EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL harmonising certain aspects of insolvency law

DIRECTIVE (EU) 2026/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

harmonising certain aspects of insolvency law

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure[2],

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1 OJ C 184, 25.5.2023, p. 34.

2 Position of the European Parliament of 10 March 2026 (not yet published in the Official Journal) and decision of the Council of …

Whereas:

(1) The objective of this Directive is to contribute to the proper functioning of the internal market and the Capital Markets Union, and to remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and the freedom of establishment, which result from differences between national laws in the area of insolvency.

(2) Insolvency proceedings ensure the orderly winding up or restructuring of companies or entrepreneurs that are in financial and economic distress. In the context of financial investments, those proceedings, including the relevant safeguards for accurately assessing the value of those companies' and entrepreneurs' assets, are key, as they determine the final recovery value of such investments. The wide differences among substantive insolvency laws, acknowledged by Regulation (EU) 2015/848 of the European Parliament and of the Council[3], have contributed to increasing legal uncertainty and unpredictability about the outcome of insolvency proceedings. Large divergences in recovery value and in the time required to complete insolvency proceedings across the Union have negative repercussions on cost predictability for creditors and investors in cross-border situations in the internal market. This divergence among the rules of Member States reduces the attractiveness of cross-border investments, thus creating barriers and impacting the cross-border movement of capital within the Union and to and from third countries. Consequently, the harmonisation of certain aspects of insolvency law could require changes to be made to the laws of some Member States.

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3 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19, ELI: http://data.europa.eu/eli/reg/2015/848/oj).

(3) The integration of the internal market in the area of insolvency law through this Directive is key to improving the efficiency of the functioning of the capital markets in the Union, including enabling greater access to corporate financing. Therefore, it is necessary to lay down minimum requirements in targeted areas concerning insolvency proceedings, which have a significant impact on the efficiency and length of such proceedings, especially in the case of cross-border insolvency proceedings.

(4) This Directive is without prejudice to individual and collective workers' rights under Union and national law in the context of insolvency proceedings, in particular, Council Directives 98/59/EC[4] and 2001/23/EC[5], and Directives 2002/14/EC[6], 2008/94/EC[7] and 2009/38/EC[8] of the European Parliament and of the Council and national laws transposing them. In particular, this Directive is without prejudice to the obligations concerning the provision of information to, and the consultation of, workers and the rights of workers in the event of the transfer of an undertaking, business or part of an undertaking or business under those Directives and national laws transposing them, including where those national laws contain rules that are more favourable to workers or their representatives than those laid down in those Directives.

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4 Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16, ELI: http://data.europa.eu/eli/dir/1998/59/oj).

5 Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16, ELI: http://data.europa.eu/eli/dir/2001/23/oj).

6 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29, ELI: http://data.europa.eu/eli/dir/2002/14/oj).

7 Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36, ELI: http://data.europa.eu/eli/dir/2008/94/oj).

8 Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28, ELI: http://data.europa.eu/eli/dir/2009/38/oj).

(5) In order to protect the value of insolvency estates for creditors, national insolvency laws should include effective rules on actions for the voidness, voidability or unenforceability of legal acts, including legal transactions, that are detrimental to the general body of creditors and that have been perfected prior to the opening of insolvency proceedings ('avoidance actions'). In order to determine whether a legal act is detrimental to the general body of creditors, it is necessary to take into account how the concepts of insolvency estate and participating creditor are defined. That is especially relevant where certain rights do not form part of an insolvency estate under national law but pertain to the debtor's personal sphere, such as the right to enter into or end a marriage or adopt a child. The acceptance or rejection of an inheritance should not be subject to the rules on avoidance actions set out in this Directive.

(6) Given that avoidance actions aim to reverse the detrimental effects of a legal act on an insolvency estate, it is appropriate to consider the detrimental effects of a legal act to have been caused at the moment the legal act is perfected and not at the moment the legal act is executed. For the purposes of this Directive, a legal act is considered to have been perfected when it produces legal effects in accordance with national law. However, where, pursuant to national law, the legal effects of a legal act are conditional upon it being entered in a public register, Member States should be able to provide that the legal act is considered to have been perfected as soon as all the other requirements for its effectiveness have been met, because the time it takes to enter a legal act in a public register is beyond the control of the debtor and the other parties to the legal act.

(7) For the purposes of this Directive, the notion of 'legal acts' under the rules on avoidance actions should be interpreted broadly in order to cover any deliberate behaviour with legal effects that is of detriment to the general body of creditors, irrespective of whether the legal effects or the detriment is intended, including where the person performing the legal act has no fraudulent purpose, notwithstanding the provisions in other areas of law. However, acts that are performed by a person who does not act consciously or who otherwise acts without exercising their free will should not be considered as legal acts under this Directive. Member States should be able to provide that the notion of 'legal act' also includes omissions, as it is of no significant difference whether creditors suffer a detriment as a consequence of an action or of the non-action of the party concerned. Furthermore, the rules on avoidance actions should cover not only legal acts performed by the debtor, but also legal acts performed by the debtor's counterparty or by a third party.

(8) This Directive lays down minimum rules on avoidance actions. Therefore, with the sole exception of the limitation period for avoidance actions set out in this Directive, Member States should be able to maintain or adopt provisions on avoidance actions that are more favourable to the general body of creditors than those under this Directive. Member States should also be able to provide for presumptions or requirements that alleviate the burden of proof in favour of the party claiming that the legal act is void, voidable or unenforceable.

(9) To protect the legitimate expectations of a debtor's counterparty, any interference, as a result of an avoidance action, with the validity or enforceability of a legal act should be proportionate to the circumstances under which that legal act was perfected. Such circumstances include the debtor's intent, the knowledge of the counterparty, or the time that elapsed between the perfection of the legal act and the commencement of the insolvency proceedings. Therefore, it is necessary to distinguish between a variety of specific grounds for avoidance actions that are based on common and typical fact patterns and that complement the general prerequisites for avoidance actions. Any such interference should also respect the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union (the 'Charter').

(10) Avoidance actions should cover legal acts perfected within a certain minimum period prior to the date of submission of a request for the opening of insolvency proceedings or, in Member States where insolvency proceedings can be commenced by a resolution of the members of the administrative, management or supervisory body of the debtor, prior to the date of such a resolution. The ability to bring an avoidance action should not be dependent on the time that a court takes to examine a request to open insolvency proceedings or for a resolution to be adopted, pursuant to national law.

(11) For the purposes of avoidance actions, a distinction should be drawn between legal acts where the claim of the counterparty was due and enforceable and has been satisfied or secured as owed (‘congruent coverage’) and legal acts where performance did not entirely correspond to the creditor’s claim (‘incongruent coverage’). Examples of incongruent coverage include: premature payments; the satisfaction of a debt by unusual means of payment; the subsequent collateralisation of a previously unsecured claim, which was not agreed upon in the original debt agreement; the granting of an extraordinary termination right or other amendments not provided for in the underlying contract; the waiver of legal defences; and objections or the acknowledgement of disputable debts. In the case of congruent coverage, the avoidance ground of preferences should only be able to be invoked if the creditor of the void, voidable or unenforceable legal act knew at the time of the transaction that the debtor was insolvent. In the case of both congruent and incongruent coverage, the terms ‘satisfaction’ and ‘collateralisation’ of the claim of the counterparty should be interpreted broadly, to include acts such as those which create a right to offset or grant creditors privileged status.

(12) The rules on avoidance actions introduced by this Directive should not apply to certain legal acts that constitute congruent coverage, namely legal acts that are performed directly in exchange for fair consideration to the benefit of the debtor's assets. Those legal acts aim to support the ordinary daily operation of the debtor's business. In order not to be subject to the rules on avoidance actions, such legal acts should have a contractual basis and require the direct exchange of the parties' mutual performances. Furthermore, performance and counter-performance arising from those legal acts should be equivalent in value and the counter-performance should benefit the debtor and not a third party. Legal acts to which the rules on avoidance actions should not apply include: prompt payment of commodities, wages, or service fees; payment in cash or by card of goods necessary for the debtor's daily operations; delivery of goods, products, or services against payment by return; creation of a security right against disbursement of the loan or during the continuation of a loan, where that is necessary, in the context of national rules, to maintain an equivalence in value between performance and counter-performance; and prompt payment of public fees in exchange for consideration such as admittance to public grounds or institutions. However, the rules on avoidance actions should apply to the granting of credit. It should be possible to consider that the payment of wages to a debtor's worker, in accordance with national law, is direct performance where they are paid within three months of the performance of the services by that worker.

(13) The payment by a debtor of an outstanding debt to a third party in a three-party relationship, such as where a subsidiary company pays its parent company's debt to a third party, should not automatically be considered as a legal act of the debtor in exchange for no or manifestly inadequate consideration. In such cases, the payment by the debtor can be reciprocal to the performance by the third party of its obligation to the parent company, which might have given the debtor a direct or indirect advantage, and the third party might not have had the possibility to reject the payment by the debtor.

(14) It should not be possible to invoke the fact that the enrichment resulting from the void, voidable or unenforceable legal act is no longer available in the property of the party which benefited from that legal act ('lapse of enrichment') where that party was aware of the circumstances on which the avoidance action is based. However, as this Directive lays down minimum rules on avoidance actions, Member States can decide not to allow the party that benefited from the legal act to invoke the lapse of enrichment defence even where that party was not aware of the circumstances on which the avoidance action is based.

(15) New financing or interim financing provided in accordance with national law as part of a restructuring attempt, including in the course of a preventive insolvency procedure under Title II of Directive (EU) 2019/1023 of the European Parliament and of the Council[9], should be protected in subsequent insolvency proceedings.

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[9] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 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) (OJ L 172, 26.6.2019, p. 18, ELI: http://data.europa.eu/eli/dir/2019/1023/oj).

(16) As an instrument of minimum harmonisation, this Directive is without prejudice to national laws on the validity of legal acts subject to avoidance actions. It is, therefore, for Member States to decide whether the detrimental legal act is to be considered *ipso jure* void, or rendered ineffective or unenforceable, or whether such legal acts can be annulled only by decision of the court. Moreover, this Directive does not set out the conditions under which a debtor is to be considered unable to pay its debts as they fall due. Therefore, for the purposes of this Directive, the determination of whether a debtor is unable to pay its debts as they fall due, including of whether such a determination requires that the debtor is generally unable to pay its debts as they fall due, is to be made in accordance with national law.

(17) The main consequence of a legal act being void, voidable or unenforceable as a result of an avoidance action is an obligation for the party benefitting from that legal act to return the benefit obtained to the insolvency estate. The notion of 'benefit' in this context should include emoluments, where relevant, and interest, in accordance with applicable national law. The benefit could be considered to have been returned either where the actual benefit itself is returned or where the equivalent monetary value of that benefit is paid, in accordance with national law. It should be possible to bring avoidance actions against individual successors of the debtor if, at the time of the acquisition of the assets subject to the avoidance action, they were aware of the circumstances on which the avoidance actions were based.

(18) Parties who are closely related to the debtor, such as relatives, where the debtor is a natural person, or, where the debtor is a legal entity, those fulfilling decisive roles in relation to the debtor, are usually at an advantage with regard to information concerning the financial situation of the debtor. In order to prevent abuse of such positions, additional safeguards should be established. Consequently, in the context of avoidance actions, when the other party involved in a void, voidable or unenforceable legal act is a party closely related to the debtor, legal presumptions should be introduced about that party's knowledge of the circumstances on which the avoidance actions were based. Those presumptions should be rebuttable and should aim to reverse the burden of proof to the benefit of the insolvency estate. Where the party which has benefited from a void, voidable or unenforceable legal act has since transferred the benefit obtained to a third party, the point in time for determining whether those parties are closely related should be the time of the transfer.

(19) Improving the means available to insolvency practitioners to identify and trace assets belonging to an insolvency estate, as well as assets subject to avoidance actions, is essential to maximise the value of the insolvency estate. When performing their duties, insolvency practitioners can access information held in public data registers, some of which have been established under Union law and are interconnected at European level, such as the Business Registers Interconnection System (BRIS) referred to in Directive (EU) 2017/1132 of the European Parliament and of the Council[10] or the Insolvency Registers Interconnection system (IRI) established pursuant to Regulation (EU) 2015/848. Having access only to information held in public databases, however, is often not sufficient in order to identify and trace assets that are, or should form, part of an insolvency estate. In particular, insolvency practitioners face practical difficulties when they try to access asset registers located in Member States other than the Member State in which they have been appointed.

