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Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - Comments on Title VI

Delegations will find in the Annex comments from the Member States on the first Presidency compromise proposal on Title VI (doc. 6061/25) requested by CM 1881/25.

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PUBLIC

I. BELGIUM

TITLE VI – WINDING-UP OF INSOLVENT MICROENTERPRISES

General remarks

Like many member states, Belgium cannot support the current text of Title VI. As already stated several times, 95-97% of enterprises in Belgium are micro-enterprises. They are not excluded, in any way, from (efficient and/or appropriate) insolvency proceedings in Belgium. Although the current text under the Polish Presidency takes great strides forward and is certainly better, the scope of application for Belgium remains problematic. More than 90% of companies in Belgium will still be affected by these proceedings. Contrary to what is intended, this exceptional procedure then becomes the ordinary procedure. This means that once again the entire insolvency system in Belgium will have to be adapted. Our government's aim is to minimize the burden on micro, small and medium-sized enterprises: to implement a new radical reform two years after a complete reform of the insolvency law is diametrically opposed to this, precisely because these procedures are often only just discovered by citizens and enterprises. Changing these procedures again is detrimental to the legal certainty, credibility and quality of insolvency law in Belgium.

If the purpose of this title is to provide access to appropriate insolvency proceedings for microenterprises, which would not have access to appropriate insolvency proceedings in certain member states, this cannot be supported by Belgium. This title is very far-reaching and in substance (because of its scope) amounts to an ultimate reform of common insolvency law, with all its consequences and with all further impact on other branches of law. This is very sensitive. Surely there must be another way to fulfill such an objective.

While we welcome the clarification that it does not necessarily have to be a separate procedure open only to micro enterprises, the implication remains that this will have a huge impact on existing national procedures.

We do not oppose an article-by-article discussion, but cannot support the text given its enormous impact on the Belgian legal system. We ask that the title be optional.

Belgium takes a substantively critical but procedurally constructive stance.

PUBLIC

All of the following comments are detailed comments. It is the general view that this title should be made optional.

Art. 2

“Definitions”

The new definition does not provide a solution in the Belgian case. The scope remains more than 90% of companies in Belgium, which - for reasons mentioned above - is problematic and also undesirable. Especially regarding the balance sheet total parameter, this is undesirable for Belgium since the definition of a Belgian microenterprise states, among other things, that a company may have a maximum balance sheet total of €450,000. With this definition, therefore, virtually all Belgian micro-enterprises fall within the scope of this title and, consequently, approximately 90-95% of enterprises in Belgium.

Art. 38

“Rules on winding-up of microenterprises”

- **paragraph 1:** Given the general comments that will not be repeated for clarity, we ask that this article become optional. In addition, it is currently unclear whether this concerns a fast versus a normal procedure, between which it must be possible to switch. Or does this obligation concern the only procedure for micro-enterprises, in other words are there still other national options for micro-enterprises?
- **paragraph 2:** pleased with the deletion of this paragraph;
- **paragraph 3:** this provision is problematic for us. We especially have problems with “and conduct”: it is obvious to us that the lack of funds should not be a ground for refusing the opening of the proceedings: this would be an obstacle to access to justice. But it is possible that the proceedings are already terminated at the opening stage and that the company is already liquidated in the same opening decision. If “and conduct” remains in the text, this becomes difficult to reconcile. In addition, we question the necessity of this provision: for what reason is this so explicitly required only in the case of micro-enterprises?

PUBLIC

Art. 39

“Insolvency practitioner”

- The reference to 38(2) is incorrect because that provision has been deleted. In any case, this provision is unnecessary for us. The principle in paragraph 1 seems to be sufficient.
- We would like the text to clarify that when an insolvency practitioner is appointed, the entrepreneur loses management of the company. This is a key element of all bankruptcy proceedings in Belgium (except the prepack procedure). For us, it is absolutely unthinkable that in proceedings outside the prepack procedure, the “debtor remains in possession.

Art. 41

“Request for the opening of simplified winding-up proceedings”

Pleased with the deletions of paragraphs 2 through 7. What remains is highly logical to us. So we wonder if this article still has added value. Ditto paragraph 2: this is redundant for us and may be deleted.

Article 42

“Decision on the request for the opening of simplified winding-up proceedings”

- **paragraph 1:** in itself no objections to the 1-month deadline, but we also agree to remove the deadline and just use “promptly”;
- **paragraph 2:** Belgium supports the deletion of this paragraph;
- **paragraph 3**: in itself no objections to his paragraph, but then article 38.3 must be amended (see previous comment)

Article 43

~~**“Debtor in possession”**~~

Belgium supports the deletion of this article.

Article 44

“Stay of individual enforcement actions”

As far as we are concerned, Article 44.2 may be deleted, for us the exception is undesirable, but at this point we can be flexible since it is not an obligation.

PUBLIC

Article 46

"Lodgement and admission of claims"

We do not agree with the exception to the principle that the entrepreneur loses management of the business and consequently cannot accept this article. If the bankrupt is left to draw up a list of debts and creditors, we open the door to abuse. What if the debtor does not submit a list, or deliberately submits a wrong list, or "forgets" some creditors...?
We also generally find this article too detailed ("by individual notices", "45 days"). Furthermore, we also do not fully understand the scope of paragraph 5: do we read correctly here that the court can continue the proceedings without considering the "undisputed claims"? With this we cannot agree.

PUBLIC

The following articles have not yet been discussed at the technical meetings. The following comments are not final and may still be subject to possible further discussion (at future working group meetings):

Article 48

"Establishment of the insolvency estate"

- **Paragraph 1**: Here we refer to the comments under Article 46: we cannot agree with the powers given to the debtor here, in bankruptcy proceedings. This is contrary to what is essential for in in bankruptcy proceedings.
- **Paragraph 2**: what is the link with the deleted article 47 here? Why do we still talk about avoidance actions here?

Article 49

"Decision on the procedure to be used"

In general, we find the following items too detailed. We also find the title of this article confusing.
We repeat the comments under articles 46 and 48: we do not agree that the debtor has such powers.
We ask that this be deleted.

Article 54

"Sale of the assets by electronic auction"

We support the changes in this article. We like the fact that the creditors no longer have the right of decision on this.

Article 55

“Decision on the closure of the simplified winding-up proceedings”

- **Paragraph 1:** We understand and do not oppose the need to impose a deadline (“as a rule”). We do oppose the addition in the first paragraph that if this deadline is expired, the proceedings are converted to 'normal' proceedings. This is especially unclear to us. What are the consequences then? Do we then have to start from scratch? What then has been the point of this abbreviated procedure? And what 'normal' procedure should we switch to then? This is very unclear and for this reason we cannot agree to it.
- **Paragraph 2:** We do not understand the scope of “time period” here.

Article 56

“Access to discharge”

We are not convinced to harmonize this issue to this extent and regulate it here: we have reservations here.

Article 57

“Treatment of personal guarantees provided for business-related debts”

We are not convinced to harmonize this issue to this extent and regulate it here: we have reservations here.

PUBLIC

II. CZECH REPUBLIC

General comments on Title VI and related provisions:

The Czech Republic would like to thank the European Commission and the Polish Presidency for their efforts so far in revising the draft directive. We see the importance of harmonising the rules of national insolvency frameworks. However, as far as Title VI is concerned, we maintain our previous negative position. Despite the proposed revisions, the text does not provide a solid basis for expert discussion at working group level. We therefore request the deletion of Title VI from the proposal. We believe that the deletion of this title would significantly contribute to speeding up the discussion on the draft directive and to achieving a full general approach by the EU Council in the near future. A large majority of Member States have taken a negative position on Title VI.

We must stress that Title VI still does not provide sufficient safeguards to ensure adequate protection of creditors' rights, which we consider to be a major problem. On the contrary, the proposal increases the risk that creditors will be harmed in the event of bankruptcy. Their satisfaction may decrease as a result of the proposal. Instead of adding value, the proposal in many ways takes away value, namely the value of creditor protection. Such effects neither contribute to strengthening the Capital Markets Union nor to increasing competitiveness.

At expert level, the request to delete Title VI from the proposal was already made at the Working Party meeting on 31. 1. 2024. The deletion of this title was requested by delegations representing DE, AT, CY, EE, FI, IE, PL, SI, SE, BG, CZ, DK, HR, MT, NL, RO and SK. Some of the remaining Member States expressed their willingness to at least discuss the title, while at the same time raising substantial objections to the text.

At the meeting of the Working Party on 28. 2. 2025, the complete deletion of the title on the liquidation of micro-enterprises was again requested by the delegations of FI, IE, DK, BG, DE, AT, SE, SK, SI, EE, MT, HR, CY, HU, NL, BE and CZ.

At the political level, the request to remove Title VI from the proposal was confirmed at the meeting of Justice and Home Affairs Council on 7. 3. 2025. The removal of the title was requested by the Ministers of CZ, CY, DE, EE, HU, FI, IE, MT, NL, SE, SI and SK, despite the fact that the discussion of Title VI was not on the agenda.

