

Brussels, 17 October 2024
(OR. en)

14518/24

LIMITE

JUSTCIV 172
ECOFIN 1147
COMPET 1021
JAI 1500
CODEC 1944

Interinstitutional File:
2022/0408(COD)

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 - Third Presidency draft compromise proposals on Title III and V and second compromise proposal on Title VIII

Delegations will find in Annex the third Presidency draft compromise proposals on Title III and V and a second compromise proposal on Title VIII 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~~.

[...]

- (13) Improving the possibilities ~~available to~~ **available to** 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 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~~ **providing for** 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 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, it 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 where there are reasonable grounds to consider that they are beneficiaries of 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 in an immediate and unfiltered way to the designated courts **or 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 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 authorities** in their Member State to access **the registers** and run the searches. **Member States should be also able to provide that the conditions for access and search of bank account information should be verified by courts or authorities other than the designated courts or authorities under this Directive.** ~~The eExchanges of~~ **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, Member States may, in line with the minimum harmonisation nature of this Directive, adopt or maintain national rules that provide for direct access and search for insolvency practitioners in bank account registers and electronic data retrieval systems.**

- (17) Directive (EU) ~~YYYY~~**2024/1640**~~XX~~ of the European Parliament and of the Council¹ [~~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 **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.

¹ OJ

- (19) Directive (EU) 2015 ~~2024/1640~~^{XX} 849 ~~[OP: Directive which replaces Directive 2015/849]~~ of the European Parliament and the Council[†] 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 are to be granted access in a timely manner to 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.~~

[†] ~~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~~ **efficiently** traced 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 those registers are located in a ~~different~~ Member State **other than that in which the insolvency practitioner was appointed. Access should be provided 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.** ~~The requested information should not be provided swiftly, but not necessarily be provided in an automatic way.~~ In line with the minimum harmonization nature of this Directive, Member States should be able to also allow provide for insolvency practitioners to contact direct access to and search in consult the datasets contained by such registers or databases. The access conditions applying to foreign insolvency practitioners should not be more cumbersome than those applying to domestic insolvency practitioners.

Procedural aspects of receiving and granting the requests submitted by domestic or foreign insolvency practitioners, such as language of the procedure or the verification of conditions of access, should be governed by the law of the Member State where the registers and databases are held.

- (20a) For securities registered in central securities depositories or other registers or databases containing information on the ownership of securities, it is essential that the information on the ultimate owner of securities be accessible for insolvency practitioners to enable effective asset tracing, and to accurately identify whether certain securities form part of the insolvency estate. To that end, registers or databases containing information on the ownership of securities which do not hold the information on the individual owners of the securities should be required to retrieve this information through the chain of custody, in order to be able to communicate the information regarding securities held by the debtor to the insolvency practitioners appointed in ongoing insolvency proceedings.

[...]

- (32) Directors oversee the management of the affairs of a legal entity **company** and have the best overview of its financial situation. Directors are therefore among the first to realise whether a legal entity **company** is approaching or surpassing the brink of insolvency. A late filing for insolvency by directors may lead to lower recovery values for creditors. Member States should therefore introduce an obligation on directors to submit a request for the opening of insolvency proceedings ~~which could end in the liquidation of the assets of that insolvent company~~ within a specified time-period. **In the context of this duty Member States may define insolvency in a way that differs from the trigger for the opening of insolvency proceedings. Member States should also define to whom the directors' duties should apply taking into account that the notion of "director" should be interpreted broadly, to cover all persons who are in charge of making or do in fact make or ought to make key decisions with respect to the management of a legal entity. For the purposes of this Directive, Member States should also provide for the persons to whom the duties of directors apply, taking into account the variety of responsibilities that certain persons or bodies may have with respect to decisions relating to the management of the company.**
- (32a) Member States should set a deadline for the duty to submit a request for the opening of insolvency proceedings that is no longer than three months of the directors having become aware, or being reasonably expected to have become aware that the company is insolvent. If the company regains its solvency before the deadline set by Member States, Member States should be able to provide that a new period should start if the company becomes insolvent again thereafter.

