



Council of the  
European Union

Brussels, 29 July 2024  
(OR. en)

12447/24

LIMITE

JUSTCIV 131  
ECOFIN 895  
COMPET 814  
JAI 1232  
CODEC 1686

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Interinstitutional File:  
2022/0408(COD)

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#### NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	15896/22 + ADD 1 + ADD 2 + ADD 3 + ADD 4
Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - Second Presidency draft compromise proposal on Title III

Delegations will find in Annex the second Presidency draft compromise proposal on Title III of the above mentioned directive.

All changes compared to the latest version are indicated in **bold and underline** or ~~strikethrough~~, while the other changes compared to the Commission proposal are indicated in **bold** or ~~strikethrough~~.

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[...]

- (13) Improving the ~~possibilities~~ means ~~ties~~ available to of insolvency practitioners in order to identify and trace assets belonging to the insolvency estate, as well as assets subject to avoidance actions, is essential ~~for the maximisation~~ to maximise of the value of that estate. When performing their duties, insolvency practitioners ~~may~~ can, already now, access information held in public data registers, ~~partly~~ some of which have been established under ~~set up by~~ Union law and are interconnected at European level, such as the Business Registers Interconnection System (BRIS); ~~or~~ or the system of Insolvency Registers Interconnection (IRI) ~~or the Beneficial Ownership Registers Interconnection System (BORIS)~~. Having access only to ~~Accessing the~~ information held in public databases, however, is often not ~~satisfactory~~ sufficient in order to identify and trace ~~important~~ assets that are or should be form in part of the perimeter of the insolvency estate. In particular, insolvency practitioners face practical difficulties when they try to access asset registers ~~situated abroad~~ located in Member States other than that in which they have been appointed.
- (14) —It is therefore necessary to lay down provisions to ensure that insolvency practitioners, when performing their duties in insolvency proceedings, can have, either directly or indirectly, access to information held in databases which are not publicly accessible.

- (15) ~~Prompt~~ **Immediate** direct access to ~~centralised bank account registers~~ **and electronic** data retrieval systems is often indispensable ~~for the maximisation~~ **to maximise** of the value of the insolvency estate. Therefore, rules should be laid down granting direct access to information held in ~~the centralised bank account registers~~ **or and electronic** data retrieval systems ~~to~~ **for the** designated Member States' courts ~~or public-administrative authorities that have jurisdiction in insolvency proceedings~~ **of the Member States. For the purposes of tracing and identifying assets belonging to the insolvency estate, as well as assets subject to avoidance actions, is essential that access is granted not only to the bank account information of the debtor but also to the bank account information of third parties who are supposed beneficiaries of void, voidable or unenforceable legal acts. Initially, the search concerns bank account information of the debtor. If this information shows that it is useful or that there are indications to also view bank account information of third parties, this is also possible.** 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 in an immediate and unfiltered way to the designated courts ~~or administrative authorities.~~
- (16) In order to respect the right to the protection of personal data and the right to privacy, direct and immediate access to bank account ~~registries~~ **registers** should be granted ~~only~~ to courts ~~with jurisdiction in insolvency proceedings~~ **or to public-administrative authorities** that are designated by the Member States for that purpose. Insolvency practitioners should therefore be allowed to access information held in the bank account registries ~~only~~ indirectly by requesting the designated courts ~~or public-administrative authorities~~ in their Member State to access **the registers** and run the searches. ~~The eExchanges of information should be limited~~ **granted only on a case-by-case basis, meaning only where relevant to a specific insolvency proceedings for the purpose of identifying and tracing assets belonging to the insolvency estate of the debtor in those proceedings, including as well as those assets subject to avoidance actions.**

- (17) Directive (EU) ~~YYYY~~**2024**/XX of the European Parliament and of the Council<sup>1</sup> [*OP: Directive which replaces Directive 2015/849*] provides that the centralised automated mechanisms, **such as central registers or central electronic data retrieval systems**, are interconnected via the **bank account registers interconnection system (BARIS)**~~bank account registers (BAR)~~ single access point, 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 purposes of maximising the value of the insolvency estate in insolvency proceedings, the designated national courts **or administrative authorities** ~~having jurisdiction in insolvency matters~~ should be able to ~~directly~~ access and search the ~~centralised bank account registries registers~~ **and electronic data retrieval systems** of other Member States **directly**, through the BARIS ~~single access point put in place pursuant to Directive (EU) YYYY/XX [OP: Directive which replaces Directive 2015/849]~~.
- (18) Any personal data obtained under this Directive should ~~only~~ be processed **only** in accordance with the applicable data protection rules by designated courts, **designated or administrative authorities** and insolvency practitioners **and** where it is necessary and proportionate for the purposes of identifying and tracing assets belonging to the insolvency estate ~~of the debtor~~ in on-going insolvency proceedings.