Title VI provides for a special procedure for resolving the insolvency of micro-enterprises. Microenterprises, together with small and medium-sized enterprises (SMEs), account for 99% of enterprises in the EU, therefore the Czech Republic does not support the creation of a special insolvency regime for this type of entity. The adoption of such a procedure would contradict its intended specificity and make the current general insolvency framework peripheral, while the special insolvency procedure for microenterprises would become the main procedure. The Commission fails to address this argument. Put simply, the exception would become the rule and the majority of business insolvencies would be dealt with in a special procedure.

The revised text reduces the scope of Title VI (Article 2 of the proposal). In the original text, a micro-enterprise was defined as an enterprise with fewer than 10 employees and an annual turnover and/or annual balance sheet total not exceeding EUR 2 million. The revised text allows the thresholds to be lowered to 4 employees and EUR 500 000 turnover and/or annual balance sheet total. However, Title VI would still apply to the majority of entrepreneurs on the Czech market. The same is true for other Member States, according to their delegations. The proposed reduction of the scope does not remove our fundamental reservations, but only limits the expected negative effects of the proposal.

Moreover, the criteria on which the applicability of the title is based are highly debatable. The Commission admitted at the working party meeting that the title is primarily aimed at companies without assets which could be monetised in insolvency proceedings and the proceeds used to satisfy creditors. However, the number of employees and the size of the turnover are taken into account instead of the existence of monetizable assets. The size of the business should not be a determining factor in such a case. Moreover, the criterion of the number of employees is highly questionable. There is also no distinction as to whether the entrepreneur is a natural or a legal person.

If a company has employees, it is important to ensure that they are properly protected in the event of the company's insolvency. A simplified resolution of the business insolvency would reduce the level of protection of employees' rights. According to the proposal, the simplified insolvency procedure should be terminated immediately if the debtor's assets are insufficient. Employees' rights under Directive 2008/94/EC of the European Parliament and of the Council on the protection of employees in the event of the insolvency of their employer would therefore also be potentially jeopardised.

The ultimate aim of Title VI, according to the Commission's oral statement, is to open the way, through a simplified winding-up procedure, to the debt discharge of other natural persons who are not themselves entrepreneurs but who are in some way connected with the business. In particular, it should be made available to family members of the entrepreneur. In this respect, the proposal goes further than the previous Directive on restructuring and insolvency.

However, we strongly believe that the means chosen to achieve this objective are fundamentally flawed and may have a very negative impact on the functioning of the legal frameworks of many EU Member States, without bringing any added value to the Capital Markets Union or increasing competitiveness. In Czech legislation, debt discharge is already available to all natural persons without any distinction. There is no need to go through a simplified bankruptcy procedure beforehand.

The Czech Republic also supports the critical comments of other Member States on this title, which were made at the last working party meeting and will certainly be put in writing by the respective Member States, so it is superfluous to repeat them here.

III. DENMARK

Firstly, we would like to acknowledge the work put in to the compromise text on Title VI. As also stated at the meeting on 28 February 2025, Denmark still prefers the deletion of the Title.

One of our major outstanding concerns with the Title is Article 50 which stipulates the obligation for Member States to establish and maintain electronic auction platforms for the purpose of the sale of the assets of the insolvency estate in simplified winding-up proceedings. The establishment and maintenance of such electronic auction platforms will in our view be unnecessarily costly. In this respect, we note that in most – if not all – Member States private companies run auction platforms that can also be used by insolvency practitioners.

Moreover, we believe that the time periods, within which the procedure must be opened and concluded, will lead to unnecessary pressure on the courts. Furthermore, such fixed time periods will make it difficult to implement the rules as part of an existing national insolvency procedure.

PUBLIC

IV. GERMANY

We are still of the view that Title VI should be deleted without replacement.

1. Recognizing and acknowledging that the compromise text strives to resolve some of the issues we have previously raised, we submit that a multitude of important issues remains unresolved and cannot be appropriately and reliably resolved in the course of ongoing negotiations. Given the Presidency's aim to reach a General Approach by the end of this semester and given limited resources and remaining time, there seems to be no alternative but to focus on Titles IV and VII, which are of much greater importance than Title VI and which at the same time require a great amount of attention in order to resolve a multitude of still unresolved fundamental issues.

2. We are still of the view that Title VI, which tackles micro-enterprises, has nothing to contribute to the **Capital Market Union (CMU)**. Taking notice of the Commission's remark on the fact that small enterprises may rely on cross-border (bank) financing when domiciling in regions close to borders and that start-up undertakings may in the long run aim at obtaining capital market financings, we submit that the vast majority of micro-enterprises does and will not have access to capital markets, as such access is associated with costs and efforts that clearly exceed the limited capabilities of micro-enterprises.

3. We hold that the compromise text lacks a solid orientation towards clearly defined and convincing policy goals. We have taken note of the view expressed by the Commission during the last meeting of the Working Party, according to which Title VI is designed to ensure (1) that natural persons have access to debt discharge proceedings when, due to their involvement with the micro-enterprise, they face personal liability for a micro-enterprise's debts and (2) that corporate micro-enterprises be wound-up in an orderly manner. Even if these policy aims were to be accepted, the vast majority of the provisions in the revised text do not have any meaningful relation to them. We further submit that the stated aims do not have an intrinsic or logical relation to micro-enterprises, but stand for themselves regardless the nature and scope of the enterprises concerned.

4. We acknowledge and appreciate that a multitude of edits and shortenings have been made in order to accommodate various concerns that have been previously raised. We still find that the resulting text consists of many provisions that are either superfluous and dispensable or problematic. We interpret this finding to be a consequence of a lack of thorough orientation towards clearly defined and accepted aims. More importantly: Since Title VI is designed to establish a special regime that deviates from the general principles and provisions of insolvency law, it appears to be a constant source of flaws and confusion that there is a lack of consent in relation to the general principles and provisions from which deviations are sought. Thus the many dispensable provisions and thus the many provisions that state the obvious by replicating generally accepted principles (e.g.: the provisions on the stay of enforcements, the right for the debtor and creditor's to file for the opening of insolvency proceedings, the right for Member States to provide whether and in which circumstances an insolvency practitioner is to be appointed). Thus finally the many fundamental problems that come into play where the texts seeks deviations from such generally accepted principles, especially where these deviations have no connection with micro-enterprises and where they do not even seem to be acceptable from point of view of many national systems (such as, e.g., the unwarranted deviations from the stay provision in Article 44(2)).

5. We note on this occasion that Title VI also contains deviations from general principles of civil law that in our view have disruptive and unacceptable effects (e.g. with the proposed sale of the debtor's assets through an online auction platform undermining national rules on notarization, in particular, in the case of real-estate property).

PUBLIC

6. We still recognize the proposal's purpose to meet the special needs of micro-enterprises and we also share the belief that some of the features of insolvency laws are more suitable for larger enterprises than for micro-enterprises. We also take note of the work that has been done in this respect by international organizations, including in particular part 5 of the UNCITRAL Legislative Guide on Insolvency Law and the respective legislative recommendations. We are also taking note of the micro-enterprise specific frameworks that several jurisdictions, including some Member States, have recently put in place. At the same time, we observe that these recommendations and frameworks differ substantively from each other and that concerns have been raised as to the practicability and appropriateness of some of the existing frameworks. We further observe that many Member States have systems in place that are functioning without special proceedings for micro-enterprises. In connection with our findings in relation to the Proposal and the compromise text that we have laid out above, we conclude that work in the field should be based on comprehensive preparatory work. Such preparatory work should include, among others: A comparative stock taking not only of special proceedings for micro-enterprises, but of any existing Member State system and the treatment they afford to micro-enterprises, the determination of the actual special needs of micro-enterprises, a clear determination of the policy aims to be pursued, a solid investigation of the impact of any proposal on the functioning of Member States' systems, including the ramifications on those parts of the systems that are not micro-enterprise specific. We also suggest having special regard to the dangers of overstraining the capabilities of entrepreneurs and directors of micro-enterprises, to the dangers of abuse as well as to the widely diverging roles of courts and authorities in the various Member States' systems. We also suggest the involvement of Member States in the preparatory works.

7. We finally hold that work of such depth and breadth cannot possibly be undertaken in the course of ongoing negotiations and find that Title VI should be deleted without replacement.

PUBLIC

V. ESTONIA

We thank the Presidency for the opportunity to submit written comments on the Commission's Proposal on harmonising certain aspects of insolvency law. We appreciate the Presidency's hard work and respectfully present our comments on the provisions that we foresee as potentially challenging for Estonia.

In Estonia, 95% of companies are micro-enterprises, which makes our insolvency system flexible and applicable to all company sizes without the need for separate types of proceedings. The initiation of insolvency proceedings depends not on the size of the company but on whether the debtor has assets or whether creditors are willing to finance the proceedings.