(20) It is therefore necessary to lay down provisions to ensure that insolvency practitioners, when performing their duties in insolvency proceedings, have, either directly or indirectly, access to information held in databases which are not publicly accessible.

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[10] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46, ELI: http://data.europa.eu/eli/dir/2017/1132/oj).

(21) Immediate and direct access to bank account registers is often indispensable to maximise the value of insolvency estates. Therefore, rules should be laid down providing for immediate and direct access by the designated courts or administrative authorities of the Member States to information held in the bank account registers. For the purpose of identifying and tracing assets belonging to insolvency estates, as well as assets subject to avoidance actions, access can be needed not only to the bank account information of the debtor but also to the bank account information of third parties, where there are reasonable grounds to consider that they have benefited from void, voidable or unenforceable legal acts. Where a Member State provides access to bank account information through a central electronic data retrieval system, that Member State should ensure that the authority operating the retrieval system reports search results immediately and in an unfiltered way to the designated courts or administrative authorities.

(22) In order to respect the right to the protection of personal data and the right to privacy, direct and immediate access to bank account registers should be granted to courts or to administrative authorities that are designated by the Member States for that purpose. Insolvency practitioners should therefore be allowed to access information held in those bank account registers indirectly, by requesting the designated courts or administrative authorities in the Member State where they were appointed to access the registers and perform the searches. Member States should be able to designate the same courts or administrative authorities for the purpose of accessing bank account registers both domestically and cross-border through the bank account registers interconnection system referred to in Directive (EU) 2024/1640 of the European Parliament and of the Council[11] (BARIS). Member States should be also able to provide that the conditions for access to and searches of bank account information should be verified by courts or authorities other than the courts or authorities designated under this Directive. Access to information should be granted only on a case-by-case basis, where relevant to specific insolvency proceedings for the purpose of identifying and tracing assets belonging to the insolvency estate, as well as assets subject to avoidance actions. However, as this Directive lays down minimum rules, Member States can adopt or maintain rules that provide for direct access and searches by insolvency practitioners in their national bank account registers and electronic data retrieval systems. In cases where insolvency practitioners have direct access and can carry out direct searches, Member States are not required to designate courts or authorities for the purpose of accessing and searching their national bank account registers or electronic data retrieval systems, but remain under the obligation to designate courts or authorities for access and searches through BARIS.

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[11] Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive(EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (OJ L, 2024/1640, 19.6.2024, ELI: http://data.europa.eu/eli/dir/2024/1640/oj).

(23) Directive (EU) 2024/1640 provides that centralised automated mechanisms, such as central registers or central electronic data retrieval systems, are to be interconnected via BARIS, which is to be developed and operated by the Commission. Considering the growing importance of insolvency cases with cross-border implications and the importance of relevant financial information for the purpose of maximising the value of the insolvency estate in insolvency proceedings, the designated courts or administrative authorities should be able to access and search the bank account registers of other Member States directly through BARIS.

(24) Access by the courts or administrative authorities designated under this Directive to bank account information across borders through BARIS is based on mutual trust among Member States derived from their respect of fundamental rights and of the principles recognised by Article 6 of the Treaty on European Union (TEU) and by the Charter, as well as the fundamental rights and principles provided for in international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions, in their respective fields of application. The power to access and search bank account information through BARIS under this Directive should be exercised in compliance with Union and national law, as well as national procedural safeguards on the protection of personal data.

(25) Any personal data obtained by designated courts or administrative authorities or insolvency practitioners under this Directive should be processed only where it is necessary and proportionate for the purpose of identifying and tracing assets belonging to the insolvency estate in ongoing insolvency proceedings, in accordance with applicable data protection rules.

(26) Directive (EU) 2024/1640 ensures that persons with a legitimate interest are granted access to beneficial ownership information, in accordance with data protection rules. For the purpose of tracing assets in the context of ongoing insolvency proceedings, insolvency practitioners should be granted access in a timely manner to specific categories of beneficial ownership information held in the interconnected central beneficial ownership registers, such as on the name, month and year of birth, the country of residence and nationality of the beneficial owner, as well as the nature and extent of beneficial interest held.

(27) To ensure that assets can be traced efficiently in the context of cross-border insolvency proceedings, insolvency practitioners should be granted expeditious access to national registers and databases, even where those registers are located in a Member State other than that in which the insolvency practitioner concerned was appointed. Access should be granted without the involvement of any intermediary court or authority, allowing insolvency practitioners to communicate directly with the entities operating or maintaining the national registers or databases concerned. Member States should be allowed to provide for direct search by insolvency practitioners in the datasets contained by such registers or databases. The access conditions applying to insolvency practitioners appointed in another Member State should not be more cumbersome than those applying to domestic insolvency practitioners. Therefore, Member States should not apply different conditions for access solely on the basis that the applicant is an insolvency practitioner appointed in another Member State. Procedural aspects relating to receiving and granting requests submitted by insolvency practitioners, such as the language of the procedure or the verification of access conditions, should be governed by the law of the Member State in which the registers and databases are held.

(28) In order to establish an effective and consistent system for the enforcement of debts against the assets of debtors, it is essential to prevent debtors from concealing their assets, including through the acquisition of financial instruments such as securities. The differences between national settlement systems, as well as the varying types and characteristics of financial instruments, can give rise to difficulties in accessing records and in identifying the ultimate beneficial owner of a financial instrument. Therefore, irrespective of the kind of register, database or other source of information used by a Member State, it is necessary for Member States to have in place a framework to facilitate the identification and tracing of the owners of financial instruments by making those national registers and databases accessible upon request.

(29) In the context of liquidation in insolvency proceedings, national insolvency laws should allow for the realisation of the assets of a business through the sale of the business, or part thereof, as a going concern. For the purposes of this Directive, ‘sale as a going concern’ is understood as the transfer of a business, in whole or in part, to an acquirer in such a way that that business, or a sufficiently significant part thereof, can continue to operate as an economically productive unit. It is not understood to include the sale of the assets of the business piece by piece (‘piecemeal liquidation’).

(30) It is generally assumed that a higher value can be recovered in liquidation by selling a business, or part thereof, as a going concern rather than by piecemeal liquidation. In order to promote the sale of a business as a going concern, national insolvency laws should provide for proceedings under which a debtor in financial distress, with the help, or under the supervision, of a monitor, can seek interested acquirers and prepare the pre-packaged sale of the business as a going concern ('pre-pack proceedings') before the formal opening of insolvency proceedings. The assets of the business subject to the pre-pack proceedings can then be quickly realised shortly after the formal opening of the insolvency proceedings. This Directive should lay down standards for pre-pack proceedings, while allowing Members States to adapt those standards to their existing national insolvency law. In order to ensure that the sale process is fair, the monitor should be independent from the debtor and any party closely related to the debtor. Member States should be able to provide for additional requirements regarding the monitor's independence from equity holders or creditors. The pre-pack proceedings should consist of two phases, namely a preparation phase and a liquidation phase.

(31) The aim of the preparation phase should be to find an appropriate buyer for the debtor's business, or part thereof, and should be confidential, at least with regard to finding an appropriate buyer. The aim of the liquidation phase should be to approve and execute the sale of the debtor's business, or part thereof, and to distribute the proceeds to the creditors, in accordance with national law. The liquidation phase should begin with a decision of a judicial body, or any other competent body, to formally open insolvency proceedings under national law, often leading to the winding up of the debtor. The debtor should not be precluded from continuing its business operations with the remaining part of its business after conclusion of the liquidation phase. The liquidation phase should be carried out by means of insolvency proceedings other than preventive restructuring procedures. In Member States where Regulation (EU) 2015/848 applies, the liquidation phase should be carried out by means of insolvency proceedings that are included in Annex A to that Regulation other than preventive restructuring proceedings.

(32) Pre-pack proceedings are without prejudice to workers' rights under Union and national law, including the involvement of workers' representatives. Pre-pack proceedings should be governed by statutory or regulatory provisions and should be understood as proceedings in which the transfer of all or part of a business is prepared with the assistance of a monitor under the supervision of the court or competent authority, prior to formal insolvency proceedings being instituted with a view to the liquidation of the assets of the debtor. While the primary objective of the pre-pack proceedings is to enable the debtor's assets to be liquidated by means of the sale of the business, or part thereof, as a going concern in the context of insolvency proceedings in order to satisfy the claims of all the creditors to the greatest extent possible, it can also serve to preserve employment.

(33) This Directive is without prejudice to Directive 2001/23/EC. In light of the case law of the Court of Justice, namely the judgment of 28 April 2022 in case C-237/20, *Federatie Nederlandse Vakbeweging*[12], the liquidation phase is covered by the exception provided for in Article 5(1) of Directive 2001/23/EC where the pre-pack proceedings have the primary objective to satisfy the claims of creditors to the greatest extent possible whilst preserving employment as much as possible.

(34) The introduction of pre-pack proceedings under this Directive should not lead, in any way, to restrictions on the powers of insolvency practitioners or on the possibility of selling the business as a going concern in insolvency proceedings under national law.

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12 Judgment of the Court of Justice of 28 April 2022, *Federatie Nederlandse Vakbeweging*, C-237/20, ECLI:EU:C:2022:321.

(35) The provisions of this Directive regarding pre-pack proceedings do not replace national substantive rules, in particular those on the ranking of creditors' claims, the distribution of proceeds, the nature, scope and form of creditors' participation, or the remuneration of the insolvency practitioner. In the event that a court or competent authority does not authorise the sale of a business, or part thereof, as proposed by the monitor, insolvency proceedings should proceed in accordance with the applicable national insolvency law. The start of the liquidation phase is subject to requirements under national law for the opening of insolvency proceedings, such as the existence of a ground for opening such proceedings.

(36) The pre-pack proceedings provided for under this Directive should be applied to debtors that are legal persons. Member States should be allowed to extend the application of pre-pack proceedings to natural persons who are entrepreneurs.

(37) Debtors should be able to benefit from a temporary stay of individual enforcement actions. The stay should be available either in the preparation phase or in the context of another type of insolvency proceedings in which the debtor remains totally, or at least partially, in control of its assets and day-to-day operation of its business and in which the sale of the debtor's business, or part thereof, as going concern can be continued and concluded. Where the stay is made available within the preparation phase, it should be available under the conditions set out in Articles 6 and 7 of Directive (EU) 2019/1023 and the national laws transposing that Directive.

(38) Pre-pack proceedings should ensure that the best bid received during the preparation phase is either submitted to the court or competent authority for authorisation or to the creditors for approval. The monitor should assess and state whether piecemeal liquidation would recover more value for creditors than the market price obtained through the sale of the business, or part thereof, as a going concern. The going-concern value of a business might reasonably be expected to be higher than its piecemeal liquidation value because it is based on the assumption that the business will continue its operations with the minimum of disruption, maintain the confidence of financial creditors, shareholders and clients, and continue to generate revenue. No undue burden is to be placed on the monitor or on the sale process and, in particular, a full-fledged valuation should not be required in the preparatory phase of the process, unless the prospective buyer is a party closely related to the debtor. It should be possible for Member States to require the monitor to take into account elements other than price, including the public interest or the viability of the business. However, a requirement to impose increased scrutiny should apply where the bid that is considered the best bid is made by a party who is closely related to the debtor. It should be possible for Member States to require the monitor to justify its conclusion that the bid identified as the best bid does not put the creditors in a worse situation than that they would be in as a result of an alternative mechanism for addressing the debtor's insolvency. The monitor should document the preparation of the sale process in order to provide an appropriate basis for the authorisation or approval of the best bid.