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<sup>1</sup> OJ

- (19) Directive (EU) 2015 ~~2024/1640~~~~XX~~ 849 [OP: Directive which replaces Directive 2015/849] of the European Parliament and the Council<sup>1</sup> ensures that persons ~~who are able to demonstrate with~~ a legitimate interest are granted access to beneficial ownership information on trusts and other types of legal arrangements, in accordance with data protection rules. ~~Those persons are granted access to information on the name, month and year of birth and the country of residence and nationality of the beneficial owner, as well as the nature and extent of beneficial interest held. It is essential that insolvency practitioners can quickly and easily access that set of information for performing their tasks to trace~~ **For the purpose of tracing** assets in the context of ongoing insolvency proceedings. It is therefore necessary to clarify that in such a case access by insolvency practitioners ~~have~~ **are to be granted access in a timely manner access to a determined scope specific categories** of beneficial ownership information held in the interconnected central beneficial ownership registers. constitutes a legitimate interest. At the same time, the scope of data directly accessible by the insolvency practitioners should not be broader than the scope of data accessible by other parties having a legitimate interest.

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<sup>1</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141 5.6.2015, p. 73) Directive (EU) 2024/1640 of the European Parliament and of the Council of ... 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>).

- (20) To ensure that assets can be ~~efficiently~~ traced **efficiently** in the context of cross-border insolvency proceedings, insolvency practitioners appointed in a Member State should be granted expeditious access to **national** asset registers **and databases**, also ~~even if~~ when ~~these~~ registers are located in a different Member State **other than that in which the insolvency practitioner was appointed**, ~~meaning that~~ ~~the~~ requested information should **not** ~~be provided swiftly, but not necessarily be provided in an automatic way~~. Member States should also allow insolvency practitioners to ~~contact~~ **consult** ~~directly those such~~ registers ~~located in a different Member State~~ **directly**. The access conditions applying to foreign insolvency practitioners should not be more cumbersome than those applying to domestic insolvency practitioners.

# Title III

## TRACING ASSETS BELONGING TO THE INSOLVENCY ESTATE<sup>1</sup>

### Article 12a<sup>2</sup>

#### Relationship with national law

This Directive shall not prevent Member States from adopting or maintaining laws which facilitate access for insolvency practitioners to bank account information, beneficial ownership information and national registers and databases to a greater extent than those provided for in Chapters 1 to 3.

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<sup>1</sup> In document No. 11846/24 definitions in Article 2, (4) and (5) relating to Title II have not been correctly adapted to the terminology of Directive (EU) 2024/1640. The correct definitions are the following:

**Article 2**

(...)

- (d4) ‘bank account registers and electronic data retrieval systems’ means ~~the~~ centralised automated mechanisms, such as central registers or central electronic data retrieval systems, put in place in accordance with Article 16(1) of Directive 2024/1640~~---~~ of the European Parliament and of the Council\*;
- (e5) ‘central beneficial ownership registers’ means national central registers ~~on~~ holding the beneficial ownership information and the systems of interconnection of those registers referred to in Article 10 of Directive 2024/1640~~---~~ of the European Parliament and of the Council\*;
- (ea) ~~‘bank account information’ means the information set out in Article 16(3) of Directive 2024/1640~~---~~ of the European Parliament and of the Council\*;~~

\* Directive 2024/1640~~---~~ of the European Parliament and of the Council of 31 May 2024~~---~~ on the mechanisms to be put in place by the 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 repaling Directive (EU) 2015/849 (OJ L..., ELI:...).

<sup>2</sup> For Member States consideration whether such a Title-by-Title approach or rather a general provision on minimum harmonisation in Title I is preferred.