Insolvency proceedings in Estonia consist of two main stages: the bankruptcy petition proceedings (first stage) and the bankruptcy proceedings (second stage). The bankruptcy petition proceedings begin when the debtor or a creditor submits a bankruptcy petition to the court. The purpose of this stage is to determine whether the debtor is insolvent and whether initiating bankruptcy proceedings is justified. If the court accepts the petition, it generally appoints an interim trustee, whose task is to assess the debtor's financial situation, including the existence of assets and their sufficiency to cover the costs of the proceedings. The interim trustee analyzes the debtor's financial position and solvency, the prospects of continuing the debtor's business, and the possibility of restructuring. They also examine the reasons for the insolvency and indicate whether it resulted from a criminal act, gross mismanagement, or other circumstances.

PUBLIC

The bankruptcy petition proceedings may end in several ways, including the termination of the proceedings due to lack of assets, meaning that the debtor does not have sufficient funds to conduct bankruptcy proceedings and no creditor is willing to finance them. If sufficient funds are available, the court declares bankruptcy, initiating the second stage – the bankruptcy proceedings. The purpose of this stage is to manage the debtor's assets, review claims, and satisfy creditors according to the legal framework. During bankruptcy proceedings, creditors can submit their claims, which are then examined and, if necessary, contested.

PUBLIC

Article 38 Rules on winding-up of microenterprises

According to Estonian law, all insolvent companies have access to bankruptcy proceedings, regardless of their size. Therefore, there is no need to establish a separate procedure for micro-enterprises. Estonia's bankruptcy proceedings are efficient – if the debtor has sufficient assets to cover the costs, bankruptcy is declared. If there are no such assets, the bankruptcy petition proceedings are terminated, and the company is liquidated within two months after the proceedings end.

Article 39 Insolvency practitioner

According to Estonian law, the court appoints an interim trustee when a bankruptcy petition is admitted for proceedings. The interim trustee's task is to assess the debtor's financial situation, including insolvency, the existence and sufficiency of assets to cover the costs of the proceedings, and the possibilities for the continuation or restructuring of the business. The interim trustee is entitled to remuneration for their work, which is primarily covered by the debtor's assets or, if necessary, by the creditors. If bankruptcy proceedings are terminated due to a lack of assets, the interim trustee's remuneration is partially covered by state funds under the conditions prescribed by law.

Article 40: Means of Communication

In Estonia, the use of electronic communication tools in insolvency proceedings is ensured, allowing digital interaction between parties to the proceedings, courts, administrative authorities, and insolvency practitioners. All procedural documents, including claims, restructuring plans, creditor notifications, objections, and appeals, can be submitted electronically via the court information system (E-toimik). This system provides secure and efficient data exchange, streamlining the conduct of proceedings. The Estonian judicial system has developed mechanisms to ensure that all parties receive the necessary documents and notifications electronically and that digitally signed documents have the same legal effect as those submitted on paper.

Article 41: Request for the Opening of Simplified Winding-Up Proceedings

Estonia has already established regulations that comply with the requirements of Article 41 of the directive regarding the initiation of simplified winding-up proceedings. Under the Bankruptcy Act, both an insolvent company and its creditors have the right to submit a bankruptcy petition to the court, ensuring that access to initiating proceedings is available to all relevant parties.

According to Estonian law, a debtor is not required to use the services of a lawyer or other legal representative to initiate proceedings, which aligns with the directive's requirement that micro-enterprises should be able to commence winding-up proceedings without legal counsel. Additionally, digital solutions such as the court information system (E-toimik) and the Official Announcements system facilitate the simplified and rapid submission of applications to the court or competent authority, making the process more efficient and less burdensome.

PUBLIC

Article 42: Decision on the Request for the Opening of Simplified Winding-Up Proceedings

PUBLIC

In Estonia, the court is required to decide on a bankruptcy petition within a specified timeframe, ensuring compliance with the directive's requirement to issue a decision on the initiation of simplified winding-up proceedings within one month. In exceptional cases, this deadline may be extended.

According to the Estonian Bankruptcy Act, the court must review a bankruptcy petition submitted by a debtor within 10 days, or in justified cases, within up to 30 days from the appointment of an interim trustee. For a creditor's bankruptcy petition, the standard timeframe is 30 days, with a possible extension of up to two months in exceptional circumstances. These time limits ensure that proceedings are initiated promptly and in line with the principles of the EU directive.

The Estonian Bankruptcy Act also includes a mechanism allowing the court to terminate bankruptcy proceedings at an early stage if it becomes evident that the debtor lacks assets or does not have sufficient funds to cover procedural costs. If the debtor's assets are insufficient to cover the costs of the proceedings and there is no possibility of recovering assets or enforcing claims, the court may terminate the proceedings due to lack of assets.

Additionally, the court may close proceedings if the debtor's assets primarily consist of clawback claims. In such cases, certain bankruptcy procedure stages, such as asset realization and distribution, are omitted, as continuing the proceedings would not be economically justified. This mechanism aligns with the directive's principle that allows the court to immediately terminate proceedings if the lack of assets makes continuation futile.

Article 44: Stay of Individual Enforcement Actions

The Estonian Bankruptcy Act allows the court, in exceptional cases, to permit the continuation of individual enforcement actions during bankruptcy proceedings. While enforcement actions against the debtor’s assets are generally suspended upon the appointment of an interim trustee, the court may, in justified cases, allow enforcement to proceed if it does not harm the interests of other creditors. If a creditor can demonstrate that suspending the enforcement would place them at an unfair disadvantage while not endangering the rights of the general body of creditors, the court may grant an exception. This aligns with the directive’s principle that deviations from the stay of enforcement may be justified when they are necessary and do not prejudice other creditors' rights.

PUBLIC

Article 46: Lodgement and Admission of Claims

The provision of the directive is not applicable under Estonian law, as it is not possible to compile a list of creditors and claims before the declaration of bankruptcy. Consequently, claims cannot be contested or automatically confirmed at this stage. In Estonia, creditor notification, claim submission, verification, and contestation take place only after the declaration of bankruptcy, under the supervision of the bankruptcy trustee or the court.

A debtor must submit information on all known creditors along with the bankruptcy petition. If a creditor files the bankruptcy petition, they only submit their own claim against the debtor. When the court admits the bankruptcy petition, its role is to determine the debtor's obligations.

The court may publish a notice in the Official Announcements regarding the time and place of the bankruptcy petition review, allowing creditors to stay informed about the process. In Estonia, creditors can subscribe to notifications from the Official Announcements system concerning specific debtors, ensuring they are aware of the bankruptcy petition proceedings. Additionally, the court publishes a notice in the Official Announcements regarding the possibility of financing the bankruptcy proceedings and specifies the amount required to be paid into the court deposit.

The directive's proposal to compile a list of creditors, contest claims, and confirm them during the bankruptcy petition stage is not practical in simplified winding-up proceedings, which aim to be fast, cost-efficient, and free from unnecessary bureaucracy.

Article 48: Establishment of the Insolvency Estate

The directive's provision does not align with the Estonian legal system, as it requires the final list of insolvency estate assets to be drawn up at the start of the proceedings, whereas in Estonia, the composition of the estate is determined during the second stage of bankruptcy proceedings.

The directive stipulates that the insolvency practitioner must compile the final list of assets or, if no practitioner is appointed, the debtor must submit and present this list for court approval. This approach is not suitable within the Estonian legal framework. Under the Estonian Bankruptcy Act, a bankruptcy trustee is appointed only after the declaration of bankruptcy (at the beginning of the second stage), and it is their responsibility to establish the precise composition of the debtor's assets. It is not feasible to determine the final insolvency estate during the first stage, as some assets may be difficult to realize, may have been transferred fraudulently, or may be subject to clawback actions. Therefore, the identification of assets occurs gradually throughout the second stage of proceedings.

PUBLIC

The directive's requirement that, in the absence of a trustee, the debtor must submit an inventory of assets for court approval is incompatible with Estonian law. The purpose of Estonian bankruptcy proceedings is to ensure collective creditor protection and objective oversight. If the debtor were to prepare the asset inventory without supervision from a trustee or court, it could be inaccurate or misleading, potentially harming creditors. This is why Estonian law provides for the appointment of a trustee in the second stage, ensuring proper asset verification and preventing harm to creditors.

The directive also requires that the insolvency estate includes assets owned by the debtor at the start of the proceedings, as well as those obtained later through avoidance actions or clawback proceedings. In Estonia, such transactions are typically identified during the second stage, when the bankruptcy trustee examines possible avoidance claims. Since avoidance actions and clawback procedures can take months, it is impractical to require a final list of assets at the beginning of the proceedings.

Additionally, the process of lodging and verifying claims can be extensive and costly in the initial stage, which may prove unnecessary if the proceedings are later terminated due to a lack of assets.

PUBLIC

Article 49: Decision on the Procedure to be Used

Article 49 of the directive does not align with the Estonian legal system, as the requirements set forth in this article are essentially part of the second stage of bankruptcy proceedings rather than the first stage. The requirement that, after determining the insolvency estate, the insolvency practitioner or the debtor must initiate the realization and distribution of assets is a procedure typically associated with the second stage of bankruptcy proceedings in Estonia.

Although the article allows the court to close proceedings without asset realization if no assets are available, the remaining requirements would make the process disproportionately complex. Under Estonian law, the debtor is not responsible for asset realization – this task falls under the responsibility of the bankruptcy trustee, who ensures that asset sales are conducted transparently and in the best interests of creditors.