(39) The preparation phase should be limited in time. Member States should provide for a maximum duration that can be shorter than the length of the stay of individual enforcement actions provided for in Directive (EU) 2019/1023. Where, in the course of the preparation phase, it becomes evident that the objectives of the pre-pack proceedings cannot be achieved, Member States should be able to provide that the pre-pack proceedings can be terminated. Such situations can occur where the debtor fails to cooperate with the monitor or to act with due diligence during the preparation phase. Another such situation is where there is no reasonable prospect of selling the business as a going concern, for example where the books and records of the debtor are incomplete or so deficient that it is impossible to ascertain its business and financial situation. Furthermore, in cases where national law stipulates that the sale process in the preparation phase be competitive, transparent and fair and meet market standard, acts of the debtor that do not comply with those requirements can be viewed as a failure to act with due diligence. Nevertheless, it should be possible for Member States to provide that, even if the debtor fails to cooperate with the monitor or to act with due diligence, where the continuation of the preparatory phase is in the general interest of the creditors, it is possible for the court or competent authority to limit the debtor's rights to administer its business in accordance with applicable insolvency law, with a view to concluding the pre-pack proceedings.

(40) In order to ensure that a business is sold for the best price through the pre-pack proceedings, Member States should ensure that the sale process in the preparation phase is conducted under high standards of competitiveness, transparency and fairness. Alternatively, Member States should be able to provide that, after the opening of the liquidation phase or the presentation of the recommended best bidder, a public auction is run to select the best bid or the bid recommended by the monitor is approved by the creditors. It is for Member States to decide whether the approval of the creditors is given by the general meeting of creditors or by the creditors' committee.

(41) Member States are not precluded from providing that a court or a competent authority that has established that the sale process is not competitive, transparent and fair and does not meet market standards can decide to proceed with a public auction during the liquidation phase or with the piecemeal liquidation of the debtor's assets in insolvency proceedings opened within the pre-pack proceedings.

(42) It is necessary that all creditors holding claims against the insolvent debtor have the right to participate in the liquidation phase of the pre-pack proceedings. It should be possible for such claims to be duly recorded, examined and satisfied in accordance with the applicable insolvency framework.

(43) In insolvency systems that are based on the principle of creditor autonomy, Member States should be able to provide that it is for the general meeting of creditors or the creditors' committee to authorise the sale of the debtor's business, or part thereof, in accordance with national law.

(44) Where a Member State opts to require high standards in the preparation phase, the monitor or, where and to the extent that Member States so decide, the debtor-in-possession should be responsible for ensuring that the sale process is competitive, transparent and fair and meets market standards. In order to meet market standards, the sale process should be compatible with standard rules and practice on mergers and acquisitions in the Member State concerned, potentially interested parties should be invited to participate in the sale process, the same information should be disclosed to potential buyers, enabling them to exercise due diligence, and bids from interested parties should be obtained through a structured process.

(45) When a public auction is run prior to or after the opening of the liquidation phase, the bid selected by the monitor during the preparation phase should be used as an initial bid ('stalking horse bid') for the purposes of the auction. In the preparation phase, the debtor should be able to offer incentives to the 'stalking horse bidder' by agreeing, in particular, to the reimbursement of expenses or break-up fees if a better bid is selected through the public auction. Member States should, nevertheless, ensure that such incentives are proportionate and do not deter other potentially interested bidders from participating in the auction.

(46) The monitor should document and report on each step of the sale process in writing. Those documents and reports should be made available in digital format in a timely manner. Member States should ensure that the monitor is subject to the same confidentiality requirements as an insolvency practitioner.

(47) To prevent the value of a business from depreciating merely because it is subject to insolvency proceedings, it is important to ensure that operational counterparties, such as suppliers or customers of the debtor concerned, are taken over by the acquirer and not affected by the pre-pack proceedings. Therefore, the opening of insolvency proceedings should not result in the early termination of contracts under which the parties still have to perform certain obligations and which are necessary for the continuation of the business. Such termination would unduly jeopardise the value of the business, or part thereof, to be sold through the pre-pack proceedings. It should, therefore, be ensured that such contracts are assigned to the acquirer of the business of the debtor, or part thereof, even without the debtor's counterparty to the contract giving its consent to the assignment. Nevertheless, there can be situations in which the transfer of certain obligations under such contracts cannot reasonably be expected, such as when the acquirer is a competitor of the counterparty to the contract. Member States should be able to provide that the consent of the debtor's counterparty or counterparties is required for the assignment of contractual obligations, depending on the type of contract, the nature of the parties, or the interests of the business concerned. Member States should be able to require the consent of the licensee to terminate contracts relating to licences of intellectual and industrial property rights, of which the debtor is the licensor, as the protection of those rights in the event of the insolvency of the licensor encourages investment in the development of such rights.

(48) The provisions of this Directive on the automatic assignment of contracts to the acquirer are without prejudice to the right of the counterparty to terminate the contract in accordance with its terms or the right of the counterparty to take measures under the applicable contract law that aim to ensure compliant performance of the obligation by the debtor for cases of non-performance or defective performance, such as the counterparty's right to require a deposit or security interests or the right of retention of performance before or after the assignment.

(49) Member States should also be able to introduce an additional safeguard for the protection of the counterparty's legitimate interests, by granting the counterparty the right to terminate the contract upon no less than three months' notice where the counterparty would be unfairly prejudiced by an obligation to continue to perform the contract up until the earliest date by which it could otherwise be able to terminate the contract under national law. This Directive is without prejudice to the rules on the burden of proof concerning unfair prejudice under national law.

(50) In order to increase the attractiveness of asset deals for potential buyers and thereby to achieve higher prices in going-concern sales, Member States should ensure that purchasers acquire businesses free and clear of debts and liabilities. Therefore, creditors' claims should be satisfied from the proceeds of the sale and not made directly against the purchaser of a business. However, obligations arising from executory contracts or employment relations, for example obligations relating to occupational pension entitlements, which are transferred to the acquirer, remain with the acquirer. Additionally, Member States should be able to introduce or maintain rules providing that the conduct of the debtor is taken into account in the assessment of the acquirer's liability for damages, if that conduct can be imputed to the acquirer under the applicable insolvency law. Such rules can apply to damages covered by environmental law or damages connected to the ownership or control of certain assets.

(51) The release of security interests in or other encumbrances attached to assets belonging to the debtor's business should be governed by national law. Where the law in a Member State requires the express consent of the holder of a security interest for the release of that interest, that Member State should be able to provide for a derogation from that requirement, except where the holder objects to the release.

(52) The best bid should not be disqualified in the preparation phase solely on the basis that it is submitted by a party closely related to the debtor. Parties closely related to the debtor should, therefore, be allowed to submit a bid and, where their bid is successful, to acquire the business free and clear of debts and liabilities. The eligibility of closely related parties to bid should, nevertheless, be subject to enhanced scrutiny in the bidding process. Providing equal opportunities for other bidders, particularly in relation to access to information and ensuring information symmetry, facilitates quick and efficient pre-pack proceedings and allows other bidders to prepare their bids.

(53) Where the bid submitted by a party closely related to the debtor is considered as the best bid, Member States should be able to introduce additional safeguards for the authorisation and execution of the sale of the debtor's business or part thereof. Such safeguards can include the obligation for the acquirer to ensure business continuity for a minimum period of time or the maintenance of employment contracts.

(54) The possibility of enforcing pre-emption rights in the course of the sale process would distort competition in the pre-pack proceedings. Potential bidders might abstain from bidding if rights holders could, at their discretion, reject those bids, irrespective of the time and resources invested or the economic value of the bids concerned. In order to ensure that winning bids reflect the best price on the market, pre-emption rights should not be conceded to bidders, nor should such rights be enforced in the course of the liquidation phase. Holders of pre-emption rights that were granted prior to the commencement of the pre-pack proceedings should, instead of invoking their pre-emption rights, be invited to participate in the bidding. Nevertheless, Member States should be able to enforce statutory pre-emption rights that are not affected by the insolvency of the debtor.

(55) Member States should allow secured creditors to participate in the bidding process in the pre-pack proceedings by offering the amount of their secured claims as consideration for the purchase of the assets over which they hold a security (‘credit bidding’). Credit bidding should not, however, be used in such a way as to provide secured creditors with an undue advantage in the bidding process, such as where the amount of their secured claim against a debtor’s assets is above the market value of the debtor’s business. As such, a secured creditor should not be able to bid the entire amount of their claim against the debtor’s business, where the business is worth less than that amount, as this could deter potential competitors from participating in the bidding process. Therefore, this Directive should restrict the amount that a creditor can bid in cases where there are under-secured or under-collateralised claims. In such cases, a secured creditor should only be allowed to bid an amount that is to be offset against the purchase price, without exceeding the market value of the business. The restriction on a creditor’s ability to bid the entire value of a secured claim does not imply that that claim loses its security interest in respect of the portion of the claim that cannot be used in the bidding process.

(56) This Directive is without prejudice to the application of Union competition law, in particular Council Regulation (EC) No 139/2004[13], and does not prevent Member States from enforcing national merger control systems. When selecting the best bid, the monitor should be allowed to take into account the regulatory risks presented by bids that require the authorisation of competition authorities and should be able to consult those authorities in accordance with applicable rules. The disclosure of information by the competition authority should not be contrary to national rules on the protection of business secrets. It should remain the responsibility of the bidders to provide all necessary information to assess those risks and to engage with the competent competition authorities in a timely manner in order to mitigate those risks. In order to increase the likelihood that pre-pack proceedings are successful, in the event that a bid poses such risks, the monitor or the debtor should be required to perform its role in a way that facilitates the submission of alternative bids.

[13] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1, ELI: http://data.europa.eu/eli/reg/2004/139/oj).

(57) Directors oversee the management of the affairs of a company and have the best overview of its financial situation. Directors are therefore among the first to realise whether a company is insolvent. A late filing for insolvency by directors can lead to lower recovery values for creditors. Member States should therefore introduce a duty for directors to submit a request for the opening of insolvency proceedings within a specified period. In the context of that duty, Member States should be allowed to define insolvency differently from the event that triggers the opening of insolvency proceedings. Where a Member State has more than one insolvency threshold, it is for that Member State to determine which of those thresholds triggers the duty to submit a request for the opening of the insolvency proceedings. For the purposes of this Directive, Member States should also specify to whom directors' duties apply, taking into account the range of responsibilities that certain persons or bodies can have with respect to decisions relating to the management of companies.

(58) A request for the opening of insolvency proceedings should be submitted within a specified time limit. Member States should ensure that that time limit is no longer than three months from the moment the directors become aware, or can be reasonably expected to have become aware, that the company is insolvent. If the company regains its solvency before the expiry of that time limit, but becomes insolvent again thereafter, Member States should be able to provide that a new time limit runs from that moment.

(59) When a company becomes insolvent, the protection of the general body of creditors can be achieved in different ways. Therefore, Member States should be able to provide that the duty of the directors to submit a request for the opening of insolvency proceedings can be discharged by informing the public of the company's insolvency through a notification in a public register in order to ensure that the creditors are able to apply for insolvency proceedings. Furthermore, Member States should also be able to suspend the duty of directors to submit a request for the opening of insolvency proceedings if the directors take measures with a view to protecting the interests of the general body of creditors and those measures ensure a level of protection to the general body of creditors which is equivalent to that ensured by the submission of a request for the opening of insolvency proceedings. Such measures can include, for example measures taken by the owners of the company to restore the company's solvency.

(60) To ensure that directors do not act against the interests of creditors by delaying the submission of a request for the opening of insolvency proceedings, despite signs of insolvency, Member States should lay down provisions making directors civilly liable for failing to submit such a request. In such cases, directors should compensate creditors for any damage resulting from the deterioration in the recovery value of the company compared to the situation that would have existed had the request been submitted on time. To the extent that this Directive does not provide for specific rules, all other aspects of civil liability, such as the calculation of damages or the burden of proof, should be governed by national law. Member States should also be able to adopt or maintain national rules on the civil liability of directors related to filing for insolvency that are stricter than those laid down by this Directive.