# Chapter 1

## Access to bank account information by designated courts and ~~designated authorities~~

### Article 13

#### Designated courts and ~~designated authorities~~

1. Each Member State shall designate, ~~among some or all of its courts or administrative authorities that are competent to hear cases related to procedures in restructuring, insolvency or discharge of debt, the~~ as courts or administrative authorities empowered to access and search its national ~~centralised~~ bank account **registers and electronic data retrieval systems** ~~registry established pursuant to Article 32a of Directive (EU) 2015/849~~ ('designated courts or ~~designated authorities~~').
2. Each Member State shall notify the Commission of its designated courts or ~~designated authorities pursuant to paragraph 1 ...~~ by ~~[6 months from transposition date]~~ **182 months from the date of entry into force of this Directive**, and shall notify the Commission of any amendment thereto. The Commission shall publish the notifications in the ~~Official Journal of the European Union~~ **European e-Justice Portal**.



Article 14

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

1. Member States shall ensure that, ~~upon request of the insolvency practitioner, where an insolvency practitioner is appointed in ongoing insolvency proceedings and upon its request,~~ the designated courts ~~or designated authorities~~ have the power to access and search, directly and immediately, bank account information listed in Article 32a(3) of Directive (EU) 2015/849 where the following conditions are met:
  - (a) the insolvency practitioner appointed in ongoing insolvency proceedings, including interim proceedings, requests bank account information; and
  - (b) where bank account information is necessary for the purposes of identifying and tracing assets belonging to the insolvency estate in ~~that those~~ proceedings, ~~including as well as~~ those assets subject to avoidance actions.
2. In facilitating cross-border access, Member States shall ensure that, ~~where an insolvency practitioner upon request of the insolvency practitioner is appointed in ongoing insolvency proceedings and upon its request,~~ the designated courts ~~or designated 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 (BARIS) single access point referred to in Article XX 16(6) of Directive (EU) YYYY2024/1640 of the European Parliament and of the Council of <sup>1</sup>XX [OP: the new Anti-Money Laundering Directive]** where the following conditions are met:

<sup>1</sup> 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>).

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

**(b) where bank account information is** necessary for the purposes of identifying and tracing assets belonging to the insolvency estate of the debtor in ~~that those~~ proceedings, ~~including as well as~~ **those assets** subject to avoidance actions.

**2a. Bank account information obtained pursuant to paragraphs 1 and 2 by means of accessing and searching the BARIS shall be processed only for the purpose for which it was obtained.**

**~~2b. Access and searches pursuant to this Article shall be without prejudice to national procedural safeguards.~~**

**3. ~~The additional~~ Information additional to that referred to in paragraphs 1 and 2 of this Article that Member States consider deem essential and include in the centralised bank account registers and electronic data retrieval systems registries pursuant to Article 32a(4) of Directive (EU) 2015/849 16(5) of Directive (EU) 2024/1640 XX<sup>1</sup> shall not be accessible and searchable by designated courts or designated authorities.**

**3a. Member States shall ensure that the designated courts or designated authorities verify whether the conditions for the purposes referred to in paragraphs 1 and 2 are met. If those conditions are met, Member States shall ensure that the designated courts or designated authorities transmit the bank account information obtained as a result of the access and search pursuant to paragraphs 1 and 2 to the insolvency practitioner who requested it.**

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<sup>1</sup> ~~Directive 2024 .../... of the European Parliament and of the Council of ... on the mechanisms to be put in place by the 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..., ELI:...).~~

4. 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 ~~central~~ bank account registers and electronic data retrieval systems transmit the bank account information expeditiously by an automated mechanism to the designated courts ~~or designated authorities~~, provided that no intermediary institution is able to interfere with the requested data or the information to be provided.

#### *Article 15*

#### **Conditions for access and ~~for~~ searches by designated courts and ~~designated authorities~~**

1. Access to and searches of bank account information in accordance with Article 14, shall be performed only on a case-by-case basis by the staff of each designated court ~~or designated authority~~ that ~~has~~ve been specifically appointed and authorised to perform those tasks.
2. Member States shall ensure that:
  - (a) the staff of the designated courts ~~and designated authorities~~ maintain high professional standards of confidentiality and data protection, and that they are of high integrity and are 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 designated authorities~~ of the power to access and search bank account information, in accordance with Article 14.