Additionally, the mandatory use of an electronic auction system for all assets is not justified. In Estonia, assets can be sold through various means depending on their type and marketability. Enforcing compulsory electronic auctions would limit flexibility, which is often needed for low-value assets or specialized items that could be better realized through alternative means, such as direct agreements between creditors.

Thus, Article 49 is incompatible with the Estonian legal system, as it imposes procedural requirements typical of standard bankruptcy proceedings onto simplified winding-up proceedings, contradicting the objective of a fast and cost-effective process. In Estonia, asset realization and distribution are clearly part of bankruptcy proceedings, not preliminary or simplified liquidation proceedings. If Article 49 were implemented, simplified winding-up proceedings would closely resemble regular bankruptcy proceedings, undermining their purpose of offering a swift and minimally bureaucratic liquidation process.

PUBLIC

If simplified winding-up proceedings required asset sales to be conducted exclusively through an electronic auction platform, this would effectively turn the process into a bankruptcy proceeding. In Estonia, asset realization is regulated within bankruptcy proceedings through agreements between the trustee and creditors, rather than in an earlier stage of the process. Furthermore, before selling assets, their actual value and legal status must be determined, which is generally beyond the scope of simplified proceedings.

Estonia already has an electronic auction platform for the sale of bankruptcy assets, which is effectively used in bankruptcy proceedings. Therefore, establishing a separate auction system solely for simplified winding-up proceedings is unnecessary, as asset sales are already conducted efficiently and transparently through the existing system.

Article 55: Decision on the Closure of Simplified Winding-Up Proceedings

Estonian law already ensures a fast and efficient preliminary procedure that meets the objectives of the directive and allows for the swift termination of proceedings in cases involving assetless debtors, without the need for a separate simplified winding-up procedure. In Estonia, the first stage of bankruptcy proceedings (preliminary proceedings) determines whether initiating bankruptcy proceedings is justified and whether the costs are covered.

If the debtor has no assets and no creditor is willing to cover the procedural costs, the court terminates the proceedings during the preliminary stage, before declaring bankruptcy. This ensures that unnecessary proceedings are not initiated in cases where resources are lacking and avoids costly formalities. The legal entity is automatically liquidated within two months without the need for a separate winding-up process, making Estonia's system significantly faster and more flexible than the approach proposed in the directive.

PUBLIC

In Estonia, this process typically takes 2–4 months in total, which is considerably faster than the directive's proposed simplified winding-up proceedings, which may last up to 12 months, including possible deadline extensions. Therefore, the six-month period and additional extension options provided in the directive are unnecessary in Estonia, as the current system already ensures a swift and efficient resolution.

Furthermore, the Estonian Bankruptcy Act includes provisions regulating the deletion of a legal entity from the commercial register upon completion of bankruptcy proceedings, ensuring compliance with the directive's requirement for the liquidation of the legal entity at the end of the process. Consequently, the Estonian system is already effective and does not require additional mechanisms that would introduce unnecessary formalities and prolong the process, contrary to the directive's goal of simplification.

Article 56: Access to Discharge

The directive stipulates that owners of micro-enterprises who are personally liable must have access to a debt discharge procedure. In Estonia, this matter is already comprehensively regulated, as the liability of shareholders in the event of bankruptcy proceedings being terminated due to lack of assets is clearly defined.

If a private limited company has been established without making the required capital contribution, the interim trustee may demand that the shareholders pay the missing amount to cover bankruptcy proceedings' costs. If the company's share capital is below 2500 euros and there are no other assets available to satisfy claims, shareholders may be required to compensate for costs up to the difference between the company's capital and 2500 euros.

Thus, Estonia already has an effective legal framework that defines the conditions under which micro-enterprise owners are liable and how they can be discharged from debts. The additional procedure proposed in the directive would be unnecessary in Estonia and would only increase administrative burdens without providing substantive added value.

PUBLIC

Article 57: Treatment of Personal Guarantees Provided for Business-Related Debts

The directive's provision does not align with the Estonian legal system, as the obligations of companies and individuals are clearly separated, and their joint processing would create legal uncertainty and affect creditor rights.

Estonian bankruptcy and enforcement proceedings already provide effective mechanisms for enforcing personal guarantees, either through separate enforcement proceedings or the bankruptcy proceedings of a natural person. The liability of guarantors is handled independently based on their financial capacity and the extent of their obligations, preventing the commingling of corporate and personal debts within the same procedure.

Therefore, introducing an additional coordinated or consolidated procedure is unnecessary, as the existing legal framework already ensures that personal guarantees are addressed fairly and efficiently in separate proceedings, depending on the guarantor's legal status and the nature of the obligations.

The directive aims to simplify insolvency proceedings for micro-enterprises, but several of its principles are not compatible with the Estonian legal framework and would not effectively simplify the process. The Estonian bankruptcy system is already structured to enable the swift liquidation of assetless debtors and ensure effective protection of creditors' rights, making the solutions proposed in the directive unnecessary and administratively burdensome. Therefore, Section VI should be removed from the directive.

PUBLIC

VI. IRELAND

Title VI
WINDING-UP OF INSOLVENT MICROENTERPRISES

PUBLIC

Ireland is a strong supporter of the Capital Markets Union and welcomes elements of the Proposal that underpin the CMU objectives.

However, Ireland continues to believe that Title VI does not contribute to the CMU and instead raises the regulatory burden for minimum benefit. Risking socially detrimental creditor practices, the Proposal takes no account of balancing measures to mitigate this harm.

Ireland concludes that Title VI should be deleted without replacement.

The issues which this additional process seeks to address are unknown to Ireland as we already provide for orderly insolvency processes. Our creditors voluntary winding up process, which accounts for the vast majority of insolvent liquidations, requires no court involvement or oversight and is therefore quicker and cheaper than what is proposed in Title VI.

In addition, we have a robust compliance and enforcement regime which includes, as part of regular assessments of company status on the register, striking from the companies register those companies which are no longer trading or where the company is being wound up and there is reasonable cause to believe that no liquidator is acting.

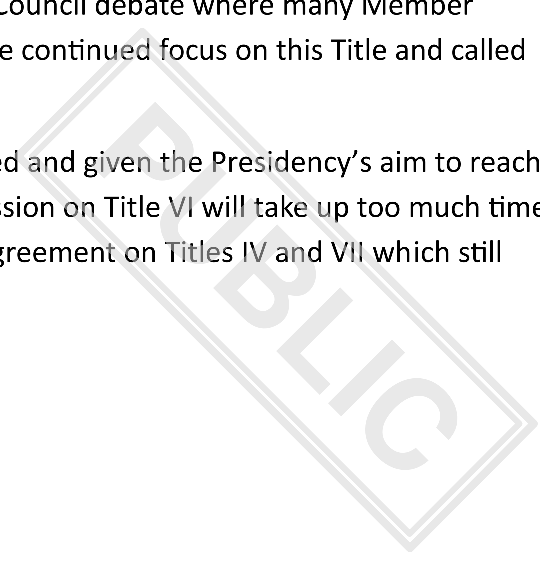
The revised scope of this Title continues to encompass the vast majority of companies in Ireland, not to mention other unincorporated business models, and would thus become the default winding up process rather than an additional option.

It would also lead to a potentially overwhelming variety of avenues open to microenterprises, creating precisely the type of administrative and regulatory burden that the Commission's own Better Regulation agenda seeks to prevent. Microenterprises do not have operational capacity to come to terms with ever more legislative options.

While we welcome the Commission's intention for Title VI not to interfere with Member States' carefully balanced creditor and debtor protections in the insolvency process, this is not reflected in the text. The Title VI process risks cynical actions from minor creditors seeking to arbitrage the process with other creditors to their benefit. The procedure would also put ordinarily solvent natural persons and their guarantors at risk of the effects of the asset recovery process.

Finally, Ireland recalls the March Justice and Home Affairs Council debate where many Member States, including Ireland, expressed grave concerns with the continued focus on this Title and called for its deletion.

The problems with this Title remain too great to be resolved and given the Presidency's aim to reach a General Approach by the end of its term any further discussion on Title VI will take up too much time. Ireland calls for the focus to now be placed on achieving agreement on Titles IV and VII which still require much attention.



VII. SPAIN

- **Nature of the procedure.**

It seems in the proposal that the procedure is considered as not an independent insolvency proceeding but linked to another one.

In Spain, we consider it to be a special and autonomous proceeding.

- **Article 2(j) Concept of micro-enterprise**

The main concern is that, the parameters for the definition of micro-enterprises should be those that Member States choose according to their own circumstances.

At the European level, two different notions of micro, small and medium-sized enterprises can be distinguished:

- for accounting purposes, the content of Directive 2013/34 EU; and
- for the purposes of State aid rules, the content of the Commission Recommendation of 6 May 2003).

