: la menace d'une concurrence déloyale post-Brexit?", in *Recueil Dalloz*, 3, p.143.

[10] DAMMANN, R., KIOUMJI-FELLBINGER, M. (2021), "Transpostion de la directive "restructuration": vers une convergence franco-allemande", in *Recueil Dalloz*, 35, p. 1962-1964.

[11] DAMMANN, BOS (2021.a), p. 1931.

[12] Articles L. 628-1 and L. 628-4 of the French commercial code.

[13] All controlled entities as defined by Articles L. 233-1 and L. 233-3 of the French commercial code must be taken into account to determine if the thresholds are met (see DAMMANN, BOS (2021.a), p. 1933).

[14] Articles L.626-32, para. 5, a) and R. 626-63 of the French commercial code. This threshold is the same than the one for the competence of French specialized commercial courts (see Article L. 721-8 of the French commercial code).

[15] DAMMANN, BOS (2021.a), p. 1933.

1.2. The selection of affected parties

Prior to the transposition of the Directive, in accelerated safeguard proceedings[16], the administrator had to create two committees of creditors: one for credit institutions and one for the main suppliers[17]. If the debtor had issued bonds, a general assembly of bondholders with all bondholders was also constituted to vote on the plan[18]. In the case of a financial accelerated safeguard proceeding, only the credit institutions committee and the general assembly of bondholders, if need be, were created, functioning as a third committee[19]. Since no cross-class cram-down was possible, each creditor's committee had a veto power. In addition, the former French law did not take into consideration the ranking of claims.

With the transposition of the Directive, committees were replaced by classes of affected parties comprising not only of creditors but also of equity holders whose claims[20] or interests are directly affected by a restructuring plan[21].

The selection of affected parties is very flexible and is in the hands of the plan proposer. Indeed, the reference to the criteria of being affected by the plan is not defined by the law. There is a great deal of discretion which is exercised in practice by the conciliator who is determining the participants in the first stage of confidential conciliation proceedings. Like in the former financial safeguard proceedings, it is possible to include all financial creditors, but it is now also possible to limit the scope of the plan to main financial creditors[22]. Thus, the new French law provides for the same flexibility as the new UK Super Scheme of Arrangement[23]. Only these affected parties will be subject to accelerated safeguard and the stay of individual enforcement actions for the duration of such proceedings. Hence, accelerated safeguard becomes a semi-collective *à la carte* proceedings. The choice of affected parties must be based on objective and verifiable criteria that cannot be discriminatory[24] and set forth in the draft restructuring plan[25].

This being said, the law provides for some limited mandatory rules. Workers, pensions rights owner and alimony creditors cannot be affected parties. New money conciliation privileges and claims that are secured by a French

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[16] Former Articles L. 628-1 and D. 628-3 of the French commercial code. Accelerated safeguard proceedings used to be only available for companies with 20 employees, 3 million euros turnover or 1,5 million euros balance sheet total and whose accounts have been certified by an auditor or established by an accountant. Since October 1, 2021, only the last condition remains.

[17] Representing more than 3% of all the supplier's claims, see former Article L. 626-30 of the French commercial code.

[18] Former Article L. 626-32 of the French commercial code.

[19] Former Article L. 628-10 of the French commercial code.

[20] Article L. 626-30 of the French commercial code mentions that only creditors whose claims arose prior to the opening judgment may be affected parties.

[21] Article 2, para. 1, (2) of the Directive.

[22] DAMMANN, BOS (2021.a), p. 1934.

[23] Part 26 of the UK Companies Act of 2006.

[24] DAMMANN, BOS (2021.a), p. 1934.

[25] Article D. 626-65, para. 5 of the French commercial code.

trust device (*fiducie sureté*) are also excluded from the selection of affected parties[26].

