

Five years on, Germany's StaRUG is doing well

Five years after coming into force, the German StaRUG, the law by which the German legislator implemented the European Restructuring Directive, has established itself as a restructuring regime on a par with the leading procedures worldwide, such as the UK Restructuring Plan, the Dutch WHOA and US Chapter 11 proceedings.

In 2025, 87 StaRUG proceedings were commenced, up from 56 two years earlier and four times the number recorded in 2021. The new procedure is fast, predictable and fair, which makes it very well suited to restructurings with a German element.

So say three lawyers based in Gibson Dunn's Munich office - partners Leo Plank and Sacha Lurken and associate Leo Verlage. Here the trio outline StaRUG's speed, predictability and fairness, and suggest some improvements for the future.

The objectives of the StaRUG differ from those of insolvency proceedings. Viable companies are to be preserved outside insolvency, and the distribution mechanism of insolvency proceedings is modified so that the company can continue as a going concern.

The StaRUG achieves this with a modular toolbox from which the debtor picks only the instruments it actually needs. A purely consensual restructuring is possible without any court involvement at all.

If, on the other hand, dissenting affected parties are to be bound as well, there is no way around court confirmation of the plan. Upon notification of the restructuring project, the restructuring matter becomes pending and the debtor gains access to many instruments that exist in the same or a similar form in other leading restructuring regimes, such as the cross-class cramdown and a moratorium on foreclosure actions in the form of a stabilisation order.

An option to terminate executory contracts, however, is not among them, nor is a payment moratorium. While the default position is that the procedure is not public, there is an option for public proceedings, but this does not affect access to these instruments but rather the publicity of the process and its cross-border recognition.

The StaRUG is fast

The StaRUG is a genuine debtor-in-possession procedure.

While in certain situations, in particular where a cramdown is anticipated, the court must appoint a restructuring officer ex officio. But that officer merely has a supervisory function and does not displace the debtor from control of the proceedings.

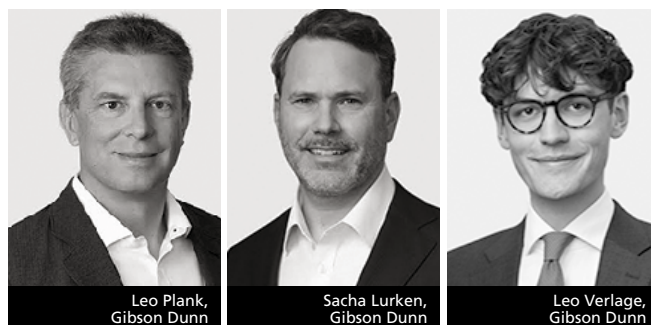
No appointment is required where only creditors from the financial sector are affected by the restructuring plan. The debtor therefore sets the pace.

Three factors, above all, make the procedure fast:

1. there is no need to include all creditors, but the debtor can cherry-pick the debt instruments it seeks to restructure.
2. the real work is done upfront. The plan is negotiated with the requisite majority of stakeholders to completion before filing, and the court phase essentially comes down to the discussion and voting hearing and confirmation, which can be compressed into a few weeks.
3. contentious issues can be clarified in advance by way of a confidential preliminary court review, the outcome of which, while not binding, provides reliable guidance, rather than erupting at the confirmation stage.

Example: The Leoni case

The Leoni case is impressive proof. The restructuring had been pending since 31 March 2023, the plan was accepted at the discussion and voting hearing on 31 May 2023 and confirmed on 21 June 2023, and once the Regional Court of Nuremberg-Fürth had rejected all appeals as inadmissible on 17 July 2023, the plan was final.



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From notification to completion, the process took less than four months, for a group with financial liabilities of more than 1.5 billion euro.

This is all the more remarkable given that the plan consisted of countless individual transactions on both the debt and the equity side, including a debt haircut, a full equity wipe-out, a new money equity injection, an amend-and-extend of several separate facilities, a new security package, a binding tax ruling and a cold delisting.

The StaRUG is predictable

For debtors and creditors alike, the course and the outcome of a StaRUG proceeding are predictable to a high degree.

- The entry threshold of imminent illiquidity is defined in the German Insolvency Code and has been shaped by case law and practice.
- The grounds on which the court must refuse to confirm the plan are set out exhaustively in the law, and as a matter of practice, the court does not review the commercial merits of the plan. The plan can therefore be aligned precisely with the statutory requirements and with the line of case law that has developed since 2021, and the preliminary court review allows critical points to be clarified in advance.
- Finally, the remedies against plan confirmation are narrowly drawn. An appeal is tied to strict admissibility requirements, with the result that most appeals are dismissed as inadmissible.

Recent case law has made it easier for all affected parties to determine when the procedure can be initiated and to anticipate the steps the others may take.

In a decision of August 2024, the Higher Regional Court of Stuttgart ruled on the allocation of competences between directors and shareholders in a German GmbH. Where a StaRUG proceeding is the only viable alternative to insolvency proceedings, the directors may decide to file even without approval from the shareholders, which is otherwise required in a GmbH for non-ordinary course actions.

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For owners and lenders alike, it thus becomes more predictable when a StaRUG filing is to be expected, and each party can take preparatory steps towards a solution that is satisfactory for all involved.