**Monitoring access and searches by designated courts and designated authorities**

1. Member States shall provide that the authorities operating the ~~centralised bank account registries~~ **registers and electronic data retrieval systems** ensure that logs are kept for each time a designated court ~~or designated 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 designated authority~~ accessing or searching the register or electronic data retrieval system consulting the registry;
  - (f) the unique user identifier of the staff member of the designated court ~~or designated authority~~ who made the query ~~or performed the search~~ and, where applicable, of the judge who ordered the query or search and, as far as possible, ~~the unique user identifier of the recipient of the results of the query or search~~ requesting insolvency practitioner.
2. The authorities operating the ~~centralised bank account registries~~ **registers and electronic data retrieval systems** shall check the logs referred to in paragraph 1 regularly.

3. The logs referred to in paragraph 1 shall be used only for the monitoring of compliance with this Directive and obligations ~~stemming from~~ **pursuant to** the applicable Union legal ~~law instruments~~ on data protection. ~~The monitoring shall include verifying the admissibility of a request and the lawfulness of personal data processing, and whether the integrity and confidentiality of personal data is ensured.~~ The logs shall be protected by appropriate measures against unauthorised access and shall be erased five years after their creation, unless they are required for monitoring procedures that are ongoing.

## Chapter 2

### Access by insolvency practitioners to beneficial ownership information

#### *Article 17*

##### **Access by insolvency practitioners to beneficial ownership information**

1. ~~Member States shall ensure that insolvency practitioners, when identifying and tracing assets relevant for the insolvency proceedings for which they are appointed, have timely access to the following information referred to in Article 30(5), second subparagraph, and in Article 31(4), second subparagraph, of Directive (EU) 2015/849 which is held in the beneficial ownership registers set up in the Member States and is accessible through the system of interconnection of beneficial ownership registers set up in accordance with Article 30(10) and Article 31(9) of Directive (EU) 2015/849.~~ **on beneficial owners of legal entities and legal arrangements held in the {interconnected central} beneficial ownership registers, without alerting the entity, arrangement or beneficial owner concerned:**

- (a) the name;
- (b) the month and year of birth;
- (c) the country of residence and nationality or nationalities;

- (d) for beneficial owners of legal entities, the nature and extent;
- (e) for beneficial owners of express trusts or similar legal arrangements, the nature of their beneficial ownership.

2. ~~Access to the information by the insolvency practitioners in accordance with paragraph 1 of this Article shall constitute a legitimate interest, whenever it is necessary for identifying and tracing assets belonging to the insolvency estate of the debtor in ongoing insolvency proceedings and is limited to the following information:~~

- (a) ~~the name, the month, the year of birth, the country of residence and the nationality of the legal owner;~~
- (b) ~~the nature and the extent of the beneficial interest held.~~

## Chapter 3

### Access by insolvency practitioners to national asset registers and databases

#### *Article 18*

##### **Access by insolvency practitioners to national asset registers and databases**

1. Member States shall ensure that insolvency practitioners, regardless of the Member State in which ~~where~~ they have been appointed, have direct and expeditious access to the information necessary for the purposes of identifying and tracing assets belonging to the insolvency estate, as well as assets subject to avoidance actions, held in existing national asset registers and databases listed in the Annex ~~located in their territory, where~~ if available according to national law.

2. With respect to access to the national ~~asset~~-registers **and databases** listed in the Annex, ~~every~~ **a** Member States shall ensure that the insolvency practitioners appointed in another Member State are not subject to access **and search** conditions that are ~~de jure or de facto~~ less favourable than ~~the conditions~~ **those** granted to the insolvency practitioners appointed in that Member State.
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**National-asset registers and databases referred to in Article 18**

1. Cadastral registers;
2. Land registers;
3. Movable property registers including registers of vehicles, ships and aircrafts, **provided that property rights are registered in those registers** ~~and registers of weapons;~~
4. Register of donations;
5. Mortgage registers;
6. **Registers or databases containing information on the ownership of securities, including central securities depositories, as defined in Article 2 of Regulation (EU) No 909/2014 and in accordance with Article 29(2) of that Regulation** ~~Other security registers, including securities depository registers and book-entry registers;~~
7. Registers of pledges including lease agreements and sale-purchase agreements with retention of title;
8. Registers containing property seizure acts;
- ~~9. Probate registers;~~
10. Registers of intellectual property rights, including patent and trademark registers;
- ~~11. Registers of internet domains;~~
- ~~12. Register of General Terms and Conditions.~~