As a matter of comparison, paragraph 8 of the *StaRUG* provides that the criteria used to choose affected parties must be "*sachgerecht*", meaning that they must be relevant to the case in question. This means for example, that secured claims that are likely to be reimbursed in case of liquidation or in the absence of the plan may not be comprised in the scope of affected parties[27]. This principle seems to derive from the best-interest-of-creditors test. This approach may inspire the French case law leading to exclude claims of affected parties that are secured by retention of title clauses or other security interests that preserve in full the value of their collateral in liquidation[28].

1.3. The creation of classes of affected parties

All affected parties must be put into specific classes to be established by the insolvency practitioner[29]. Transposing *verbatim* Article 9, para. 4 of the Directive, Article L. 626-30, III of the French commercial code sets forth that classes must reflect a sufficient commonality of interest. The French legislator added three conditions: creditors of secured and unsecured claims shall be treated in separate classes, subordination agreements must be observed and equity holders must be put into one or several classes[30]. In accordance with the Directive, the determining criterion is the ranking of the claims. Additional sub-classes of creditors having the same ranking may also be created provided that they reflect a sufficient commonality of interests based on objective and verifiable criteria[31]. In this regard, the German practice of the *Insolvenzplan* may be of guidance and is referred to by French doctrine. For example, a class can be comprised of only one creditor, if the reason for such singling-out is not artificial[32].

Hence, new money loan providers and unsecured suppliers may be put in separated classes. In the same vein, bondholders with different types of debt instruments (e.g. high yield bonds secured by intercompany upstream guarantees and unsecured convertible bonds) may be treated in different classes because of the different nature of their bonds[33]. It would also appear possible to put into a separate class claims of creditors that benefit from a personal guarantee from the State (PGE), since the French state may want

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[26] Article L. 626-30, IV of the French commercial code.

[27] DAMMANN, R., MASSELOT, C. (2021), "Le principe du par condicio creditorium dans le nouveau de la restructuration: une étude comparative franco-allemande" in *Mélanges en l'honneur d'Arlette Martin Serf*, p.6 (to be published).

[28] DAMMANN, BOS (2021.a), p. 1934.

[29] Article L. 626-30, V of the French commercial code. The insolvency practitioner must notify the affected parties of their class and explain the criteria used to treat the affected parties into their designated classes (see Article R. 626-58, I, para. 2 of the French commercial code).

[30] Article 9, para. 4 of the Directive and Article L.626-30, III of the French commercial code.

[31] DAMMANN, R. (2020) "Article 9" in PAULUS, C., DAMMANN, R., *European Preventive Restructuring*, Munich, C.H. Beck, Hart Publishing and Nomos Verlagsgesellschaft, p. 152.

[32] DAMMANN, BOS (2021.a), p. 1936.

[33] For example, see DAMMAN, MASSELOT (2021), p. 1 (to be published).

to impose a special treatment of their claims. Finally, French securities law is characterized by a large number of privilege claims by law which may lead of an inflation in the creation of classes of affected parties[34].

2. The confirmation of a restructuring plan

Once affected parties have been treated into classes, each class needs to approve the draft restructuring plan with a majority of two-third of the claims held by the affected parties casting a vote[35]. A head-count majority of the members of each class is not requested.

2.1. The best-interest-of-creditors test

The best-interest-of-creditors test is satisfied if a dissenting creditor is not worse off under the restructuring plan by comparison to the application of the normal ranking of priorities in liquidation proceedings (whether piecemeal sale or going concern) or in the event of the next-best-alternative scenario if the restructuring plan was not confirmed[36].

The application of the best-interest-of-creditors test is based on a counterfactual analysis of the potential recovery ratio in liquidation proceedings or in the absence of the plan and can be quite complexed[37]. Such analysis must be done by the court who can be helped, if need be, by an expert[38].

If all classes agree on the plan, the plan proposer has free discretion to allocate the surplus of the plan among the various classes[39]. Thus, the draft plan may provide for a different treatment of classes of the same ranking[40]. In other words, "no creditor's worse off" maxim only protects the individual rights of dissenting affected parties.

