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From:	General Secretariat of the Council
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Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - Common position paper on Title VI

Delegations will find in annex the common position of the German, Austrian, Cypriot, Estonian, Finnish, Irish, Polish, Slovenian and Swedish Delegations on Title VI of the Commission's proposal for a Directive harmonising certain aspects of insolvency law.

**Common Position of the
German, Austrian, Cypriot, Estonian, Finnish, Irish, Polish, Slovenian and Swedish
Delegations
on Title VI
of the Commission's proposal for a Directive harmonizing certain aspects of insolvency law
(COM(2022) 702) (hereinafter: the "Proposal")**

While we support the Capital Markets Union and all measures that are suitable to improve it, Title VI of the Proposal should, in our view, be deleted without replacement.

- Title VI has little to contribute to the European Capital Markets Union.
- Title VI **adversely interferes with functioning insolvency systems** that rely on the functions of insolvency practitioners, as serious doubts are to be expressed in relation to the Proposal's assumption that insolvency practitioners' functions can be adequately and reliably substituted by the debtor and the courts/authorities.
- Title VI imposes **unnecessary costs and burdens**, given that costly and burdensome insolvency proceedings in relation to assetless companies and partnerships have no conceivable utility.

While recognizing the Proposal's purpose in Title VI to meet the special needs of microenterprises and while sharing the belief that some of the features of insolvency laws are more suitable for larger enterprises than for microenterprises, changes in the regimes should be based on **sound policy choices, a prudent analysis of expected impacts** (including, in particular, a thorough analysis of **existing regimes and their apparent flaws**) as well as consultations (including of Member States). Existing proposals on special proceedings for microenterprises are not ripe for adoption. We conclude that Title VI should be deleted without replacement.

If considered necessary, we are open to discussions on whether the Directive could provide that the Commission is to be mandated to carry out the required analysis and consultations in order to issue a substantive report.