Furthermore, it should be kept in mind that Directive (EU) 2019/1023 on preventive restructuring frameworks, debt relief and disqualifications, and on measures to increase the efficiency of restructuring, insolvency and debt relief procedures, does not harmonise a definition of small or medium-sized enterprises or micro-enterprises. Article 2(2)(c) of Directive (EU) 2019/1023 refers the delimitation of these concepts to national law. In addition, recital 18 of Directive 2019/1023 reminds national legislatures of the possibility of referring to Directive 2013/34 (including the Commission Recommendation of 6 May 2003) for the purposes of defining those concepts.

Spain considers that Member States should be given the same possibility that Directive 2019/1023 allowed. Therefore, the parameters for the definition of micro-enterprises should be those that Member States choose according to their own circumstances.

Thus, in the transposition of Directive 2019/1023, even though the Spanish legislature initially took into account the criterion most used internationally to define microenterprises (Commission Recommendation of 6 May 2003 and Regulation (EU) No 651/2014), it finally opted for a stricter concept of microenterprise (Directive 2013/34), in response to complaints from professional and corporate groups (associations of insolvency practitioners).

In our book III, Article 685.1 and .2 of Insolvency Law -TRLC-, we chose to reproduce the reduced accounting concept contained in Article 3.1 of Directive 2013/34 on financial statements, annual accounts and other reports, which, in its wording given by Directive EU 2023/2775 of 17 October 2023 (*balance sheet total: EUR 450 000; net turnover: EUR 900 000; average number of employees during the financial year: 10*), is currently being transposed.

PUBLIC

The proposal in Article 2(j) as currently drafted opts for a broader concept corresponding to that laid down in Article 23(3) of the Annex to Commission Regulation (EC) No 2003/361 ("3. *In the SME category, a micro-enterprise is defined as an enterprise employing fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed EUR 2 million.").*

PUBLIC

CHAPTER I GENERAL RULES

- **Article 38 Rules on the winding-up of micro-enterprises**

It should be clarified whether these rules refer to current insolvency or also extend to imminent insolvency or likelihood of insolvency. The latter two do not seem to be excluded, but perhaps it should be stated expressly.

- **Article 39 Insolvency practitioner**

✓ **39.1**: The appointment of an insolvency practitioner in winding-up proceedings is optional (Article 707(1) TRLC, at the request of the debtor) Even if the appointment of an insolvency practitioner in these micro-enterprise winding-up proceedings is considered desirable, the main issue of who pays the insolvency practitioner remains unsolved, since micro-enterprise insolvency proceedings are usually estate-free.

According to the proposal, neither the debtor nor the creditors will request and opt for the appointment of the insolvency practitioner. However, it seems that there will be assumptions assessed by the States in which such an appointment should be made. The article does not lay down the criterion to be used by the Member States to determine when an insolvency practitioner is needed and when not. Should this depend on the liabilities? Should this depend on whether there is or not insolvency estate? If the Commission confirms that Member States have the possibility to establish that the debtor or creditors can request the appointment of the insolvency practitioner, this could be indicated in the recitals.

✓ **39.2:** The reference to Article 38(2) in Article 39(2) should be clarified because the current proposal deletes the original Article 38(2). Moreover, it can be understood that the insolvency practitioner is only remunerated in such cases. For the sake of clarity, it would be better to put "*including whenever"* or a similar expression. Again, the question is who pays the insolvency practitioner, since microenterprise competitions are usually mass competitions. Therefore, it would be convenient to find a harmonised solution.

- **Article 40 Media**

The wording in the proposal of Article 40 is not entirely clear, insofar as it seems to assume that there will always be an insolvency practitioner, when Article 39 makes it optional. It is proposed to add "*and, where appointed* "instead of "*and, where relevant".*

CHAPTER II OPENING OF SIMPLIFIED WINDING-UP PROCEEDINGS

- **Article 41 Application for the opening of simplified winding-up proceedings**

✓ **41.1:** we are glad to see the deletion of the reference to the standard form, given the bad experience with the ESPD (European Single Procurement Document).

✓ **41.2:** In Spain, the debtor must intervene in the winding-up of microenterprises assisted by a lawyer to request the opening of the special procedure (Article 691(1) TRLC), which does not correspond to Article 41(2) of the proposal. Past experience in Spain (from when it was possible to appear without legal assistance) discourages the possibility of standing without a lawyer and requesting the opening of the procedure for winding up micro-enterprises without legal assistance.

- **Article 42 Decision on the application for the opening of simplified winding-up proceedings**

✓ **42.3**: It would be interesting to include a mention that the closure of the simplified winding-up procedure at the time of deciding on its opening is only possible if there are no pending reintegration actions. As the simplified liquidation replaces bankruptcy, it is necessary to ask why the debtor does not have assets, since he was able to remove them from the estate and, in that case, they would have to be reinstated through the exercise of reintegration actions.

- **Article 44 Stay of individual enforcement actions**

As drafted, the stay of individual enforcement actions is very broad. A wording is proposed in the terms of Article 694.4 TRLC, i.e. that it does not affect (i) secured claims; (ii) to claims classified as privileged in accordance with the general rules and, in any case, to the percentages of the social security contributions to be paid by the undertaking for common contingencies and occupational contingencies or to the percentages of the worker's quota relating to common contingencies or accidents at work and occupational diseases.“(4 . The opening of the special procedure shall entail the cessation of judicial or extrajudicial executions of the debtor’s assets and rights, regardless of whether or not enforcement had already been initiated at the time of the application and of the status of the claim or creditor, the provisions of Chapter II of Title II of Book Two, with the special features set out herein, shall apply. **The suspension of enforcement proceedings shall not affect secured claims,** subject to the debtor's request in accordance with the circumstances permitted by this third book *(Article 712).* **Executions of appropriations which are not affected by the continuation plan shall also not be suspended.** Thus, in the case of**public claims,** the execution of claims classified as privileged in accordance with the general rules and, in any case, the percentages of social security contributions paid by the company for common contingencies and occupational contingencies or the percentages of the**worker's quotathat referto** common contingencies or accidents at work and occupational disease.)” It would be important to include the possibility of exceptions ex lege, especially for executions of public credit.

✓ **44.2**: the possibility of excluding a claim from the stay of individual enforcement actions at the request of a creditor is very broad. It would be useful to propose that such creditor should represent a percentage of liabilities. Otherwise, all creditors would be very likely to activate this route, because they would all argue that the stay unreasonably undermines their claim.

- ~~**Article 45 Publicity of the opening of simplified winding-up proceedings**~~

We understand that, this exclusion does not prevent advertising measures from being put in place.

CHAPTER III LIST OF CLAIMS AND DETERMINATION OF THE INSOLVENCY ESTATE

- ~~**Article 47 Avoidance actions**~~

In Spain, avoidance actions can be filed in the special simplified winding-up procedure for micro-enterprises. They do not imply a stay of the special winding-up procedure (Article 695 TRLC). We understand that nothing prevents this regulation from being maintained.

PUBLIC

CHAPTER IV REALISATION OF ASSETS AND DISTRIBUTION OF INCOME

- **Article 49 Decision on the procedure to be followed**

✓ "*if any of the following conditions is fuflfilled":* again, a reference should be made to the fact that there are no possibilities for avoidance/reitegration actions, or for qualifying the procedure as tortious. However, there is the problem that the Directive does not refer to any classification of the insolvency as tortious or fortuitous. Therefore, "*if any of the following conditions is fuflfilled"* could be replaced by an expression such as "*that is not pending the determination of the liability of the debtor or its administrators within the insolvency proceedings*" or something similar.

✓ **49.3:** Does the obligation to use the public electronic auction system in the sale, unless it is considered inappropriate in the light of the circumstances of the liquidation procedure, may raise problems with Article 710 TRLC, which prioritises the sale of the undertaking or its operating production units by direct sale and only subsidiarily through public auction?

- **Article 50 Electronic auction systems for the sale of the debtor's assets**

✓ While the TRLC already contains an obligation to establish one or more electronic auction platforms (Articles 708.3 and 710.1.3a TRLC), Spain would like to highlight that the implementation and initiation of electronic settlement platforms face major technical and registry difficulties. Not all States have the same technological, registry and interconnection of registries development. Moreover, the platform would also have to be in line with the Directives on the digitalisation of company law.

✓ In addition, Article 50 does not indicate who bears the cost of maintenance or how action will be taken in the event that the settlement platform is not operational in a process that does not stall. Moreover, Article 50 does not take into account the problems of registration certification that are being raised in countries such as Spain, where the protection of the third party in good faith in in force and where it is very difficult for platforms to issue certifications accrediting the ownership of goods and their transmission outside public records.

✓ Establishing a transitional regime should be considered.

- **Article 53 Tasks of the Commission in relation to the processing of personal data in the system of interconnection of electronic auction platforms**

It may be questioned whether this is not a case of joint responsibility under Article 26 GDPR and whether a joint control agreement is necessary.

- **Article 54 Sale of assets by electronic auction**

✓ **54.2**: As the platform is publicly accessible through the internet and creditors will already know that assets will be sold on it because they will know that the winding-up is happening, individual notification to creditors does not seem necessary.