French law does not specifically provide for the remedy to cure a violation of the best-interest-of-creditors test. It may be possible for the court to sanction a safeguard plan and to indemnify minority creditors that were worse off under the plan.

In this respect, the German practice may be interesting[41]. The draft restructuring plan may provide for a special indemnification reserve fund to compensate the prejudice suffered by impaired creditors in case of the viola-

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[34] DAMMANN, R., ALLE, A. (2020) "A la recherche d'une cohérence entre sûretés réelles et droit des procédures collectives" in *Mélanges en l'honneur du professeur Michel Grimaldi*, Defrenois, p. 259-274.

[35] Article L. 626-30-2 of the French commercial code.

[36] Article 2, para. 1, 6) of the Directive.

[37] DAMMANN, R. (2018), "l'introduction des classes de créanciers dans l'optiques d'une harmonisation franco-allemande des procédures d'insolvabilité" in *Mélanges en l'honneur du Professeur Claude Witz*, LexisNexis, p.234.

[38] Article L. 626-33, I of the French commercial code which refers to Article R. 626-64, I, para. 2 of the French commercial code.

[39] DAMMANN, BOS (2021.a), p. 1932.

[40] DAMMANN, BOS (2021.a), p. 1932.

[41] German law transposed the best-interest-of-creditors test in Paragraph 64, (1) of the *StaRUG.*

tion of the principle of "no creditor's worse off"[42]. Sometimes, the plan provides for a bank guarantee[43]. Finally, a redistribution clause (*salvatorische Klausel*) is also conceivable pursuant to which the plan is reallocating the amount to be received by creditors to comply with the best-interest-of-creditors test[44].

2.2. The approval of the plan by a majority of the voting classes

When a restructuring plan is not approved by the two-third majority of each class, the debtor or the insolvency practitioner with his approval may ask the judge to confirm the proposed plan which becomes binding even upon dissenting voting classes[45]. But the following conditions must be met.

The plan must have been approved by a majority of the voting classes of affected parties as long as one of those classes is a class of secured creditors or is senior to the ordinary unsecured creditors class[46]. In the absence of such majority, the plan may be approved by at least one of the voting classes of affected parties, other than equity holders' classes or any other class which could be reasonably presumed not to receive any payment or keep any interest, if the debtor was valued on the basis of a going concern[47].

2.3. The compliance with the absolute priority rule

The French legislator has opted for the absolute priority rule. According to Article L. 626-32, I, para. 3 of the French commercial code, dissenting voting parties' claims must be satisfied in full by the same or equivalent means before a more junior class is to receive any payment or keep any interest under the restructuring plan[48]. This rule ensures that the surplus of a restructuring plan is shared among different classes of affected parties depending on the ranking of their claims[49]. In accordance with this rule, equity holders which are junior to unsecured creditors (including convertible bondholders) may not keep any interest in the debtor before all senior classes of creditors have been paid off. However, it must be kept in mind that the selection of affected parties is rather flexible. In fact, equity holders may be excluded from the scope of the debt restructuring with the consequence that the absolute priority rule may not come into play. This is particularly the case if the affected parties are only financial creditors. In such a case, any capital increase or sale of shares that does not give rise to debt-to-equity swap is irrelevant and

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[42] Paragraph 64, (3) of the StaRUG.

[43] DAMMANN (2018), p. 234.

[44] DAMMANN, BOS (2021.a), p. 1940.

[45] Article L. 626-32, I of the French commercial code.

[46] Article 11, para.1, b), i) of the Directive and Article L. 626-32, I, para. 2, a) of the French commercial code.

[47] Article 11, para 1, b), ii) of the Directive and Article L. 626-32, I, para. 2, b) of the French commercial code.

[48] Article L. 626-32, I, para. 3 of the French commercial code transposed Article 11, para. 2 of the Directive.

[49] DAMMANN, BOS (2021.a), p. 1938.

dissenting classes which are senior to equity holders can only benefit from the individual best-interest-of-creditors test rule.