(61) Where Member States allow directors to take measures to protect the interests of the general body of creditors, other than by discharging their duty to submit a request for the opening of insolvency proceedings, they should also lay down provisions that ensure that directors are liable for any damage caused to the creditors resulting from any deterioration in the recovery value of the company compared to the situation that would have existed had a request for the opening of insolvency proceedings been submitted. In such cases, the creditors should be put in the position they would have been in had the request to open insolvency proceedings been submitted by the directors within the time limit set by the Member States. It should be possible for Member States to provide for the release of directors from such liability where and to the extent that those directors are able to demonstrate, on the basis of objective circumstances and information that was ascertainable at the time the measures concerned were taken, that such measures were reasonably likely to secure an equivalent or better outcome for creditors than the outcome resulting from the submission of a request for the opening of insolvency proceedings. In such situations, national law on the discharge of the burden of proof should apply.

(62) In order to promote an efficient and inclusive insolvency framework that supports entrepreneurship and economic renewal, Member States should be able to maintain or introduce simplified winding-up proceedings for microenterprises.

(63) Where an entrepreneur has full or partial ownership of a company and is personally liable for all the debt of the company, the fact that the company does not have sufficient assets to cover the cost of the insolvency proceedings should not prevent the entrepreneur from obtaining a discharge of debt in accordance with Directive (EU) 2019/1023 and thus benefit from a second chance. While Member States are not required to introduce a new procedure for the discharge of debt, they should ensure access to procedures for the discharge of debt for entrepreneurs who are natural persons, and not for companies. This Directive concerns insolvent entrepreneurs who are liable for all the debts of a company and should not concern persons who are only partly liable for the debt of a company such as a guarantor for the company's bank loan and other kinds of guarantees to one of the company's creditors. This Directive only concerns denial of discharge of debt on the ground that no insolvency proceedings can be opened against the company because the company does not have sufficient assets to cover the costs of such insolvency proceedings. This Directive does not regulate other grounds for denial of discharge of debt, such as those provided for in Directive (EU) 2019/1023. When a person fulfils the conditions for discharge of debt, the date of the decision to refuse or not to open insolvency proceedings against the company can be applied instead of the date referred to in Article 21(1)(b) of Directive (EU) 2019/1023.

(64) It is important to ensure that creditors are appropriately involved in insolvency proceedings so that their interests can be adequately considered. Creditors' committees allow for better involvement of creditors in insolvency proceedings, in particular where creditors would otherwise be prevented from doing so individually due to limited resources, the economic significance of their claims, or the lack of geographic proximity. Creditors' committees can help cross-border creditors better exercise their rights and ensure that they are treated fairly. Member States should allow a creditors' committee to be established once insolvency proceedings are opened. Member States should also be able to provide that a creditors' committee is established before insolvency proceedings are opened. Member States are not prevented from extending the application of the provisions concerning the establishment of creditors' committees to preventive restructuring proceedings. A creditors' committee should be established whenever the general meeting of creditors so decides or requests or, where national law does not provide for a general meeting of creditors, where creditors so request in accordance with national law. It should be possible for Member States to decide that the courts or competent authorities or insolvency practitioners can establish a creditors' committee on their own initiative or at the request of one or more creditors, the insolvency practitioner or the debtor.

(65) The burden of establishing and operating a creditors' committee ought to be commensurate with its benefits. Therefore, Member States should be able to provide that no creditors' committee is established where the burden of establishing and operating it would be higher than the economic relevance of the decisions it might take. This can be the case where there are too few creditors, where the large majority of creditors has a small share in the claim against the debtor, where possible delays caused by establishing a creditors' committee would lead to the deterioration of the financial situation of the debtor, or where the value expected to be recovered from the insolvency estate is lower than the cost of establishing and operating the creditors' committee. Such situations occur, in particular, in insolvency proceedings concerning debtors who are entrepreneurs or small enterprises, and in discharge procedures. Member States should be able to provide for the establishment of a creditors' committee only for large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU of the European Parliament and of the Council[14]. In the case of smaller enterprises, it is possible that national law already provides, in other ways, for creditors' interests to be adequately protected through insolvency proceedings.

(66) The provisions of this Directive on the establishment of creditors' committees should apply to debtors that are legal persons. Member States should be allowed to extend the application of those provisions to natural persons who are entrepreneurs.

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[14] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19, ELI: http://data.europa.eu/eli/dir/2013/34/oj).

(67) Member States should clarify the functions of creditors' committees and the requirements, duties and procedures for appointing their members. To avoid undue delay when establishing the creditors' committee, members of the committee should be appointed expeditiously to ensure the efficiency of the insolvency proceedings. Member States should ensure that creditors are fairly represented within creditors' committees and that cross-border creditors that are resident in a Member State other than that in which the insolvency proceedings are opened are not precluded from participating in creditors' committees. When workers are among the creditors, those workers or their representatives should be eligible for appointment to creditors' committees, unless there is another, at least equivalent, mechanism through which the interests of workers in insolvency proceedings can be represented. This could be the case where workers' interests in collective proceedings are taken into account through mandatory consultations with their representatives on the direction of the proceedings or prior to major decisions, such as on the sale of assets or the transfer of the business. Workers whose wage claims are paid in full by a guarantee institution are not creditors.

(68) Fair representation of creditors in creditors' committees is particularly important in relation to unsecured creditors, including creditors with small claims. Member States should be able to provide that persons or entities other than creditors, such as workers' representatives, public bodies or guarantee institutions, are also eligible for the appointment to creditors' committees.

(69) Creditors' committees should be involved in insolvency proceedings and ensure that they are conducted in a way that protects creditors' interests, including by following and being regularly informed of the activities of the insolvency practitioner, without requiring the insolvency practitioner to be subordinate to the committee. The role of creditors' committees in monitoring the fairness and integrity of insolvency proceedings can only be performed effectively where they and their members act independently from insolvency practitioners and are accountable only to the creditors. The members of creditors' committees should act in good faith when carrying out the functions of the committee. Creditors, members of creditors' committees and any professionals employed by creditors' committees should maintain the confidentiality of confidential information obtained in connection with the creditors' committee's activities.

(70) While a creditors' committee should be sufficiently large to ensure a diversity in the views and interests of the creditors, it should also be relatively limited in size to be able to deliver on its tasks effectively and in a timely manner. Member States should specify when and how the composition of a creditors' committee needs to be altered, such as in the event that representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw. Member States should also specify the conditions for removing members who have committed a serious violation with respect to their duty to act in the interests of the general body of creditors. Such violations can include situations of conflicts of interest.

(71) The working methods of creditors' committees should be transparent and effective. Member States should therefore lay down requirements concerning the working methods of creditors' committees, specifying the, voting procedure, including eligibility to vote and the necessary quorum, record-keeping of the decisions taken, and how the impartiality and the confidentiality of their work is ensured. Member States should ensure that the working methods can be further specified by creditors' committees by means of protocols.

(72) Creditors should be able to participate and vote electronically, or to delegate their voting rights to a duly authorised third person. The possibility to delegate would be particularly beneficial for creditors resident in Member States other than the Member State in which the insolvency proceedings are opened.

(73) Creditors' committees should be granted sufficient rights to perform their functions efficiently and effectively. Member States should ensure that creditors' committees act in a transparent manner and can interact with insolvency practitioners, courts, the debtor-in-possession, and the creditors that they represent, as necessary, to enable creditors' committees to form and communicate their views on matters of direct interest and relevance to creditors, and for those views to be duly considered in proceedings. Member States should provide for the right of creditors' committees to request information from insolvency practitioners and, where applicable, debtors-in-possession. Member States should provide for a right of creditors' committees to be heard on major decisions. Member States should be able to allow the general meeting of creditors to delegate decisions to the creditors' committee. Member States should also be able to provide for the right of creditors' committees to appoint a secretary and to request external advice on matters in which the creditors they represent have an interest.

(74) Since the operation of creditors' committees incurs expenses, Member States should establish clear rules as to who bears those expenses. Member States should also establish safeguards to prevent the costs of creditors' committees from reducing the recovery value of insolvency estates in a disproportionate manner.

(75) To encourage creditors to become members of creditors' committees, Member States should limit their civil liability for carrying out their functions in accordance with this Directive. Nonetheless, it should be possible to remove members of the creditors' committee that have violated their duties intentionally or in a grossly negligent manner and hold them liable for that violation. In those cases, Member States should provide that those members are held individually liable for the detriment caused by their misconduct. Member States should be able not to apply such a limitation of civil liability where the expenses for an insurance covering the personal liability of the members of a creditors' committee is borne by the insolvency estate. Where Member States entrust creditors' committees with greater powers than those provided for by this Directive, allowing them, for example, to take decisions concerning the assets of the debtor or to accept transactions, they should be able to provide that the members of creditors' committees are held liable in the same manner as insolvency practitioners.

(76) To ensure enhanced transparency of the key features of national insolvency proceedings and, especially, to help cross-border creditors assess what would happen to their investments if those investments became involved in insolvency proceedings, investors and potential investors should be granted easy access to that information in a pre-defined, comparable and user-friendly format. Member States should prepare a standardised key information factsheet and make it available to the public. The Commission should make key information factsheets available to the public in a multilingual format. A key information factsheet would be an important tool for potential investors to make a quick assessment of a given Member State's rules on insolvency proceedings. It should contain sufficient explanations to allow the reader to understand the information therein without having to refer to other sources of information. Key information factsheets should include practical information on the conditions that trigger the opening of insolvency proceedings as well as on the steps to be taken to request the opening of insolvency proceedings or to lodge a claim. Since Member States are already required to provide information on their national rules on insolvency procedures under Regulation (EU) 2015/848, it is important to ensure that information provided under this Directive is consistent with information provided under that Regulation. To that end, the Member States should be able to provide the information required by this Directive through the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC[15].

[15] Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25, ELI: http://data.europa.eu/eli/dec/2001/470/oj).

(77) In the event of exceptional emergency situations stemming from natural disasters or other catastrophic events which seriously disrupt economic activities at the level of a Member State or its regions, Member States should be able to act quickly in order to minimise the adverse impact of those situations on the economy. Such situations have arisen in the context of the COVID pandemic and might arise in the context of a systemic crisis as defined in Directive 2014/59/EU or in situations where State aid is compatible with the internal market to repair damage caused by natural disasters or exceptional occurrences pursuant to Article 107(2), point (b), of the Treaty on the Functioning of the European Union. In such situations, which imply the risk of widespread insolvencies, including for companies that would be viable under ordinary circumstances, Member States should be able to temporarily derogate from certain provisions of this Directive. The derogations should be limited in scope and time to what is essential to address the exceptional situation, for example by being restricted geographically to the region in the Member States that is affected by a natural disaster. Member States should notify the Commission of the measures which derogate from this Directive, their territorial scope, their duration and a justification of the necessity to implement them. The obligation of Member States to notify those measures should not affect their entry into force and application. The notification, which facilitates the Commission's monitoring of the compliance of derogations with the relevant requirements, should be brought to the attention of other Member States without undue delay. The maximum duration of the derogation should be one year, and it should be possible to extend it by six-month-periods subject to an additional controlling mechanism. Member States should notify the request for an extension no later than three months before the expiration of the derogation in order to allow the Commission to oppose it if needed.

(78) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[16].

(79) This Directive is without prejudice to the protection of undisclosed know-how and business information, otherwise known as trade secrets, from unlawful acquisition, use and disclosure pursuant to Directive (EU) 2016/943 of the European Parliament and of the Council[17].

(80) Since the objectives of this Directive cannot be sufficiently achieved by the Member States because differences between national insolvency frameworks would continue to raise obstacles to the free movement of capital and the freedom of establishment, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

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16 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: http://data.europa.eu/eli/reg/2011/182/oj).

17 Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1, ELI: http://data.europa.eu/eli/dir/2016/943/oj).

(81) This Directive respects the fundamental rights and observes the principles recognised by the Charter, in particular the right to respect for private and family life, the right to the protection of personal data, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, workers' right to information and consultation as well as the right to a fair trial.

(82) Regulation (EU) 2016/679 of the European Parliament and of the Council[18] applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council[19] applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive.

(83) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 6 February 2023[20],

HAVE ADOPTED THIS DIRECTIVE:

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18 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

19 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

20 OJ C 89, 10.3.2023, p. 10.

TITLE I
GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Directive lays down common rules on:

   (a) avoidance actions;

   (b) tracing of assets belonging to insolvency estates;

   (c) pre-pack proceedings;

   (d) duty of directors to submit a request for the opening of insolvency proceedings;

   (e) creditors' committees;

   (f) key information factsheets.