✓ **54.3 and 4**: Problems may arise from the fact that, when a person specially related to the insolvent acquires a productive unit, this acquirer is obliged to pay the unpaid claims, unlike what happens when the acquirer is not especially related (TRLC 224.2).

- **Article 55 Decision on the conclusion of a simplified winding-up procedure**

✓ What is the purpose of converting the electronic procedure into an ordinary one? It adds complexity to what is intended to be a fast and expeditious settlement procedure. It is better to set a maximum term of 12 months and arbitrate liability for the insolvency practitioner if they do not finish liquidation within that period. For example, in Spain the rules of efficiency in the insolvency proceedings are established and the remunerations increase or decrease depending on the fact that liquidation takes place before or after the foreseen term.

✓ **55.2:** It is problematic because it presupposes that there is always exoneration. In the previous version, there was exoneration of the members personally responsible in the same bankruptcy of the microenterprise, and here this seems to be softened with the exception of "unless they are eligible for separate insolvency proceedings". Even so, the reason for including this issue in the competition of the microenterprise without going through that of the partner is not understood.

CHAPTER V EXEMPTION OF EMPLOYERS IN SIMPLIFIED WINDING-UP PROCEEDINGS

- **Article 56 Access to exemption**

✓ The wording is softened compared to the previous version, as it is now about having access to an exoneration procedure instead of "exonerated". However, the main problem persists, i.e. the exemption of the members personally responsible in the same competition is provided for instead of them going to the competition and in any case they are exempted there – without prejudice to the possibility of accumulating competitions. This is also not the case in Directive 2019/1023, where the exemption is provided only for "insolvent entrepreneurs" (Article 20(1)), which Article 2(1)(9) defines as natural persons, without any similar provision for members or members of legal persons.

✓ Spain considers that it should be stated, at least in the recitals, that the exemption is subject to the same possible exceptions as provided for in Directive 2019/1023 'including claims with privileged status such as public claims'.

✓ "*full discharge of the debt":* It would be better to delete this adjective, since the exoneration procedures of Directive 2019/1023 may provide for exceptions to claims that are not exonerated."

PUBLIC

- **Article 57 Treatment of personal guarantees created for debts related to the company**

The single enforcement cumulation rule does not seem to have much reason to be, unless it is intended that the collection obtained in enforcement of the personal security should go to the estate rather than to the creditor, which is also not said. In addition, it could lead to coordination problems, especially at the level of deadlines. We suggest to delete it.

PUBLIC

VIII. ITALY

SINTESI DELLE POSIZIONI DELL'ITALIA SU PROPOSAL DIRECTIVE 7.12.2022 INSOLVENCY III (*Presidency draft compromise proposal* n. 6853/25 – 7 march 2025) ALL'ESITO DEGLI INCONTRI DEL GRUPPO DI LAVORO E DELLE RIUNIONI DEL 27 e 28 febbraio 2025 COME RICHIESTO DALLA PRESIDENZA – Titolo VI

PUBLIC

SUMMARY OF ITALY'S POSITIONS ON PROPOSAL DIRECTIVE 7.12.2022 INSOLVENCY III (Presidency draft compromise proposal no. 6853/25 – 7 march 2025) AT THE END OF THE WORKING GROUP MEETINGS AND MEETINGS OF 27 and 28 February 2025 AS REQUESTED BY THE PRESIDENCY – **Title VI**

PREMESSA/PREMISE

L'Italia apprezza gli attuali articoli da 38 a 57, poiché il nuovo testo ha superato in parte i riferimenti problematici evidenziati da alcuni Stati membri. Sono tuttavia necessari alcuni ulteriori emendamenti perché anche questa parte della Direttiva permetta di raggiungere gli obiettivi di un mercato dei capitali più efficiente. Infatti, regole più comuni, che sostituiscono quelle nazionali, significano più commercio, costi più bassi, relazioni economiche più rapide, maggiore affidabilità di ciascun sistema-paese, maggiore ricchezza europea complessiva. Una prospettiva di armonizzazione prudente ma lungimirante deve quindi essere orientata verso la massima efficacia della regolamentazione del fenomeno che esiste in tutta l'Unione, dove vi è un numero molto elevato di microimprese e corrispondenti insolvenze di microimprese.

Va dunque realizzato un quadro flessibile, attraverso norme tecniche semplici ed istituti poco costosi, ribadendo che l'impatto per il CMU è evidente non solo per promuovere politiche di crescita per le microimprese ma altresì per tutelare i creditori transfrontalieri fornendo loro un quadro normativo almeno coordinato, così da ridurre – come solennemente indicato nel preambolo della stessa Proposta di questa Direttiva – gli alti costi già della conoscenza delle diverse regole dei 27 ordinamenti. Vanno infatti incoraggiate le esportazioni e la mutua fiducia tra clienti e fornitori *cross border*.

Nel valutare i migliori testi già presenti in alcuni Stati, con le rispettive esperienze positive, il Titolo VI potrebbe cambiare prevedendo:

a) la presenza obbligatoria del curatore fallimentare, in modo che gli Stati assicurino, direttamente o indirettamente, la sua remunerazione anche in procedure con microimprese incapienti (*sans actifs*);

b) una soglia di ingresso anche più ridotta sia in termini di base occupazionale che di dimensione, calcolata su un triennio di riferimento antecedente l'apertura (o la domanda);

c) un requisito finale di indebitamento, in modo che una procedura comune europea riguardi non solo le microimprese in quanto tali ma, tra queste, le sole imprese insolventi con la stessa importanza dei debiti finali.

Tra i vantaggi di una procedura speciale europea per le microimprese insolventi, vale la pena menzionare anche gli aspetti trattati nella Carta dei diritti fondamentali dell'Unione, tra cui il diritto alla vita privata (art. 7 senza azioni dei creditori non basate su prospettive di recupero), la libertà di lavorare (art. 15), la libertà d'impresa (quindi di ricominciare, art. 16), il diritto di riacquistare una proprietà (art. 17), il diritto alla non discriminazione fondata sul patrimonio o la sua assenza (art.21), il diritto a una vita dignitosa e indipendente (soprattutto per gli anziani, art.25), tutti diritti sottesi alle insolvenze minori.

Per quanto riguarda le soglie, sembra essenziale, come osservato da tutti gli Stati in occasione del gruppo di lavoro del 28 febbraio 2025 e sin dall'inizio degli incontri, raggiungere un punto di equilibrio minimo allontanandosi dai parametri della Raccomandazione 2003/361/CE.

La proposta italiana stabilisce i seguenti criteri: 500 000 euro di debiti definitivi massimi; un attivo non superiore a 300 000 euro e ricavi non superiori a 200 000 euro, nonché addetti all'impresa non superiori a 4, con limiti mai superati nel triennio, in qualsiasi esercizio precedente all'apertura della procedura (o nell'anno in cui viene effettuata la richiesta di accesso) o comunque nel periodo più breve della vita dell'impresa.

Italy appreciates the current Articles 38 to 57, as the new text has partly overcome the problematic references highlighted by some Member States. However, a number of further amendments are needed to ensure that this part of the Directive also achieves the objectives of a more efficient capital market (CMU). In fact, more common rules, which replace national ones, mean more trade, lower costs, faster economic relations, greater reliability of each country-system, greater overall European wealth. A prudent but far-sighted harmonization perspective must therefore be directed towards the maximum effectiveness of the regulation of the phenomenon that exists throughout the Union, where there is a very large number of micro-enterprises and corresponding insolvencies of micro-enterprises.

A flexible framework must therefore be created, through simple technical standards and inexpensive institutions, reiterating that the impact for the CMU is evident not only to promote growth policies also for micro-enterprises but also to protect cross-border creditors by providing them with a regulatory framework that is at least coordinated, so as to reduce – as solemnly indicated in the Preamble of the same Proposal for this Directive – the high costs of knowing the different rules of the 27 MS. In fact, exports and mutual trust between cross-border customers and suppliers must be encouraged.

PUBLIC

In evaluating the best texts already present in some States, with their respective positive experiences, Title VI could change by providing:

a) the mandatory presence of the insolvency pratictioner, so that the Member States ensure, directly or indirectly, his remuneration even in procedures without assets (*sans actifs*);

b) an even lower entry threshold both in terms of employment base and size, calculated over a three-year reference period prior to the opening (or application);

(c) a final debt requirement, so that a common European procedure covers not only micro-enterprises as such but, among them, only insolvent micro-enterprises with the same size as final debts.

Among the advantages of a special European procedure for insolvent micro-enterprises, it is also worth mentioning the aspects dealt with in the Charter of Fundamental Rights of the Union, including the right to privacy (Article 7 without actions by creditors not based on recovery prospects), the freedom to work (Article 15), the freedom to conduct a business (i.e. to start over, article 16), the right to reacquire property (article 17), the right to non-discrimination based on property or its absence (article 21), the right to a dignified and independent life (especially for the elderly people, article .25), all rights underlying minor insolvencies.

As regards the thresholds, it seems essential, as observed by all States at the working group of 28 February 2025 and since the beginning of the meetings, to achieve a minimum balance point by moving away from the parameters of Recommendation 2003/361/EC.