It is interesting to note that the German legislator also opted for the transposition of the absolute priority rule[50] whereas the UK implemented a "fairness test". Although, even if in a majority of cases the absolute priority rule is normally complied with, it is theoretically possible, under English law, to do a cross-class cram-up which would not be possible neither under German law[51], nor under French law.

2.4. Derogation to the absolute priority rule

When opting for the absolute priority rule[52], the French government decided to implement the derogation provided for in Article 11, para. 2 of the Directive. Hence, the draft restructuring plan may derogate from the application of the absolute priority rule if it is necessary to achieve the aims of the restructuring plan and if it does not unfairly prejudice the rights or interests of any affected parties. As an example, Article L. 626-32, II of the French commercial code notes that claims of suppliers of goods and services, equity holders and tort claims may benefit from this special treatment.

As explained above, the absolute priority rule is only applicable with respect to affected parties. Hence, a derogation is possible without any condition if the draft plan excludes these claims from the scope of the restructuring. This is precisely the reason why Article 8 of the *StaRUG* specifically provides that the carving-out of claims must be objectively justified. One of the key elements of this justification is the necessity of the restructuring plan.

Hence, the plan proposer has some room of maneuver to tailor-made the scope of the restructuring and possible exceptions to the absolute priority rule where such flexibility is necessary to achieve the aim of the restructuring plan, provided that the fairness test is complied with.

A *fortiori*, the same flexibility must be possible in order to derogate to the principle of equal treatment of creditors having the same ranking, which the German legislator sets forth in Paragraph 28 of the *StaRUG*[53].

2.5. The principle of equal treatment of creditors having the same ranking

Like German law[54], French law clearly states that all members of the same class of affected parties must be treated equally and proportionally to their claim[55]. This principle of equal treatment does not preclude the plan from

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[50] Paragraph 27, (2) of the *StaRUG*.

[51] KNAPP, M. (2021), «Paragraph 27 Absolute Priorität » in FLÖTHER, L., *Unternehmensstabilisierungs- und – restrukturierungsgesetz (StaRUG) Kommentar,* C.H. Beck Verlag, p. 215.

[52] About the transposition of Article 11, para. 4, see PAULUS, DAMMANN (2020), p. 152.

[53] DAMMANN, MASSELOT (2021), p. 4 (to be published).

[54] Paragraph 10, (1) of the *StaRUG*.

[55] Article 10, para. 2, b) of the Directive transposed into French law in Article L. 626-31, para. 2 of the French commercial code.

offering options provided that all class members have the same right to choose.

As explained above, the multiplication of privileges with different rankings normally should lead to the creation of separate classes. However, it would be possible to regroup secured creditors into a single class providing that the principle of equal treatment of all class members is complied with.

What are the exceptions to the equal treatment of classes of creditors of the same ranking?

First, the surplus created by the plan can be freely allocated provided that all classes of affected parties agree. In other words, the principle of equal treatment of classes of the same ranking is not mandatory, because the best-interest-of-creditors test is just an individual protection for each dissenting creditor.

The question arises as to whether the surplus may be also freely allocated in case of cross-class cram-down.

The Directive only deals with this question in regard with the relative priority rule[56], meaning that dissenting voting classes of affected creditors must be treated at least as favorably as any other class of the same rank and more favorably than any junior class.

However, the Directive is silent with respect to the equal treatment of classes of creditors of the same ranking in case of the absolute priority rule. Nothing prohibits the Member States from choosing an *a fortiori* analogic argument based on the transposition of Article 11, para. 2 of the Directive. If it is possible to provide for a derogation in favor of junior classes, the same derogation must be possible with respect to classes of the same ranking. This reasoning is also supported by the fact that it is possible to exclude from the scope of the restructuring unsecured claims of suppliers which have the same ranking than unsecured financial creditors.

The idea behind these exceptions is the necessity to achieve the aim of the restructuring plan, provided that the fairness test is complied with.