~~(32b) Member States should be able to choose to suspend the duty to submit a request for the opening of insolvency proceedings, if preventive restructuring proceedings [or pre-pack proceedings] had already started before the company has become insolvent and are still ongoing when insolvency occurs. That suspension should apply in accordance with the conditions set out in the national law transposing Directive (EU) 2019/1023 in relation to preventive restructuring proceedings under that Directive.~~

(32c) It is essential that when a company becomes insolvent, the protection of the general body of creditors becomes the primary responsibility of the directors. As such protection may be achieved in different ways, Member States ~~This Directive should be~~ able to choose to suspend the duty to submit a request for the opening of insolvency proceedings, if not limit the possibilities of the Member States to provide for other ~~duties of the directors~~ take measures with the view to protect the interests of the general body creditors of the insolvent company, provided that such measures ensure an equivalent level of protection to the general body of creditors than the duty to submit a request for the opening of insolvency proceedings. Those ~~duties~~ measures can include, for example, informing creditors and business partners about the company's financial situation through a register notification, ~~or~~ a duty not to enter into obligations which the debtor cannot perform or initiating measures by the company's owners to restore solvency.

(33) To ensure that directors do not act **against the interests of creditors** ~~in their self-interest~~ 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 a breach of the duty to submit such a request. In that case, directors should compensate creditors for ~~the possible~~ damages resulting from the deterioration in the recovery value of the ~~legal entity~~ **company** compared to the situation where the request would have been submitted on time. **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 civil liability of directors related to the filing for insolvency that are stricter than those laid down by this Directive.

(33a) Where Member States allow directors to take other measures to protect the interests of the general body of creditors, rather than to comply with the duty to submit a request for the opening of insolvency proceedings, they should also lay down provisions that ensure that those directors are liable for possible damages caused to the creditors as a result of the measures taken. In such a case, creditors should be put in a position as they would be, if the request to open insolvency proceedings would have been submitted within the deadline set by the Member States for the duty to submit a request for the opening of insolvency proceedings.

[...]

- (58) To ensure an enhanced transparency of the key features of **all types of** national insolvency proceedings and help especially cross-border creditors to estimate what would happen if their investments got 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. A standardised key information factsheet should be prepared and made available to the public by Member States. ~~That~~**is** document would be ~~key~~**important** for potential investors to make a “glance-through” assessment of the insolvency proceedings rules in a given Member State. It should contain sufficient explanations to allow the reader to understand the information therein without having to resort to other documents. The key information factsheet should, in particular, include practical information on the **conditions that trigger the opening of insolvency trigger-proceedings** as well as on the steps to take to request the opening of insolvency proceedings or to lodge a claim. ~~As under~~**Since** ~~Regulation (EU) 2015/848 Member States are already obliged~~**required** to provide information on their national rules on insolvency procedures **under Regulation (EU) 2015/848, it is important to ensure that consistency between the information provided on the basis of Regulation (EU) 2015/848 and this under this Directive should be ensured****is consistent with information provided under Regulation (EU) 2015/848**. 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/EC¹.

[...]

¹ **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).**

Title III

TRACING ASSETS BELONGING TO THE INSOLVENCY

ESTATE

Article 12a

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 3.¹~~

¹ *This provision has been moved to Article 3a in Title I*

Chapter 1

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

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 authorities** pursuant to paragraph 1 ~~... by ...~~ **by ...** ~~{6 months from transposition date182 date242 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 appointed in ongoing insolvency proceedings~~ the designated courts **or 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, ~~upon request of the insolvency practitioner appointed in ongoing insolvency proceedings~~ the designated courts **or 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 'XX** [~~OP: the new Anti-Money Laundering Directive~~] **where the following conditions are met:-**

¹ **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 these assets subject to avoidance actions.~~