The Italian proposal sets out the following criteria: €500 000 in final debts; assets not exceeding €300,000 and revenues not exceeding €200,000, as well as employees of the company not exceeding 4, with limits never exceeded in the three-year period, in any financial year prior to the opening of the procedure (or in the year in which the request for access is made) or in any case in the shortest period of the micro-enterprise’s life.

PUBLIC

ANALISI DEL TESTO ED EMENDAMENTI/TEXT ANALYSIS AND AMENDMENTS

*Changes in comparison to the Presidency's proposal are indicated in **red bold and underline** or ~~strikethrough~~. *Explanatory considerations are written in red italics.*

PUBLIC

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2022/0408 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

harmonising certain aspects of insolvency law

(Text with EEA relevance)

ANNEX

Article 2

Definitions

(j) 'microenterprise' means a microenterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC~~;~~ **that, in each of the three financial years prior to the date of filing of the application for the opening of judicial liquidation or from the start of the activity if of shorter duration, it jointly meets the following requirements: 1) a number of employees not exceeding 4; 2) assets of a total annual amount not exceeding € 300,000; 3) revenues, in whatever way they may be, for a total annual amount not exceeding € 200,000; the aforementioned values may be updated every three years by decision of the European Commission;**~~Member States may establish lower ceilings than those stipulated in the Recommendation provided that enterprises which employ fewer than 4 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 500.000 are included.~~

j-1) "insolvency of the micro-enterprise": a final amount of debts, including unexpired debts, not exceeding €500,000, at the time of the decision on the application to open the procedure; the aforementioned value may be updated every three years by decision of the European Commission.

Title VI

WINDING-UP OF INSOLVENT MICROENTERPRISES

PUBLIC

Chapter 1

General rules

Article 38

Rules on winding-up of microenterprises

1. Member States shall ensure that microenterprises, when insolvent **according to what appears on the basis of art.1 letter j-1**,, have access to simplified winding-up proceedings that comply with the provisions laid down in this Title.

~~2. A microenterprise shall be deemed insolvent for the purposes of simplified winding-up proceedings when it is generally unable to pay its debts as they mature. Member States shall set out the conditions under which a microenterprise is deemed to be generally unable to pay its debts as they mature and ensure that these conditions are clear, simple and easily ascertainable by the microenterprise concerned.~~

3. The opening and conduct of simplified winding-up proceedings may not be denied on the ground that the ~~debtor has no~~ assets ~~or its assets~~**of the debtor** are not sufficient to cover the costs of the simplified winding-up proceedings.

~~4. Member States shall ensure that the costs of the simplified winding-up proceedings are covered in the situations set out in paragraph 3.~~

Article 39

Insolvency practitioner

1. Member States **shall ensure that**~~**may determine whether and** in simplified winding-up proceedings~~~~**which circumstances**~~ an insolvency practitioner ~~may only~~**is to** be appointed ~~if both of the following conditions are met:~~**in simplified winding-up proceedings.**

~~(a) the debtor, a creditor or a group of creditors requests such an appointment;~~

~~(b) the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that requested the appointment.~~

2. Member States shall ensure that insolvency practitioners are ~~appropriately~~ remunerated taking into account the activities carried out~~, whenever they are appointed in the situations set out in Article 38(2)(3).~~

Article 40

Means of communication

Member States shall ensure that in simplified winding-up proceedings**,** all communications between the **court or the** competent authority ~~and, where relevant~~, the insolvency practitioner~~, on the one hand,~~ and the parties to such proceedings, ~~on the other hand,~~ can be performed by electronic means, in accordance with Article 28 of Directive (EU) 2019/1023.

Chapter 2

Opening of simplified winding-up proceedings

Article 41

Request for the opening of simplified winding-up proceedings

1. Member States shall ensure that ~~insolvent~~ **an insolvent microenterprise or any creditor of the microenterprise can submit a request for the opening of simplified winding-up proceedings to a court or a competent authority.**

2. Member States shall ensure that microenterprises can submit a request for the opening of simplified winding-up proceedings ~~to a competent authority.~~**without the representation by a lawyer or another legal professional.**

PUBLIC

~~2. Member States shall ensure that any creditor of an insolvent microenterprise can submit a request for the opening of simplified winding-up proceedings against the microenterprise to a competent authority. The microenterprise concerned shall be given the opportunity to respond to the request, by contesting or consenting to it.~~

~~3. Member States shall ensure that microenterprises can submit a request for the opening of simplified winding-up proceedings using a standard form.~~

~~4. The standard form referred to in paragraph 3 shall allow for the inclusion, among others, of the following information:~~

~~(a) if the microenterprise is a legal person, the debtor’s name, registration number, registered office or, if different, postal address;~~

~~(b) if the microenterprise is an entrepreneur, the debtor’s name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;~~

~~(c) a list of the assets of the microenterprise;~~

~~(d) name, address or other contact details of creditors of the microenterprise, as known to the microenterprise at the time of the submission of the request,~~

~~(e) the list of the claims against the microenterprise and, for each claim, its amount specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;~~

~~(f) if security in rem or a reservation of title is alleged in respect of a certain claim and, if so, what assets are covered by the security interest.~~

~~5. The Commission shall establish the standard form referred to in paragraph 3 by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 69~~(2)

~~6. Member States shall ensure that when the request for opening simplified winding-up proceedings is submitted by a creditor, and the microenterprise expressed its consent to the opening of the proceedings, the microenterprise is required to submit the information listed in paragraph 4 together with the response referred to in paragraph 2 of this Article, where available.~~

~~7. Member States shall ensure that when the request for opening simplified winding-up proceedings is submitted by a creditor and the competent authority opens such proceedings despite the microenterprise contesting or not responding to the request the microenterprise is required to submit the information listed in paragraph 4 of this Article no later than two weeks following the receipt of the notice of opening.~~

PUBLIC

Article 42

Decision on the request for the opening of simplified winding-up proceedings

1. Member States shall ensure that the **court or the** competent authority takes a decision **promptly** ~~**and in any event within one month**~~ on the request for the opening of simplified winding-up proceedings~~ no later than two weeks after receiving the request~~.

~~2. The opening of simplified winding-up proceedings may be refused only if one or more of the following conditions is fulfilled:~~

~~(a) the debtor is not a microenterprise;~~

~~(b) the debtor is not insolvent pursuant to Article 38(2) of this Directive;~~

~~(c) the competent authority where the request was submitted has no jurisdiction over the case;~~

~~(d) the Member State where the request was submitted has no international jurisdiction over the case.~~

3. Member States shall ensure**may provide** that the microenterprise or any creditor of the microenterprise may challenge before a court the**court or the competent authority in its** decision on the request for the opening of simplified winding-up proceedings. The challenge has no suspensive effect on **proceeds to** the opening**closure** of simplified winding-up**the** proceedings and shall be dealt with promptly**pursuant to Article 55, if** by the court. **by the time of the decision of the opening it establishes that:**

a) there are no assets in the insolvency estate, or

b) the assets in the insolvency estate are not sufficient to cover the costs of the simplified liquidation proceedings.

In this case, Chapters 3 and 4 of this Title, with the exception of paragraphs 2 and 3 of Article 55, do not apply.

PUBLIC

Article 43

Debtor not in possession

1. **Member States shall ensure that**~~, subject to the conditions laid down in paragraphs 2, 3 and 4, debtors accessing simplified winding-up proceedings remain in control of their assets and the day-to-day operation of the business.~~

~~2. Member States shall ensure that, where an insolvency practitioner is appointed, the competent authority specifies in the **time of the** decision on the appointment whether~~ **the rights and duties to manage and dispose of the debtor's assets are transferred to the insolvency practitioner**~~. **of opening it establishes that**~~

~~3. Member States shall specify the circumstances in which the competent authority may, exceptionally, decide to remove the debtor's right to manage and dispose of its assets. Such a decision must be based on a case-by-case assessment in view of all relevant elements of law and facts.~~

~~4. Member States shall ensure that, where the debtor no longer holds the right to manage and dispose of its assets and no insolvency practitioner is appointed, one of the following applies:~~

~~(a) any decision of the debtor to that effect becomes subject to the approval of the competent authority, or~~

~~(b) the competent authority entrusts the right to manage and dispose of the assets of the debtor to a creditor.~~

PUBLIC

Article 44

Stay of individual enforcement actions

1. Member States shall ensure ~~that debtors benefit from~~ a stay of individual enforcement actions**,** **either by law or** upon the decision of the **court or the** competent authority to open simplified winding-up proceedings and until the closure of ~~that~~**those** proceedings.

~~2. Member States may provide that **the court or** the competent authority excludes, upon request by the debtor or a creditor, a claim from the scope of the stay of individual enforcement actions where both of the following conditions are fulfilled:~~

~~(a) the enforcement is not likely to jeopardise the legitimate expectations of the general body of creditors and;~~

~~(b) the stay would unfairly prejudice the creditor of that claim.~~

Article 45

Publicity of the opening of simplified winding-up proceedings

1. Member States shall ensure that the information on the opening of simplified winding-up proceedings is published in the insolvency register referred to in Article 24 of Regulation (EU) 2015/848, as soon as possible after the opening.