2. Titles II, III and VI of this Directive apply to collective proceedings, as defined in Article 2, point (1), of Regulation (EU) 2015/848, which are based on laws relating to insolvency, with the exception of preventive restructuring procedures.

   Title II does not apply to interim proceedings.

3. This Directive does not apply where debtors are:

(a) insurance undertakings or reinsurance undertakings as defined in Article 13 points (1) and (4), of Directive 2009/138/EC of the European Parliament and of the Council[21];

(b) credit institutions as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council[22];

(c) investment firms or collective investment undertakings as defined in Article 4(1), points (2) and (7), of Regulation (EU) No 575/2013;

(d) central counterparties as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[23];

(e) central securities depositories as defined in Article 2(1), point (1), of Regulation (EU) No 909/2014 of the European Parliament and of the Council[24];

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21 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1, ELI: http://data.europa.eu/eli/dir/2009/138/oj).

22 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/575/oj).

23 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/648/oj).

24 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/909/oj).

(f) other financial institutions and entities listed in Article 1(1), first subparagraph of Directive 2014/59/EU of the European Parliament and of the Council[25];

(g) public bodies under national law;

(h) natural persons who are not entrepreneurs.

4. Member States may exclude from the scope of this Directive debtors that are financial entities other than those referred to in paragraph 3 providing financial services that are subject to special arrangements under which the national supervisory or resolution authorities have wide-ranging powers of intervention comparable to those in relation to the financial entities referred to in paragraph 3. Member States shall communicate those special arrangements to the Commission.

5. Titles IV and VI apply to debtors that are legal persons.

6. Member States may decide to apply Title VI of this Directive only to debtors that are large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU.

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[25] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190, ELI: http://data.europa.eu/eli/dir/2014/59/oj).

Article 2

Definitions

1. For the purposes of this Directive, the following definitions apply:

(a) ‘insolvency practitioner’ means a person or body that has one or more of the functions listed in Article 2, point (5), of Regulation (EU) 2015/848 and in Article 2(1), point (12), of Directive (EU) 2019/1023;

(b) ‘court’ means a judicial body of a Member State;

(c) ‘bank account registers’ means centralised automated mechanisms, such as central registers or central electronic data retrieval systems, put in place in accordance with Article 16(1) of Directive (EU) 2024/1640;

(d) ‘central beneficial ownership registers’ means national central registers holding beneficial ownership information and the systems of interconnection of those registers referred to in Article 10 of Directive (EU) 2024/1640;

(e) ‘bank account information’ means the information listed in Article 16(3) of Directive (EU) 2024/1640;

(f) ‘legal act’ means, for the purposes of Title II, any deliberate human behaviour producing legal effects;

(g) ‘executory contract’ means a contract between a debtor and one or more counterparties, under which the parties still have obligations to perform at the time of the opening of insolvency proceedings in the liquidation phase under Title IV, with the exception of netting arrangements, including close-out netting arrangements, on financial markets, energy markets and commodity markets, where such arrangements are enforceable under national insolvency law, and of financial contracts;

(h) ‘best-interest-of-creditors test’ means a test that is satisfied if no creditor would be worse off under a liquidation in the context of pre-pack proceedings than such a creditor would be if the normal ranking of liquidation priorities were applied in the event of a piecemeal liquidation or, where Member States so provide, in the event of the next-best-alternative scenario;

(i) ‘interim financing’ means any new financial assistance, provided by an existing or a new creditor, that includes, as a minimum, financial assistance during pre-pack proceedings, and that is reasonable and immediately necessary for the debtor’s business, or a part thereof, to continue operating, or to preserve or enhance the value of that business;

(j) ‘creditors’ committee’ means a representative body of creditors under Title VI;

(k) ‘pre-pack proceedings’ means proceedings, comprising a preparation phase and a liquidation phase, that enable the sale of the business of the debtor, in whole or in part, as a going-concern to the best bidder in the course of insolvency proceedings;

(l) ‘preparation phase’ means the phase of the pre-pack proceedings the aim of which is to find an appropriate buyer for the debtor’s business or part thereof;

(m) ‘liquidation phase’ means the phase of the pre-pack proceedings the aims of which is to approve and execute the sale of the debtor’s business, or part thereof, and to distribute the proceeds to the creditors.

2. For the purposes of this Directive, the concepts of ‘insolvency’ and ‘directors’ are to be understood as defined by national law.

Article 3

Party closely related to the debtor

1. For the purposes of Title II, parties closely related to the debtor shall include:

(a) where the debtor is a natural person:

(i) the debtor’s spouse or partner;

(ii) the debtor’s ascendants, descendants and siblings or those of the debtor’s spouse or partner, and the spouses or partners of those persons;

(iii) persons living in the debtor’s household;

(iv) persons with access to non-public information on the debtor's affairs who have the possibility to control the debtor's operations, including where they work for the debtor under a contract of employment or are in an employment relationship with the debtor;

(v) legal entities in which the debtor or one of the persons referred to in points (i) to (iv) is a member of the administrative, management or supervisory bodies; or

(vi) legal entities in which the debtor or one of the persons referred to in points (i) to (iv) performs duties which provide for access to non-public information on the debtor's affairs;

(b) where the debtor is a legal entity:

(i) any member of the debtor's administrative, management or supervisory bodies;

(ii) equity holders with a controlling interest in the debtor;

(iii) persons who perform functions similar to those performed by persons under point (i);

(iv) persons who are closely related, in accordance with point (a), to the persons listed in points (i), (ii) and (iii) of this point.

2. For the purposes of Title IV, parties closely related to the debtor shall include the persons listed in paragraph 1 and any other persons, including legal persons, with preferential access to non-public information on the debtor's affairs.

3. Whether a party is closely related to the debtor shall be determined by reference to:

(a) for the purposes of Title II, the day on which the legal act subject to an avoidance action was perfected or a period of three months prior to the perfection of the legal act;

(b) for the purposes of Title IV, the day on which the liquidation phase of the pre-pack proceedings starts or a period of at least six months prior to the start of the liquidation phase.

Paragraph 1 and paragraph 3, point (a), of this Article shall apply *mutatis mutandis* to persons closely related to parties which have benefited from a void, voidable or unenforceable legal act as referred to in Article 12(2), second subparagraph.

Article 4

National law and minimum harmonisation

1. Without prejudice to Article 10(3), Member States may adopt or maintain laws which provide for a greater level of protection for the general body of creditors than that provided for under Titles II and V.

2. Member States may adopt or maintain laws relating to the establishment, functioning, tasks and members of creditors' committees which provide for a greater participation of creditors in insolvency proceedings than that provided for in Title VI.

3. Member States may adopt or maintain laws which facilitate access by insolvency practitioners to bank account information held in their bank account registers, beneficial ownership information and national registers and databases to a greater extent than the rules provided for in Title III.

4. Member States shall ensure that insolvent entrepreneurs or other natural persons who as equity holders are personally liable for the debts of a company with unlimited liability have access to a full discharge of debt in accordance with Directive (EU) 2019/1023 even in cases where no insolvency proceedings can be opened in accordance with national law with regard to the debtor on the ground that the debtor has no assets or its assets are not sufficient to cover the cost of the proceedings or the costs relating to the involvement of the insolvency practitioner.

5. Member States may adopt or maintain laws which establish simplified winding-up proceedings for microenterprises.

Article 5

Protection of workers

This Directive is without prejudice to Union and national law on the rights of workers in relation to the matters governed by this Directive, including Union and national law on the involvement of workers' representatives and appropriate measures to inform and consult workers' representatives, in particular:

(a) the rights guaranteed by Directives 98/59/EC, 2001/23/EC and 2008/94/EC;

(b) the right to information and consultation in accordance with Directives 2002/14/EC and 2009/38/EC.

TITLE II
AVOIDANCE ACTIONS

Chapter 1
General provisions

Article 6

General prerequisites for avoidance actions

Member States shall ensure that legal acts which have been perfected prior to the opening of insolvency proceedings to the detriment of the general body of creditors are void, voidable or unenforceable under the conditions laid down in Chapter 2.

Member States may provide that a legal act, the effects of which are conditional upon its entry in a public register, is considered to have been perfected as soon as all the other requirements for its effectiveness have been met.

Chapter 2
Specific conditions

Article 7

Preferences

1. Member States shall ensure that detrimental legal acts benefitting a creditor or a group of creditors by satisfaction or collateralisation are void, voidable or unenforceable where they were perfected:

   (a) within the three months prior to the submission of the request that led to the opening of the insolvency proceedings or, in the absence of such a request, within the three months prior to the date of the resolution to commence insolvency proceedings, provided that the debtor was unable to pay its debts as they fell due in accordance with national law; or

   (b) after the submission of the request or the date of the resolution referred to in point (a) and before the opening of insolvency proceedings.

2. If a due claim of a creditor was satisfied or secured as owed, Member States shall ensure that detrimental legal acts are void, voidable or unenforceable at least if:

   (a) the conditions laid down in paragraph 1 are met; and

(b) that creditor knew that the debtor was unable to pay its debts as they fell due in accordance with national law, that a request for the opening of insolvency proceedings had been submitted or that, in the absence of such a request, a resolution to commence insolvency proceedings had been made.

For the purposes of the first subparagraph, point (b), such knowledge shall be presumed if the creditor was a party closely related to the debtor. That presumption shall be rebuttable.

3. Paragraphs 1 and 2 do not apply to the following legal acts:

(a) legal acts performed directly in exchange for fair consideration to the benefit of the debtor's assets;

(b) payments on bills of exchange or cheques, where the law that governs bills of exchange or cheques bars the recipient's claims arising from the bill or cheque against other bill or cheque debtors such as endorsers, the drawer, or the drawee if the recipient refuses the debtor's payment;

(c) legal acts that are not subject to avoidance actions in accordance with Directive 98/26/EC and Directive 2002/47/EC;

(d) where relevant, in accordance with national law, legal acts the purpose of which is to satisfy or collateralise claims by social security authorities;

(e) the entering into netting arrangements, including close-out netting arrangements, in financial markets, energy markets or other commodity markets, as well as legal acts supporting the operation of such arrangements.

For the purposes of the first subparagraph, point (b), Member States shall ensure that the amount paid on the bill or cheque be restituted by the last endorser or, if the latter endorsed the bill on account of a third party, by such party, if the last endorser or the third party knew that the debtor was unable to pay its debts as they fell due in accordance with national law or that a request for the opening of insolvency proceedings had been submitted at the moment of endorsing the bill or having it endorsed. Such knowledge shall be presumed if the last endorser or the third party was a party closely related to the debtor. That presumption shall be rebuttable.

Article 8

Legal acts in exchange for no or manifestly inadequate consideration

1. Member States shall ensure that where legal acts of the debtor are performed in exchange for no or manifestly inadequate consideration, those legal acts are void, voidable or unenforceable where they were perfected:

   (a) within the 12 months prior to the submission of the request that led to the opening of insolvency proceedings or, in the absence of such a request, within the 12 months prior to the date of the resolution to commence insolvency proceedings; or

   (b) after the submission of the request or the date of the resolution referred to in point (a) and before the opening of the insolvency proceedings.

2. Paragraph 1 shall not apply to gifts and donations of symbolic value.

Article 9

Legal acts intentionally detrimental to creditors

Member States shall ensure that legal acts by which the debtor has intentionally caused a detriment to the general body of creditors are void, voidable or unenforceable where both of the following conditions are met:

(a) those acts were perfected either within the two years prior to the submission of the request that led to the opening of the insolvency proceedings or, in the absence of such a request, within the two years prior to the date of the resolution to commence insolvency proceedings, or after the date of submission of such a request or the date of such a resolution and before the opening of the insolvency proceedings;

(b) the other party to the legal act knew of the debtor's intent to cause detriment to the general body of creditors.

For the purposes of the first paragraph, point (b), such knowledge shall be presumed if the other party to the legal act was a party closely related to the debtor. That presumption shall be rebuttable.