- 2a. **Member States shall ensure that bBank account information obtained pursuant to paragraphs 1 and 2 shall be processed, including by insolvency practitioners, only for the purposes for which it was obtained. 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 appropriate management of confidential information.**
3. ~~The additional information~~ **additional to that referred to in paragraphs 1 and 2 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) 2015/84916(5) of Directive (EU) 2024/1640 shall not be accessible and searchable by designated courts or designated authorities.**
- 3a. **Member States shall ensure that the designated courts or authorities referred to in Article 13 or other competent courts or 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 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.**

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 registries **and electronic data retrieval systems** transmit the bank account information expeditiously by an automated mechanism to the designated courts **or 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 authority** that ~~have~~ been specifically appointed and authorised to perform those tasks.
2. Member States shall ensure that:
 - (a) the staff of the designated courts **and 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 authorities** of the power to access and search bank account information, in accordance with Article 14.

Article 16

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 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 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 authority** who made the query ~~or performed the search~~ and, where applicable, of the judge **or official** who ordered the query or search and, ~~as far as possible,~~ **where available,** 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~~ **for the purposes of** identifying and tracing assets relevant for the insolvency proceedings for which they are appointed, **insolvency practitioners** 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~~ **the beneficial owners of legal entities and of legal arrangements held in the interconnected central beneficial ownership registers, and that such access be provided without alerting the entity, the arrangement or the 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 of the beneficial interest held;
- (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 available, in accordance with conditions provided for by 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~~ **applicable** to the insolvency practitioners appointed in that Member State.

Title V

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

Article 36

~~Duties to request the opening of insolvency proceedings of directors~~

1. Member States shall ensure that, where a ~~legal entity~~**company** becomes insolvent, ~~in accordance to national law~~, its directors ~~are obliged~~ **have the duty** to submit a request for the opening of insolvency proceedings ~~which could end in as set out in Annex A of Regulation (EU) 2015/848, with the exception of preventive restructuring proceedings the liquidation of the assets of that company.~~
2. The request referred to in paragraph 1 shall be submitted to ~~with~~ the court or the authority competent for the insolvency proceedings ~~no later than within 3 months of~~ after the directors ~~having~~ **became** aware, or ~~being~~ **can** reasonably be expected to have ~~become~~ **been** aware that the ~~legal entity~~**company** is insolvent **in accordance to national law**.

Member States may provide that the duty referred to in paragraph 1 does not apply if the debtor becomes solvent within the period specified in national law for the submission of the request for the opening of insolvency proceedings.

- ~~3. In addition to the duty referred to in paragraph 1, Member States may lay down further duties for directors in order to avoid damage to the creditors of insolvent companies.~~

Article 36a

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

1. Member States ~~shall~~may provide that the duty referred to in Article 36(1) does not apply if, according to national law, directors cannot request the opening of insolvency proceedings due to the lack of assets of the debtor~~the company is subject to insolvency proceedings which could end in the liquidation of its assets or if the company is under liquidation outside of insolvency proceedings in accordance with national law.~~
2. ~~Member States shall ensure that in the course of preventive restructuring frameworks under Title II of Directive (EU) 2019/1023, the duty referred to in Article 36(1) is suspended in accordance with the conditions set out in national law.~~
3. ~~Member States may provide that the duty referred to in Article 36(1) is suspended during preventive restructuring procedures under national law that are not covered by paragraph (2) of this Article.~~
4. ~~[Member States shall ensure that the duty referred to in Article 36(1) is suspended where pre-pack proceedings under Title IV of this Directive have been initiated...]~~¹.
5. Member States may provide that the duty referred to in Article 36(1) is suspended if the directors take measures that are designed to avoid damages for the creditors of the insolvent company and ensure a level of protection of the general body of creditors that is equivalent to the duty referred to in Article 36(1).

¹ Since Title IV is still under negotiation, the Presidency suggests that the reference to pre-pack proceedings under Title IV should only be finalized after the final text of Title IV itself is known. This element of this Article will not be part of the envisaged Partial General Approach.

