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#### 'I/A' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) **(first reading)**

- Adoption of the legislative act
- Statements

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#### Statement by Portugal

Portugal acknowledges that there is sufficient flexibility within the text of the 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 to allow Member States to exclude specific categories of debt from discharge of debt, or restrict access to discharge of debt or lay down a longer discharge period where such exclusions, restrictions or longer periods are duly justified.

Portugal's understanding is that Member States may maintain or introduce provisions excluding or restricting access to discharge of tax debts, not only because such measures are to be considered duly justified due to the special nature of tax debts, but also because the adoption of EU legislation with an impact on the payment of turnover taxes, excise duties and other forms of taxation would require a different specific legal basis, subject to special legislative procedures, as prescribed by the Treaty on the Functioning of the European Union.

Bearing this in mind, Portugal would like to reserve this position regarding the regulation of access to discharge of tax debts when transposing the Directive.

### **Statement by Germany**

Germany approves the position of the European Parliament at first reading on the Commission's 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 (COM(2016) 723).

I.

However – with reference to its earlier statements for the minutes of the JHA Council Meetings of 4/5 June and 11/12 October 2018 - Germany reiterates its view that within the context of the banking union, the proposal does not make a significant contribution to the measures necessary for a sustainable reduction and future avoidance of non-performing loans. Farther-reaching elements would be required to that end, such as ensuring that secured creditors have effective access to the value of the collateral security in liquidation procedures.

Furthermore, in Title II (Preventive restructuring frameworks), the Directive allows a large number of options to be exercised at national discretion, leaving Member States room for forms of implementation which do not provide adequate safeguards against abuse and against economically inefficient restructuring attempts. This may lead to the delaying of necessary insolvency proceedings, which in turn may lead to lower rates of return.

In addition, the collection of data on recovery rates envisaged in point (b) of Article 29(3) of Title V (Monitoring) should be obligatory for all Member States in order to allow a comparison of the efficiency of insolvency proceedings within the context of the banking union.

As a result, the proposed Directive does not offer the required minimum level of creditor protection and therefore does not represent an important step towards fulfilling the ‘Action plan to tackle non-performing loans in Europe’ of 11 July 2017.

II.

Lastly, it is Germany’s understanding that the Directive, as stated in recital 95, is subordinate to the Cape Town Convention on international interests in mobile equipment of 16 November 2001 (OJ L 121, 15.5.2009, p. 8) and all its Protocols, and that this was not made clear in the enacting terms - in Article 31(3) - only because the additional Protocols which are not referred to therein have not yet entered into force. Germany therefore assumes that, in the event of a conflict with the additional Protocols to the Cape Town Convention on international interests in mobile equipment of 16 November 2001, once these have entered into force, the Directive will also not affect the application of these additional Protocols and that a conflict with the provisions of international law can consequently be ruled out.