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#### NOTE

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From: Presidency  
To: Permanent Representatives Committee/Council

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No. Cion doc.: 14875/16

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Subject: Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU  
- General approach

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In document ST 12334/18 INIT, the following recitals should be added to the text on pages 27-28:

"(30) Confirmation of a restructuring plan by a judicial or administrative authority is necessary to ensure that the reduction of the rights of creditors or interests of equity holders is proportionate to the benefits of the restructuring and that they have access to an effective remedy. **This is particularly necessary if there are dissenting affected parties or where the restructuring plan contains provisions on new financing, but Member States could provide that confirmation by a judicial or administrative authority is necessary in other cases as well.**

**(30a) Member States should lay down provisions to ensure that the** judicial or administrative authority should (...) **be able to** reject a plan where it has been established that the attempted restructuring reduces the rights of dissenting creditors or equity holders **either** below what they could reasonably expect to receive in the event of the liquidation of the debtor's business, either by piecemeal liquidation or by a sale as a going concern **depending on the particular circumstances of each debtor, or below what they could reasonably expect in the event of the next best alternative scenario if the restructuring plan was not confirmed.** However, where the plan is confirmed through a cross-class cram-down mechanism, **reference should be made to the protection mechanism used in such scenario. Where Member States have opted to do a valuation of the debtor as a going concern,** the going-concern value takes into account the debtor's business in the longer term, **as opposed to the** liquidation value. The going-concern value is, as a rule, higher than the liquidation value because it captures the fact that the business continues its activity and contracts with the minimum disruption, has the confidence of financial creditors, shareholders and clients, continues to generate revenues and limits the impact on workers."

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