Chapter 3

Consequences of avoidance actions

Article 10

General consequences

1. Member States shall ensure that the claims, rights or obligations resulting from legal acts which are void or unenforceable or have been voided pursuant to Chapter 2 cannot be invoked to obtain satisfaction from the insolvency estate concerned.

2. Member States shall ensure that the party that benefited from the void, voided or unenforceable legal act is obliged to return the actual benefits themselves or to pay their monetary equivalent.

   The fact that the enrichment resulting from the void, voided or unenforceable legal act is no longer available in the property of the party that benefited from that legal act can only be invoked if that party was not aware of the circumstances on which the avoidance action is based.

3. Member States shall ensure that the limitation period for all claims resulting from a void, voidable or unenforceable legal act against the other party is no longer than three years from the date of the opening of insolvency proceedings. Member States may provide that the limitation period is calculated from the date the insolvency practitioner became aware of the facts that gave rise to the claim against the other party.

This Directive is without prejudice to national law regulating the suspension or interruption of the limitation period referred to in the first subparagraph.

4. Member States shall ensure that a claim for the return of the actual benefits themselves or for the payment of their monetary equivalent pursuant to paragraph 2 can be assigned to a creditor or a third party.

5. Member States shall ensure that the party that is obliged to return the actual benefits themselves or pay their monetary equivalent pursuant to paragraph 2 cannot offset that obligation against any claims that it would otherwise need to pursue in the insolvency proceedings.

6. This Article is without prejudice to actions brought under civil and commercial law for compensation of damages suffered by creditors as a result of a void, voidable or unenforceable legal act.

Article 11

Consequences for the party that benefited from a void, voidable or unenforceable legal act

1. Where and to the extent that the party that benefited from the void, voidable or unenforceable legal act returns the actual benefits themselves or pays their monetary equivalent in accordance with Article 10, Member States shall ensure that any claim of that party which was satisfied by means of that legal act revives in accordance with national law.

2. Member States shall ensure that any counter-performance rendered by the party that benefited from the void, voidable or unenforceable legal act after, or in an instant exchange for, the performance by the debtor under that legal act is refunded from the insolvency estate to the extent that benefits rendered as the counter-performance are still available in the insolvency estate in a form that can be distinguished from the rest of the insolvency estate or to the extent that the insolvency estate is still enriched by the value of the counter-performance.

In cases not covered by the first subparagraph, the party that benefited from the void, voidable or unenforceable legal act may lodge a claim for the compensation of the counter-performance.

Article 12

Liability of third parties

1. Member States shall ensure that Articles 10 and 11 are applicable to any heir, or another universal successor of the party that benefited from the void, voidable or unenforceable legal act.

The extent of the liability of heirs shall be governed by national law.

2. Member States shall ensure that Article 10 is applicable to any individual successor of the other party to the void, voidable or unenforceable legal act if the successor knew the circumstances on which the avoidance action is based.

The knowledge referred to in the first subparagraph shall be presumed if the individual successor is a party closely related to the party that benefited from the void, voidable or unenforceable legal act. That presumption shall be rebuttable.

Article 13

Relation to other instruments

This Title is without prejudice to Directives 98/26/EC, 2002/47/EC and (EU) 2019/1023.

Where, during preventive restructuring proceedings under Directive (EU) 2019/1023, the debtor becomes unable to pay its debts as they fall due and the benefit of a stay is kept in place in accordance with Article 7(3) of that Directive, Member States may provide that, with respect to legal acts performed during the stay, a party's knowledge that the debtor was unable to pay its debts as they fell due in accordance with national law does not give rise to avoidance actions under Article 7(2) of this Directive.

TITLE III
TRACING ASSETS
BELONGING TO AN INSOLVENCY ESTATE

Chapter 1
Access by designated courts and administrative authorities to bank account information

Article 14

Designated courts and administrative authorities

1. Each Member State shall designate the courts or administrative authorities that are authorised to access and search its national bank account registers and the courts or administrative authorities that are authorised to access and search bank account information on a cross-border basis in accordance with Article 15(2) (‘designated courts or administrative authorities’).

2. Each Member State shall notify the Commission of its designated courts or administrative authorities by … [36 months from the date of entry into force of this Directive] and shall notify the Commission of any changes thereto without undue delay. The Commission shall publish such notifications in the *Official Journal of the European Union* and on the European e-Justice Portal.

Article 15

Access to and searches of bank account information
by designated courts and administrative authorities

1. Member States shall ensure that the designated courts or administrative authorities have the power to access and search, directly and immediately, bank account information where the following conditions are met:

   (a) the insolvency practitioner appointed in ongoing insolvency proceedings, including interim proceedings, requests bank account information; and

   (b) the bank account information is necessary for the purpose of identifying and tracing assets belonging to the insolvency estate in proceedings as referred to in point (a), as well as assets subject to avoidance actions.

2. In facilitating cross-border access, Member States shall ensure that the designated courts or administrative authorities have the power to access and search, directly and immediately, bank account information in other Member States available through the bank account registers interconnection system referred to in Article 16(6) of Directive (EU) 2024/1640 (BARIS) where the following conditions are met:

   (a) the insolvency practitioner appointed in ongoing insolvency proceedings, including interim proceedings, requests bank account information in other Member States; and

(b) the bank account information is necessary for the purposes of identifying and tracing assets belonging to the insolvency estate of the debtor in proceedings as referred to in point (a), as well as assets subject to avoidance actions.

3. Information beyond that referred to in paragraphs 1 and 2 of this Article that Member States consider essential and include in the bank account registers pursuant to Article 16(5) of Directive (EU) 2024/1640 shall not be accessible and searchable by designated courts or administrative authorities.

4. Member States shall ensure that the designated courts or administrative authorities or other competent courts or authorities verify whether the conditions referred to in paragraphs 1 and 2 have been met. Where those conditions have been met, Member States shall ensure that the designated courts or administrative authorities transmit the relevant bank account information obtained by accessing and searching bank account information pursuant to paragraphs 1 and 2 to the insolvency practitioner who requested it.

5. Access and searches pursuant to paragraphs 1 and 2 are without prejudice to national procedural safeguards and Union and national rules on the protection of personal data. Member States shall ensure that bank account information obtained pursuant to paragraphs 1 and 2 is processed only for the purposes for which it was obtained, including where it is processed by insolvency practitioners.

6. Member States shall ensure that insolvency practitioners, when processing bank account information obtained pursuant to paragraphs 1 and 2, have in place relevant internal procedures for the appropriate management of confidential information.

7. For the purposes of paragraphs 1 and 2, access to, and searches of, bank account information shall be considered to be direct and immediate, inter alia, where the national authorities operating the bank account registers transmit the bank account information expeditiously by an automated mechanism to the designated courts or administrative authorities, provided that no intermediary institution is able to interfere with the requested data or the information to be provided.

Article 16

Conditions for access to, and searches of, bank account information by designated courts and administrative authorities

1. Member States shall ensure that bank account information is accessed and searched in accordance with Article 15 only on a case-by-case basis by the staff of each designated court or administrative authority who has been specifically appointed and authorised to perform those tasks.

2. Member States shall ensure that:

   (a) the staff referred to in paragraph 1 maintain high professional standards of confidentiality and data protection and are of high integrity and appropriately skilled;

   (b) technical and organisational measures are in place to ensure the security of the data to high technological standards for the purposes of the exercise by designated courts and administrative authorities of the power to access and search bank account information in accordance with Article 15.

Article 17

Monitoring access to, and searches of, bank account information by designated courts and administrative authorities

1. Member States shall provide that the authorities operating the bank account registers ensure that logs are kept of every instance in which a designated court or administrative authority accesses and searches bank account information. The logs shall include, in particular, the following:

   (a) the case reference number;

   (b) the date and time of the query or search;

   (c) the type of data used to launch the query or search;

   (d) the unique identifier of the results;

   (e) the name of the designated court or administrative authority accessing or searching the register;

   (f) the unique user identifier of the staff member of the designated court or administrative authority who made the query and, where applicable, of the judge or official who ordered the query or search and, where available, of the requesting insolvency practitioner.

2. The authorities operating the bank account registers shall regularly check the logs referred to in paragraph 1.

3. The logs referred to in paragraph 1 shall be used only to monitor compliance with this Directive and with applicable Union law on data protection. Those logs shall be protected by appropriate measures against unauthorised access and shall be erased five years after their creation, unless they are required for ongoing monitoring procedures.

Chapter 2
Access by insolvency practitioners to beneficial ownership information

Article 18

Access by insolvency practitioners to beneficial ownership information

Member States shall ensure that, for the purpose of identifying and tracing assets relevant for the insolvency proceedings for which they are appointed, insolvency practitioners have timely access to the following information on the beneficial owners of legal entities and of legal arrangements held in interconnected central beneficial ownership registers, and that such access is provided without alerting the entity, the arrangement or the beneficial owner concerned:

(a) the name of the beneficial owner;

(b) the month and year of birth of the beneficial owner;

(c) the country of residence and nationality or nationalities of the beneficial owner;

(d) for beneficial owners of legal entities, the nature and extent of the beneficial interest held;

(e) for beneficial owners of express trusts or similar legal arrangements, the nature of their beneficial ownership.

Chapter 3

Access by insolvency practitioners to national registers and databases

Article 19

Access by insolvency practitioners to national registers and databases

1. Member States shall ensure that insolvency practitioners, regardless of the Member State in which they have been appointed, have direct and expeditious access to information necessary for the purpose of identifying and tracing assets belonging to the insolvency estate, as well as assets subject to avoidance actions, that is held in existing national registers and databases as listed in the Annex, in accordance with conditions provided for by national law.

2. With respect to access to the national registers and databases listed in the Annex, each Member State shall ensure that the insolvency practitioners appointed in other Member States are not subject to substantive access conditions that are *de jure* or de facto less favourable than those applicable to insolvency practitioners appointed in that Member State.

3. Member States shall notify the Commission of the existing national registers and databases as listed in the Annex by… [36 months from the date of entry into force of this Directive] and shall notify it of any changes thereto.

The Commission shall publish the information notified by Member States pursuant to the first subparagraph in the *Official Journal of the European Union* and on the European e-Justice Portal.

Chapter 4
Access to courts by the insolvency practitioners of another Member State

Article 20

Access to courts by the insolvency practitioners of another Member State

With respect to the right to initiate proceedings or appear before courts or authorities in order to claim assets on behalf of an insolvency estate, each Member State shall ensure that insolvency practitioners appointed in other Member States are not subject to conditions that are less favourable than those applicable to insolvency practitioners appointed in that Member State.

TITLE IV
PRE-PACK PROCEEDINGS

Chapter 1
General provisions

Article 21

Pre-pack proceedings

1. Member States shall ensure that pre-pack proceedings are available at least for debtors that are likely to become insolvent in accordance with national law.

   Member States may provide that the preparation phase cannot be initiated where the debtor is unable to pay its debts as they fall due in accordance with national law.

2. Pre-pack proceedings may, under national law, be separate proceedings or part of existing insolvency proceedings.

3. Member States shall ensure that debtors that enter pre-pack proceedings remain totally, or at least partially, in control of their assets and the day-to-day operation of their business during the preparation phase.

4. National law applies to matters not regulated by this Title, including the ranking of claims, the distribution of proceeds, the responsibilities and liability of the debtor and the debtor's directors, the remuneration of the insolvency practitioner and the nature, scope and form of creditors' participation, except, where applicable, with respect to the approval of the sale.

Article 22

Relationship with other Union legal acts

1. The liquidation phase shall be carried out by means of insolvency proceedings other than preventive restructuring procedures.

   In Member States where Regulation (EU) 2015/848 applies, the liquidation phase shall be carried out by means of insolvency proceedings as set out in Annex A to Regulation (EU) 2015/848 other than preventive restructuring proceedings.

2. This Directive is without prejudice to Directive 2001/23/EC and national rules implementing it.

   For the purposes of Article 5(1) of Directive 2001/23/EC, when it takes place in proceedings which could end in the liquidation of the debtor, the liquidation phase shall be considered to be bankruptcy proceedings or any analogous insolvency proceedings instituted with a view to the liquidation of the assets of the transferor under the supervision of a competent public authority.