Article 37

Directors' Civil liability of directors

1. Member States shall ensure that the **directors of the insolvent legal entity's company** ~~directors are liable, in accordance with national law, for damages incurred by~~ **caused to** creditors as a result of their failure to comply with the duty referred to in ~~the obligation laid down in Article 36.~~
2. Paragraph 1 shall be without prejudice to national rules on civil liability for the breach of the ~~duty of directors to submit a request for the opening of insolvency proceedings as set out in Article 36 that are stricter towards directors.~~

If Member States have made use of the option in Article 36a(3), they shall ensure that the directors who take measures referred to in Article 36a(3) are liable, in accordance with national law, for any damages caused to creditors that would not have otherwise been caused had the opening of the opening of insolvency proceedings been requested in accordance with Article 36.

Article 37a

Relation to other instruments

1. **The provisions of this Title shall not affect national laws transposing Article 7 of Directive (EU) 2019/1023.**

[...]

Title VIII

MEASURES ENHANCING TRANSPARENCY OF NATIONAL INSOLVENCY LAWS

Article 68

Key information factsheet

1. **Without prejudice to paragraph 10,** Member States shall provide **the Commission**, ~~within the framework of~~ **through** the European e-Justice Portal, a key information factsheet on certain elements of national law on insolvency proceedings (**the “key information factsheet”**).
2. The content of the key information factsheet ~~referred to in paragraph (1)~~ shall be **concise**, accurate, clear and ~~not misleading~~ **non-technical** and **shall** set out the ~~facts information~~ in a ~~balanced and fair~~ **factual** manner. ~~It shall be consistent with other information on insolvency or bankruptcy law provided within the framework of the European e-Justice Portal in accordance with Article 86 of Regulation (EU) 2015/848.~~
3. The key information factsheet shall:
 - (a) ~~be drawn up and submitted to the Commission in an official language of~~ **the institutions of** the Union by **...** ~~[306 months after the deadline for transposition from the entry into force of this Directive]~~;
 - (b) ~~have a~~ **maximum concise and no longer than ten** length of five sides of A4-sized paper when printed, ~~using characters of readable size;~~
 - (c) ~~be written in a clear, non-technical and comprehensible language.~~

4. The key information factsheet shall ~~contain~~**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) 2019/1023¹.
5. The section referred to in paragraph (4), point (a), shall ~~include~~**contain**:
- (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** ~~and how to submit the a~~ request for the opening of insolvency proceedings ~~can be submitted~~;
 - (d) how and when the debtor is notified of the **decision whether to opening** ~~ing~~ of insolvency proceedings.

¹ 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 (OJ L 172, 26.6.2019, p. 18).

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

- (a) the list of persons that can lodge a claim;
- (b) the list of conditions ~~to~~**for** lodging a claim;
- (c) the time limit ~~to lodge~~**for lodging** a claim;
- (d) ~~where to find~~**how to obtain** the form ~~to lodge~~**for lodging** a claim, ~~when if applicable~~;
- (e) how and where to lodge a claim;
- (f) how the claim is verified and validated.

~~7. The section referred to in paragraph (4), point (c), shall contain:~~

- ~~(a) a brief description of how rights and claims of creditors are ranked;~~
- ~~(b) a brief description of how proceeds are distributed.~~

8. Member States shall update the information referred to in paragraph 4 within ~~1~~**a** month ~~after~~
of the entry into force of ~~the~~**any** relevant amendments to national law. The key information factsheet 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]’.

8a. The Commission shall ~~arrange for~~**ensure** that **the** key information factsheet ~~to be~~**is accessible to the public** ~~in~~**translated into** English, French and German **and the original language, if different, or, if the key information factsheet is drawn up in one of those languages, into the other two of them, and make it accessible to the public** 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 ~~or to extend or reduce the scope of the technical information provided therein~~ by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 69(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 Council Decision 2001/470/EC¹ in a manner consistent with Article 86 of that Regulation.**

[...]

¹ 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).

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,
where provided that property rights are registered in such ~~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.~~