In other words, the different treatment of classes of affected parties with the same ranking to allocate the surplus of the plan may be justified if there are objective reasons for such differentiation to achieve the goal of the restructuring.

An example may illustrate such theory: the court may likely find fair and justifiable the difference of treatment between unsecured bank loans and convertible bonds[57] which are also unsecured claims before the conversion occurred. Indeed, even if both debt instruments have the same ranking, their risk structure is totally different. The bonds could possibly give rise, at the maturity date, to either a redemption in cash or to a conversion into equity, with a high speculative upside in both cases, whereas the unsecured bank loans may have higher margins and may be amortized annually. If the plan provides for an extension of the maturity for both the bank loans and the bonds, it does not seem unfair that the bank loans continue to be amortized

[56] Article 11, para. 1, c) of the Directive.

[57] This is the case of *ORNANE*-bonds that can either be converted into shares or be reimbursed in cash.

annually, if such difference of treatment is necessary to achieve the aim of the restructuring plan.

3. The situation of equity holders

3.1. The forced debt-to-equity swap

In the framework of an accelerated safeguard proceeding, a debt-to-equity swap may be imposed to equity holders by cross-class cram-down provided that several criteria are met. First, as mentioned above, such mechanism is limited to big companies that meet the thresholds[58]. Second, the debtor must consent to it[59]. Third, such debt-to-equity swap is only possible if one could reasonably establish that the equity holders are out of the money based on the going concern evaluation of the company. Fourth, equity holders keep their preferential right of subscription to participate in cash in a capital increase. Finally, the forced sale of the shares although without any value is impossible[60].

Since the consent of the debtor is necessary in accelerated safeguard proceeding, the management may face distrust from the shareholders and even be revoked, thus enabling, *de facto*, equity holders to prevent such a debt-to-equity swap from happening[61]. However, it must be kept in mind that the management has fiduciary duties to defend the interest of the company which may be different from the interest of its shareholders. Otherwise, the legal representatives of the company may engage their personal liability.

Hence, the possibility to impose a debt-to-equity swap through cross-class cram-down is a true revolution of French law in favor of a more creditor-friendly restructuring system.

3.2. The definition of equity holders

A question arises as to whether convertible bondholders which have yet to exercise their right to conversion fall within the category of equity holders or remain creditors, in particular for the purpose of debt-to-equity swap.

The answer to that question lies in the definition of equity holder which is defined by Article 2 para. 1 (3) of the Directive as “a person that has ownership interest in a debtor’s business, including a shareholder, in so far as that person is not a creditor”. Having an ownership interest implies that equity holders have both residual economic rights (*i.e.* the right to capture any upside from the debtor’s business once the creditors have been paid) and political

[58] Article R. 626-63 of the French commercial code.

[59] The possibility to bypass the consent of the debtor is only possible in case of rehabilitation proceedings i.e. in the case that no consensual plan is agreed by the debtor in accelerated safeguard and common law safeguard proceedings.

[60] Article L. 626-32, 5.º of the French commercial code.

[61] DAMMANN, BOS (2021.b), p.1.

rights (*i.e.* appointment and dismissal of managers)[62]. In the sense of the Directive, equity holders are shareholders with property rights over the business whereas, for example, bondholders who have not converted their bonds into shares yet can only be considered as creditors who have a debt instrument with no property right attached[63].

In this regard, the definition Article L. 626-30, I, para. 2 of the French commercial code including ambiguously bondholders into the category of equity holder must be interpreted in the light of the Directive, which prevails.

III. CONCLUSION

The Directive was designed to create a common ground, harmonizing the pre-insolvency regime of the Member States of the European Union. The key element of the transposition in France is the creation of classes of affected parties together with cross-class cram-down[64]. The efficiency of the French two steps model is enhanced, along with a clear shift from the debtor-friendly approach towards a more financial one in favor of creditors. It is now up to practitioners and judges to adapt to this change of paradigm and make good use of these new legal tools[65].

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