Chapter 2
Preparation phase

Article 23

Appointment of the monitor

1. Member States shall ensure that, at the initiative of a debtor, the preparation phase starts when a monitor is appointed. The procedure for the appointment of a monitor shall be set by national law.

2. Member States shall ensure that the monitor is independent from the debtor and any party closely related to the debtor. Member States may provide for additional requirements regarding the monitor's independence from equity holders or creditors.

3. Member States shall ensure that only persons who satisfy the eligibility criteria applicable to insolvency practitioners in the Member State where the pre-pack proceedings take place can be appointed as a monitor.

Article 24

Principles applicable to the preparation phase

1. Member States shall ensure that the sale process carried out during the preparation phase is competitive, transparent and fair and meets market standards.

2. Member States shall ensure that the monitor, if necessary with the assistance of the debtor:

(a) justifies why it considers that the requirements under paragraph 1 are fulfilled;

(b) recommends the best bidder as the pre-pack acquirer of the debtor's business, or part thereof, in accordance with Article 33;

(c) provides a statement that, on the basis of its assessment, the best bid does not constitute a breach of the best-interest-of-creditors test.

The monitor shall document and report on each step of the sale process in writing. Those documents and reports shall be made available in digital format and in a timely manner. Member States shall ensure that the monitor is subject to the same confidentiality requirements as an insolvency practitioner.

3. Member States may provide that a public auction be conducted in accordance with Article 29(3) in order to ensure the realisation of a fair market price. Member States may provide that such a public auction is conducted, in particular, in situations where one or more creditors demonstrate that there is reasonable doubt as to whether the best bid recommended by the monitor reflects the fair market price. Where such a public auction is conducted, Member States may provide that the obligations set out in paragraph 1 and paragraph 2, point (a), do not apply to the monitor.

4. Member States may provide that, where the recommendation referred to in paragraph 2, point (b), is approved by creditors in accordance with national law, paragraph 1 and paragraph 2, point (a), do not apply.

5. Member States shall ensure that:

(a) if no subsequent liquidation phase ensues, the monitor is remunerated by the debtor;

(b) if the liquidation phase ensues, the monitor's renumeration is borne by the insolvency estate.

Article 25

Stay of individual enforcement actions

Member States shall ensure that, during the preparation phase, where the debtor is in a situation of likelihood of insolvency or is insolvent in accordance with national law, the debtor can benefit from a stay of individual enforcement actions in accordance with Articles 6 and 7 of Directive (EU) 2019/1023, either in the preparation phase or in the context of another type of insolvency proceedings in which the debtor remains totally, or at least partially, in control of its assets and the day-to-day operation of its business and in which the sale of the debtor's business, or part thereof, as a going concern can be continued and concluded.

Article 26

Suspension of the opening of the liquidation phase

Member States may provide that, when a creditor files for insolvency during the preparation phase, the opening of the liquidation phase can be suspended where, taking into account the circumstances of the case, it would not be in the general interest of creditors to open the liquidation phase.

Article 27

Termination of the preparation phase

1. Member States shall provide that the preparation phase is limited in time.

2. Member States may provide that the preparation phase can be terminated where:

(a) the debtor fails to provide the necessary assistance in accordance with Article 24(2);

(b) the debtor fails to act with due diligence during the preparation phase; or

(c) the preparation phase does not have any reasonable prospects of success.

Chapter 3

Liquidation phase

Article 28

Liquidation phase

Member States shall ensure that the liquidation phase starts when a decision on the opening of the insolvency proceedings referred to in Article 22(1) is taken in accordance with national law.

Article 29

Principles applicable to the liquidation phase

1. Member States shall ensure that, when the liquidation phase is opened, the court or competent authority authorises the sale of the debtor's business, or part thereof, at least in one of the following cases:

   (a) the acquirer is proposed by the monitor, provided that the monitor has issued an opinion confirming that the sale process that took place during the preparation phase complied with the requirements laid down in Article 24(1) and the court or competent authority is satisfied that the requirements under Article 24(1) and (2) have been complied with;

   (b) the acquirer is selected in a public auction, where Member States provide for such an auction in accordance with paragraph 3 of this Article; or

   (c) the sale to the acquirer is approved by the creditors as referred to in Article 24(4).

2. Member States may provide that the sale of the debtor's business, or part thereof, under paragraph 1, point (c), is approved by the creditors without the authorisation of the court or competent authority where, under national law, the sale of the debtor's business, or part thereof, requires the consent of the creditors.

3. The public auction referred to in Article 24(3) shall last no longer than three months.

   The bid selected by the monitor shall be used as the initial bid in the public auction.

Member States shall ensure that the protections granted to the initial bidder in the preparation phase are commensurate and proportionate.

4. Member States shall provide that the court or the competent authority can decide that a valuation of the business of the debtor as a going concern is carried out on the ground that the best bid might not meet the best-interest-of-creditors test.

Where, under national law, the sale of the debtor's business, or part thereof, requires the consent of the creditors, Member States may provide that the decision referred to in the first subparagraph can be taken by the creditors without the involvement of the court or competent authority.

Article 30

Assignment or termination of executory contracts

1. Member States shall ensure that the acquirer of the debtor's business, or part thereof, is assigned the executory contracts which are necessary for the continuation of that business and the suspension of which would lead to a business standstill. The assignment shall not require the consent of the debtor's counterparty or counterparties.

The first subparagraph shall not apply where the acquirer of the debtor's business, or part thereof, is a competitor of the debtor's counterparty or counterparties.

2. Member States may provide that the consent of the debtor's counterparty or counterparties is required depending on the type of contract, the nature of the parties, or the interests of the business.

3. Without prejudice to other termination rights, Member States may provide that the counterparty or counterparties can terminate executory contracts assigned under paragraph 1 subject to a notice period of no less than three months of the assignment, provided that the assignment of the contract would unfairly prejudice the counterparty or counterparties.

4. Member States may provide that executory contracts relating to licences of intellectual and industrial property rights of which the debtor is the licensor are not terminated without the consent of the licensee.

Article 31

Debts and liabilities of the business acquired via pre-pack proceedings

1. Without prejudice to Article 30 and Article 38(1) and (2), as well as to the obligations arising from employment relations affected by the sale of the business, or part thereof, Member States shall ensure that the acquirer acquires the debtor's business, or part thereof, free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.

2. Paragraph 1 is without prejudice to national laws providing that the conduct of the debtor is taken into account in the assessment of the acquirer's liability for damages where that conduct can be imputed to the acquirer under the applicable law.

Article 32

Suspensive effect of appeals

Member States may provide that, where national law provides for appeals against decisions of the court or the competent authority relating to the authorisation or execution of the sale of the debtor's business, or part thereof, such appeals do not have suspensive effect unless adequate measures are taken to cover any damage that might be caused by an unjustified stay of the execution of the sale, such as the requirement for a security to be provided by the appellant or the appellant being liable for such damage.

Chapter 4
Common provisions

Article 33

Criteria for selecting the best bid

Member States shall set the criteria for selecting the best bid in the pre-pack proceedings. Member States shall ensure that those criteria are the same as the criteria for selecting among competing bids in insolvency proceedings.

Member States may include the preservation of employment in the criteria referred to in the first paragraph.

Article 34

Civil liability of monitors and insolvency practitioners

Member States shall ensure that monitors and insolvency practitioners are liable for damage caused to creditors by their intentional or negligent failure to comply with their obligations under this Title.

Article 35

Parties closely related to the debtor in the sale process

1. Member States shall ensure that parties closely related to the debtor are eligible to acquire the debtor's business, or part thereof, provided that all of the following conditions are met:

   (a) the parties closely related to the debtor disclose in their bid to the monitor their relation to the debtor;

   (b) parties other than those referred in point (a) receive adequate information on the existence of parties closely related to the debtor and their relation to the debtor;

   (c) in the case provided for in Article 29(1), point (a), a valuation of the business as a going concern is carried out for the purposes of the statement of the monitor referred to in Article 24(2), point (c);

   (d) parties not closely related to the debtor are granted sufficient time to submit a bid.

   Member States shall provide that, where it is proven that a party closely related to the debtor failed to comply with the conditions set out in the first subparagraph, point (a), the court or competent authority can revoke the benefits referred to in Article 31(1).

2. Where the bid submitted by a party closely related to the debtor is considered as the best bid, Member States may introduce additional safeguards for the authorisation and execution of the sale of the debtor's business or part thereof.

Article 36

Interim financing

1. Where interim financing is needed, Member States shall ensure that:

   (a) interim financing is not declared void, voidable or unenforceable; and

   (b) the grantors of interim financing do not incur civil, administrative or criminal liability on the grounds that such financing is detrimental to the general body of creditors, unless national law provides for other grounds for such liability.

2. Member States may provide that grantors of new or interim financing are entitled to receive payment with priority in the context of subsequent insolvency procedures in relation to other creditors that would otherwise have superior or equal claims.

3. Subject to the priority ranking of claims arising during insolvency proceedings, Member States may provide that:

   (a) security interests over the sale proceeds can be granted to grantors of interim financing in order to secure reimbursement; and

   (b) interim financing is eligible to be offset against the price to be disbursed under the adjudicated bid, when provided by interested bidders.

4. Member States may provide that paragraph 1 apply only to interim financing which has been subject to *ex ante* control.

Article 37

Pre-emption rights and credit bidding

1. Without prejudice to Article 38(1), Member States shall ensure that no pre-emption rights are granted to bidders. Member States may provide that statutory pre-emption rights not affected by the insolvency of the debtor are maintained and are enforceable.

2. Member States shall ensure that, where security interests encumber the business which is the subject of the pre-pack proceedings, creditors that are the beneficiaries of those security interests may offset their claims against the purchase price only up to an amount not exceeding the market value of the business.

Article 38

Protection of the interests of the creditors

1. Member States shall ensure that security interests or other encumbrances are released in the course of the pre-pack proceedings in accordance with the same requirements that would apply in insolvency proceedings under national law.

2. Member States whose law makes the release of security interests conditional upon the consent of holders of secured claims in insolvency proceedings may provide that such consent is not required in the course of the pre-pack proceedings.

Article 39

Impact of competition law procedures on the timing or the successful outcome of the bid

1. Member States shall ensure that, where there is an appreciable risk of a delay ensuing from a competition law procedure or of a negative decision by a competition authority in relation to a bid submitted in the course of the preparation phase, the monitor or the debtor takes appropriate steps for alternative bids to be submitted.

2. Member States shall ensure that the monitor can receive information on the applicable competition law procedures and on any outcome of such procedures that might affect the timing or the successful outcome of the bid, provided that the disclosure of information by the competition authority is not contrary to national rules on the protection of business secrets. In that regard, the monitor shall be subject to a duty of confidentiality in accordance with national law.

3. Member States shall ensure that a bid may be disregarded where it entails an appreciable risk of a delay as referred to in paragraph 1, provided that both of the following conditions apply:

   (a) the bid is not the only bid; and

   (b) the delay in the conclusion of the sale to the bidder concerned would result in damage to the debtor's business or part thereof.

TITLE V
DIRECTORS' DUTY TO REQUEST THE OPENING OF INSOLVENCY PROCEEDINGS AND CIVIL LIABILITY

Article 40

Duties of directors

1. Member States shall ensure that the directors of a company which becomes insolvent in accordance with national law have a duty to submit a request for the opening of insolvency proceedings, with the exception of preventive restructuring proceedings.

   In Member States where Regulation (EU) 2015/848 applies, the duty to submit a request for the opening of insolvency proceedings refers to the proceedings set out in Annex A to that Regulation, with the exception of preventive restructuring proceedings.

2. A request as referred to in paragraph 1 shall be submitted to the court or the authority competent for insolvency proceedings within three months of the directors having become aware, or being reasonably expected to have become aware, that the company is insolvent in accordance with national law.

Article 41

Non-application or suspension of the duty to submit a request for the opening of insolvency proceedings

1. Member States may provide that the duty referred to in Article 40(1) does not apply to directors who are natural persons and are personally liable for all of the company's debt.

2. Member States may provide that the duty referred to in Article 40(1) can be discharged by way of informing the public of the company's insolvency through a notification in a public register, before the expiry of the time limit referred to in Article 40(2), in order to ensure that the creditors are able to request the opening of insolvency proceedings.