The StaRUG is fair

The channelling of remedies does not mean that the StaRUG pays insufficient regard to creditor interests.

The protection of affected parties is moved to an earlier stage than in traditional insolvency proceedings. Objections can be raised before plan confirmation, and dissenting affected parties can file a minority protection motion in the confirmation hearing, and lodge an appeal against confirmation. The refusal of confirmation on the grounds that the applicant is likely to be worse off under the plan than without it can be prevented by a provision of funds in the operative part of the plan for the event that an affected party proves that it is in fact worse off.

The appeal is then dismissed, and whether the party actually receives compensation out of these funds is determined outside the restructuring proceedings. In economic terms, that protection is largely designed to compensate rather than to block the plan, which in turn safeguards the predictability of the process.

There are sufficient safeguards to prevent a class being treated in an unfair manner.

In a cross-class cramdown, a 'no-worse-off' test must be carried out, and the absolute priority rule applies, with certain exceptions, in favour of senior creditors.

Where the consent of their class is replaced, affected parties must not be left worse off than they would be without the plan.

The comparative calculation on which this turns must already be set out in the plan and forms part of the court's confirmation. So that the test cannot be used to block the plan without substance, the dissenting affected party must plead and substantiate that it would be worse off in the context of the minority protection motion.

In addition, a dissenting class must receive an appropriate share of the plan value, which means that no *pari passu* creditor must receive better treatment under the plan than the dissenting class, and that no junior creditor or shareholder receives any value (absolute priority rule).

This also means that dissenting shareholders can be crammed down and their equity wiped out or diluted under the plan.

The courts have confirmed such cross-class cramdowns of shareholders on several occasions, including in Leoni, Varta and Northvolt.

There are narrow exceptions to the absolute priority rule, most notably, shareholders may receive or retain value if the plan has only a *de minimis* effect on the affected senior creditors, in particular if maturities are extended for 18 months or less. Senior creditors remain protected in their ranking, while the plan retains the flexibility to leave value with junior stakeholders where this serves the success of the restructuring.

The scope of the restructuring plan does not extend to groups in need of special protection, such as employees.

This is the flip side of the structural decision to make the StaRUG a fast procedure. Where a proceeding cannot guarantee the protection of vulnerable groups, it is preferable not to include them in a restructuring plan at all. The more groups require special protection, the higher the demands on the procedure that must ensure that protection.

Options for further development

The European Restructuring Directive provided for a European Commission report on its implementation by member states by 17 July 2026.

The German government called for submissions for the evaluation of the StaRUG, which should put the focus on three weaknesses that the legislator would do well to remedy.

1. The StaRUG lacks any means of intervening in executory contracts, which makes restructuring the operating business more difficult.

Not infrequently, the very cause of the need for restructuring lies in operating contracts that are unbalanced or become unbalanced later on. This complicates the restructuring of companies with a large number of bundled operating contracts, given that such contracts, leasing agreements in particular, often carry a financing function in substance, as the frequency of sale-and-leaseback transactions demonstrates.

Supply relationships and companies with numerous bundled real estate leases are cases in point. The government draft originally contained a court-ordered termination of contracts, which was deleted during the legislative process. The evaluation is an occasion to revisit that decision.

2. The court terminates the restructuring matter where the debtor has obtained a stabilisation order or plan confirmation in an earlier restructuring matter, unless the cause of the earlier matter was overcome by a sustainable restructuring.

If less than three years have passed since the end of the prior stabilisation order or plan confirmation, it is rebuttably presumed that no sustainable restructuring has taken place.

This anti-abuse bar reaches beyond its purpose and captures more than just abusive arrangements.

In cases such as Varta, where a restructuring was achieved but a further restructuring became necessary after a short time, this avenue was blocked.

In such cases, the presumption can make the restructuring considerably less certain or prevent it altogether, even though continuing the business would be in the interest of most stakeholders and of the economy as a whole.

Less strict rules could provide at least the same protection against abuse, for example by raising the required approval rates. A renewed restructuring would then remain possible where it is needed, while abuse would still be prevented.

3. The StaRUG offers only a 'moratorium-lite', which does not provide full protection in all respects required for robust proceedings.

In particular, it lacks a payment moratorium. As a result, aggressive creditors can pre-empt, or even fully derail, the restructuring by accelerating debt, thereby potentially blocking access to the StaRUG through causing cash-flow insolvency and forcing the debtor into an insolvency process.

If debt is accelerated while a restructuring procedure is pending and causes cash-flow insolvency, the court has to move the matter to an insolvency proceeding, unless the claim on which acceleration is based is anticipated to be affected by the restructuring plan, and it is more likely than not that a restructuring can be achieved.

Conclusion

In five years, the StaRUG has proven itself as a reliable and fast restructuring tool whose mechanics strike a fair balance between the parties involved. The upcoming evaluation should therefore not call the basic mechanics of the procedure into question but close the gaps described.

A StaRUG with the power to reshape contracts, a more flexible bar on repeat proceedings and the option for a full payment moratorium could even serve as a model for the foreign restructuring regimes that have so far been its equals.