3. Member States may provide that the duty referred to in Article 40(1) is suspended if the directors take measures that are designed to avoid damage to the creditors of the insolvent company and that ensure a level of protection for the general body of creditors that is equivalent to the protection provided by the duty referred to in Article 40(1).

Article 42

Civil liability of directors

1. Member States shall ensure that the directors of an insolvent company are liable, in accordance with national law, for damage caused to creditors as a result of their failure to discharge the duty referred to in Article 40.

2. Where Member States have exercised the option provided for in Article 41(3), they shall ensure that directors who take measures as referred to therein are liable, in accordance with national law, for damage caused to creditors that would not otherwise have been caused had the opening of insolvency proceedings been requested in accordance with Article 40(1).

3. Member States may provide that liability as referred to in paragraph 2 of this Article is excluded where and to the extent that the directors can demonstrate, on the basis of objective circumstances, that the measures taken were reasonably likely to secure an equivalent or better outcome for creditors than that provided by the duty referred to in Article 40(1).

Article 43

Relation to other instruments

This Title is without prejudice to Article 7 of Directive (EU) 2019/1023.

TITLE VI
CREDITORS' COMMITTEES

Chapter 1
Establishment and members of creditors' committees

Article 44

Establishment of creditors' committees

1. Member States shall ensure that a creditors' committee is established after the opening of insolvency proceedings if the general meeting of creditors so decides or requests or, where national law does not provide for a general meeting of creditors, if creditors so request in accordance with national law.

2. Member States may provide that a creditors' committee can be established before the opening of insolvency proceedings in accordance with national law.

   Member States shall ensure that, when the creditors' committee is established, the composition of the creditors' committee is decided upon.

3. Member States may provide that a creditors' committee is not established where, due to circumstances related to the nature and scope of the debtor's business, they determine that the burdens of its establishment would outweigh the benefits. Member States shall ensure that those circumstances, which may include the low economic relevance of the insolvency estate, the low number of creditors, the small size of the debtor or the negative effect on the financial situation of the debtor caused by possible delays in the establishment of a creditors' committee, are clearly set out in national law.

Article 45

Appointment and composition of creditors' committees

1. Where a creditors' committee is established pursuant to Article 44, Member States shall ensure that the members of the creditors' committee are appointed without undue delay either at the general meeting of creditors or by decision of the court.

2. Member States shall ensure that the composition of creditors' committees fairly reflects, as far as possible, the different interests of creditors.

When workers are among the creditors, Member States shall ensure that those workers or their representatives are eligible for appointment to the creditors' committee, unless there is at least another equivalent mechanism for representing the interests of workers in insolvency proceedings.

Member States may provide that persons and entities other than creditors are also eligible for appointment to creditors' committees.

3. Member States shall ensure that cross-border creditors are eligible for appointment to creditors' committees.

4. Member States shall ensure that, where national law provides for appeals, any interested party defined in accordance with national law can challenge before the court the appointment of one or more members of a creditors' committee on the grounds that the appointment was not made in accordance with applicable law.

Article 46

Removal of members and replacement

1. Member States shall lay down rules specifying the grounds and procedures for the removal and replacement of members of creditors' committees. Those rules shall also provide for the situation where members of a creditors' committee resign or are unable to perform their duties.

2. Grounds for removal as referred to in paragraph 1 shall include at least an intentional or grossly negligent breach of duties of a serious nature with respect to the interests of the general body of creditors, such as situations of conflict of interest.

Chapter 2

Working methods and function of creditors' committees

Article 47

Working method of creditors' committees

1. Member States shall lay down rules specifying the following aspects of the working methods of creditors' committees:

   (a) the voting procedure, including eligibility to vote and the necessary quorum;

   (b) conflicts of interest;

   (c) the confidentiality of information;

   (d) record-keeping of the decisions taken.

2. Member States shall ensure that creditors' committees can further specify their working methods by means of protocols, provided that such protocols comply with the rules laid down in paragraph 1. Such protocols shall be made available at least to the court and the insolvency practitioner.

3. Member States shall provide that the members of creditors' committees are allowed to participate and vote either in person or via electronic means. Member States may provide that the members of creditors' committees are given the possibility to vote in writing.

4. Member States shall ensure that members of creditors' committees can be represented by a duly authorised person.

Article 48

Function, rights and duties of creditors' committees

1. Member States shall ensure that creditors' committees have rights that safeguard their involvement in insolvency proceedings and enable them to examine the activities of insolvency practitioners or, where a debtor remains in possession, of the debtor, including:

   (a) the right to hear and be heard by insolvency practitioners on matters of interest to the general body of creditors, including major decisions, such as the sale of assets outside the ordinary course of business;

   (b) the right to be heard in insolvency proceedings;

   (c) the right to request and receive relevant and necessary information from represented creditors and from insolvency practitioners or, where a debtor remains in possession, from the debtor.

Member States may provide, that creditors' committees have the right to appoint a secretary and to request external advice on matters in which the creditors they represent have an interest.

2. Member States shall ensure that creditors' committees, during the course of their activities, represent the interests of the general body of creditors and act independently of insolvency practitioners.

Member States shall ensure that the members of creditors' committees represent the interests of the whole body of creditors and act in good faith when carrying out the functions of the committee.

3. Member States may entrust creditors' committees with the power to approve certain decisions or legal acts. In such a case, Member States shall clearly specify the matters on which such approval is required, which may include all decisions of special importance to the proceedings.

4. Member States shall ensure that creditors, members of creditors' committees and any professionals assisting creditors' committees maintain the confidentiality of confidential information obtained in connection with the committee's activities.

Article 49

Expenses and remuneration

1. Member States shall specify who bears the expenses incurred by creditors' committees or their individual members in exercising the function referred to in Article 48.

2. Where the expenses referred to in paragraph 1 are borne by an insolvency estate, Member States shall ensure that the creditors' committee or its individual members keep a record of such expenses and the court or competent authority or insolvency practitioner has the authority to limit unjustified or disproportionate expenses.

3. Where Member States allow members of a creditors' committee to be remunerated and such remuneration is borne by an insolvency estate, they shall ensure that the remuneration is proportionate to the function performed.

Article 50

Liability

1. Member States shall ensure that at least one of the following rules apply:

   (a) members of creditors' committees are exempt from personal liability for their actions in their capacity as members of the committee unless they have been found to have violated their duties with respect to the creditors' interests intentionally or through gross negligence;

   (b) the personal liability of the members of creditors' committees for their actions in their capacity as members of the committee is covered by insurance which is borne by the insolvency estate in accordance with Article 49(2).

2. Where Member States entrust creditors' committees with the power to approve certain decisions or transactions, they may provide that the members of creditors' committees have the same liability as an insolvency practitioner.

TITLE VII
MEASURES ENHANCING TRANSPARENCY OF NATIONAL INSOLVENCY LAWS

Article 51

Key information factsheet

1. Without prejudice to paragraph 10, by … [39 months from the date of entry into force of this Directive] each Member State shall draw up a key information factsheet on essential elements of national law on insolvency proceedings (the 'key information factsheet') and submit it to the Commission through the European e-Justice Portal.

2. Key information factsheets shall be drawn up in an official language of the institutions of the Union.

3. The content of key information factsheets shall be concise, accurate, clear and non-technical and shall be set out in a factual manner.

4. Key information factsheets shall include the following sections in the following order:

   (a) the conditions for the opening of insolvency proceedings;

   (b) the rules governing the lodging, verification and admission of claims;

   (c) the rules governing the ranking of creditors' claims and the distribution of proceeds from the realisation of assets ensuing from the insolvency proceedings;

(d) the average reported length of insolvency proceedings, as referred to in Article 29(1), point (b) of Directive (EU) 2019/1023.

5. The section referred to in paragraph 4, point (a), shall include:

(a) the list of persons that can request the opening of insolvency proceedings;

(b) the list of conditions that trigger the opening of insolvency proceedings;

(c) how and where to submit a request for the opening of insolvency proceedings;

(d) how and when the debtor is notified of the decision on whether to open insolvency proceedings.

6. The section referred to in paragraph 4, point (b), shall include:

(a) the list of persons that can lodge a claim;

(b) the list of conditions for lodging a claim;

(c) the time limit for lodging a claim;

(d) how to obtain the form for lodging a claim, if applicable;

(e) how and where to lodge a claim;

(f) how the claim is verified and validated.

7. Member States shall update the information referred to in paragraph 4 within one month of the entry into force of any relevant amendments to national law. Key information factsheets shall contain the following statement: ‘This key information factsheet is accurate as at … [the date of submission of the information to the Commission or the date of the update]’.

8. The Commission shall ensure that key information factsheets are available to the public in English, French and German and the original language, if different, on the European e-Justice Portal under the ‘insolvency/bankruptcy’ section for each Member State.

9. The Commission shall be empowered to modify the format of the key information factsheet by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 53(2).

10. Member States where Regulation (EU) 2015/848 is applicable shall provide the key information factsheet referred to in paragraph 1 of this Article through the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC in a manner consistent with Article 86 of that Regulation.

TITLE VIII
FINAL PROVISIONS

Article 52

Emergency measures

1. Member States may derogate from the application of national provisions transposing Titles II, V and VI in the event of extraordinary situations which seriously disrupt economic activities at the level of the Member States or their regions where and to the extent that the application of the national provisions transposing those Titles would entail a risk of widespread insolvencies, including for companies that would be viable under ordinary circumstances.

2. The derogation referred to in paragraph 1 and its duration shall be proportionate and limited to what is essential for containing, mitigating, resolving or preventing the serious disruption referred to in that paragraph.

3. Member States shall notify the Commission of a derogation as referred to in paragraph 1 within one month of its entry into force.

When notifying the Commission in accordance with the first subparagraph, the Member States shall list the provisions of this Directive from which they have derogated, the nature and extent of the exceptional circumstances on which the derogation is based, the duration of the derogation, and the reasons for which the derogation is considered essential for containing, mitigating, resolving or preventing serious disruption to economic activities as referred to in paragraph 1. The Commission shall inform the other Member States thereof without undue delay.

4. A derogation as referred to in paragraph 1 may have a maximum duration of one year.

Where and to the extent that the extraordinary situation which seriously disrupts economic activities persists, the derogation may be extended by periods of up to six months provided that the Member State notifies the Commission to that effect no later than three months before the expiration of the previous derogation period. That extension shall take effect unless the Commission objects, at the latest one month before the expiration of that previous derogation period, on the basis that the extension does not comply with the requirements set out in paragraphs 1 and 2.

Article 53

Committee procedure

1. The Commission shall be assisted by the Committee on Restructuring and Insolvency established by Article 30 of Directive (EU) 2019/1023. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 54

Review

No later than … [7 years and nine months from the date of the entry into force of this Directive] and every five years thereafter, the Commission shall present to the European Parliament, to the Council and to the European Economic and Social Committee a report assessing the application and impact of this Directive. On the basis of that assessment, the Commission shall submit, where appropriate, a legislative proposal.

Article 55

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … [33 months from the date of entry into force of this Directive]. They shall immediately inform the Commission thereof.

   Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 15, 16 and 17 of this Directive, to the extent they relate to BARIS, by the date referred to in the first subparagraph of this paragraph or by 10 July 2029, whichever is later in time.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Title II applies only to legal acts perfected from the date of entry into force of the laws, regulations and administrative provisions necessary to comply with this Directive referred to in the first subparagraph of paragraph 1.

3. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 56

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 57

Addressees

This Directive is addressed to the Member States.

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

National registers and databases as referred to in Article 19

1. Cadastral registers;

2. Land registers;

3. Movable property registers including registers of vehicles, ships and aircrafts, where property rights are registered in such registers;

4. Registers of donations;

5. Mortgage registers;

6. Registers or databases containing information on the ownership of securities, such as central securities depositories, as defined in Article 2 of Regulation (EU) No 909/2014;

7. Registers of pledges, including lease agreements, and of sale-purchase agreements with retention of title;

8. Registers containing property seizure acts;

9. Registers of intellectual property rights, including patent and trademark registers.