2. Member States shall ensure that the competent authority immediately informs the debtor and all known creditors~~, by individual notices,~~ of the opening of simplified winding-up proceedings.

~~The notice shall include, in particular:~~

~~(a) the list of claims against the debtor as indicated by the debtor;~~

PUBLIC

~~(b) an invitation to the creditor to lodge any claims not included in the list referred to in point (a) or to rectify any incorrect statement on those claims no later than 30 days upon the receipt of the notice;~~

~~(c) a statement to the effect that, without further action by the creditor, the claims included in the list referred to in point (a) will be considered as lodged by the creditor concerned.~~

PUBLIC

Chapter 3

List of claims and establishment of the insolvency estate

Article 46

Lodgement and admission of claims

1. Member States shall ensure that the **insolvency practitioner**~~**, or in its absence, the debtor,**~~ **prepares a list of creditors and claims.**

2. Member States shall ensure that the insolvency practitioner, or ~~**in its absence,**~~ **the court or the competent authority informs all known creditors**~~**, by individual notices,**~~ **of the list, indicating the time period for communicating any objection or concern as regards the list. The** claims against the debtor **indicated in the list** are considered as lodged without any further action from the creditors concerned~~, where those claims are indicated by the debtor in one of the following submissions:~~**.**

~~(a) in its request for the opening of simplified winding-up proceedings;~~

~~(b) in its response to the request for the opening of such proceedings submitted by a creditor;~~

~~(c) in its submission pursuant to Article 41(7).~~

~~2.~~

3. Member States shall ensure that any creditor may lodge claims not contained in the ~~submissions~~**list** referred to in paragraph 1 or make statements of objection or raise concern on claims included in ~~one of that submissions~~**the list**, within **a short term**30~~45 days~~ from the **receipt of the** ~~**individual**~~ **notice referred to in the paragraph 2** ~~or from the publication of the date of the opening of simplified winding-up proceedings in the insolvency register or, in case of a known creditor, of the receipt of the individual notice referred to in Article 45~~ ~~**referred to in Article 24 of Regulation (EU) 2015/848**~~ ~~whichever is the latest.~~

PUBLIC

3. Member States shall ensure that, in the absence of any objection or concern communicated by a creditor within the time period indicated in paragraph 2, a claim included in the ~~submissions~~**list** referred to in paragraph 1 is deemed to be undisputed and shall be definitively admitted as stated therein.

~~4. Member States shall ensure that the competent authority or, where appointed, the insolvency practitioner may admit or deny admission of claims lodged by a creditor, in addition to the claims referred to in paragraph 1, in accordance with paragraph 2 and the appropriate criteria defined by national law.~~

5. Member States shall ensure that the disputed claims are dealt with ~~promptly~~ either by the ~~competent authority or by a~~ court~~.~~ **or the competent authority.** The **court or** competent authority may decide to continue the simplified winding-up proceedings with respect to undisputed claims.

Article 47

Avoidance actions

Member States shall ensure that the rules on avoidance actions apply as follows in simplified winding-up proceedings:

(a) the pursuit and enforcement of avoidance actions ~~shall not be mandatory, but~~ shall be left to the discretion of ~~creditors or, when applicable, of~~ the insolvency practitioner;

~~(b) any decision by creditors not to commence avoidance actions shall not affect the liability of the debtor under civil or criminal law, where it is later discovered that the information communicated by the debtor about assets or liabilities was concealed or forged;~~

(c) the competent authority may convert simplified winding-up proceedings into standard insolvency proceedings, where the conduct of avoidance proceedings under simplified winding-up proceedings would not be possible due to the significance of the claims subject to avoidance proceedings in relation to the value of the insolvency estate, and due to the anticipated length of avoidance proceedings.

PUBLIC

Article 48

Establishment of the insolvency estate

1. Member States shall ensure that the ~~competent authority or, where appointed, the~~ insolvency practitioner~~, determines the~~ **establishes a** final list of assets that constitute the insolvency estate~~, on~~**.** ~~**If no insolvency practitioner has been appointed,** the basis of the~~**final** ~~list of assets submitted~~**shall be prepared** ~~by the debtor as referred to Article 41(4), point (c) and of the relevant additional information received thereafter.~~~~**approved by the court or the competent authority.**~~

2. The ~~assets~~**final list** of the insolvency estate shall include assets ~~in the possession~~ of the debtor at the time of the opening of simplified winding-up proceedings, assets acquired after the submission of the request for opening of such proceedings and assets recovered through avoidance actions or other actions.

~~3. Member States shall ensure that, where the debtor is an entrepreneur, the competent authority or, if appointed, the insolvency practitioner specifies which assets are excluded from the insolvency estate and can therefore be retained by the debtor.~~

Chapter 4

Realisation of the assets and distribution of the proceeds

PUBLIC

Article 49

Decision on the procedure to be used

1. Member States shall ensure that in simplified winding-up proceedings once the insolvency estate has been established ~~and the list of claims against the debtor has been determined, the competent authority:~~**in accordance with Article 48(1), the insolvency practitioner**~~**, or in its absence the debtor,**~~ **proceeds with the realisation of the assets and the distribution of the proceeds.**

~~(a) proceeds with the realisation of the assets and the distribution of the proceeds; or~~

~~(b) takes~~

2. Notwithstanding paragraph 1 of this Article, Member States shall ensure that the court or the competent authority can take a decision on the closure of the simplified winding-up proceedings without any realisation of the assets, ~~in accordance with paragraph 2.~~**if any of the following conditions is fulfilled:**

~~2. Member States shall ensure that the competent authority can take (a decision on the immediate closure of the simplified winding-up proceedings without any realisation of the assets, only if any of the following conditions is fulfilled:~~

(a) there are no assets in the insolvency estate;

(b) the assets of the insolvency estate are of such a low value that it would not justify the costs or time of their sale and of the distribution of proceeds;

(c) the apparent value of encumbered assets is lower than the amount owed to the secured creditor(s) and the **court or the** competent authority considers it justified to allow those secured creditor(s) to take over the asset(s).

3. Member States shall ensure that, where the ~~competent authority~~**insolvency practitioner** proceeds with the realisation of the debtor's assets as referred to in paragraph 1~~, point (a), the competent authority~~**, it** also specifies the means of realisation of the assets. ~~Other means than~~**For** the sale of **an asset of the debtor,** the ~~debtor's assets through an~~ **insolvency practitioner shall use the** electronic ~~public~~ auction ~~may only be selected, if their use~~ **system referred to in Article 50, unless this** is ~~deemed more~~**not** appropriate in ~~light~~**view** of the nature of the ~~assets~~**asset** or the circumstances of the proceedings.

PUBLIC

Article 50

Electronic auction systems for the sale of the assets of the debtor

1. Member States shall ensure that one or several electronic auction platforms are established and maintained in their territory for the purpose of the sale of the assets of the insolvency estate in simplified winding-up proceedings.

~~Member States may set out that for the purpose of the sale of the debtor's assets users may also place bids for the purchase of the debtor's business as a going concern.~~

~~2. Member States shall ensure that the electronic auction platforms, as referred to in paragraph 1, are used whenever the debtor's business or assets subject to simplified winding-up proceedings are realised through auction.~~

3. Member States may extend the use of the electronic auction systems, as referred to in paragraph 1, to the sale of the debtor's business or assets that are subject to other types of insolvency proceedings opened in their territory.

4. Member States shall ensure that the electronic auction platforms, as referred to in paragraph 1, are accessible by all natural and legal persons with domicile or place of registration in their territory or in the territory of another Member State. Access to the auction system may be subject to electronic identification of the user, in which case persons with domicile or place of registration in another Member State shall be able to use their national electronic identification schemes, in accordance with Regulation (EU) No 910/2014[1].

PUBLIC

Article 51

Interconnection of the electronic auction systems

1. The Commission shall establish a system for the interconnection of the national electronic auction systems as referred to in Article ~~50~~ **50** by means of implementing acts. The system shall be composed of national electronic auction systems interconnected via the European e-Justice Portal, which shall serve as a central electronic access point in the system. The system shall contain in all the official languages of the Union information on all auction processes announced in national electronic auction platforms, enable the search among these auction processes and provide hyperlinks leading to the pages of the national systems where offers may be directly submitted.

2. The Commission shall lay down by means of implementing acts technical specifications and procedures necessary to provide for the interconnection of Member States' national electronic auction systems, setting out:

   (a) the technical specification or specifications defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of the electronic auction systems;

   (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of electronic auction systems;

[1] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

(c) the minimum set of information that shall be made accessible through the central platform;

(d) the minimum criteria for the presentation of announced auction processes via the European e-Justice Portal;

(e) the minimum criteria for the search of announced auction processes via the European e-Justice Portal;

(f) minimum criteria for guiding the users to the platform of the national auction system of the Member State where they may submit their offers directly in the announced auction processes;

(g) the means and the technical conditions of availability of services provided by the system of interconnection;

(h) the use of the European unique identifier referred to in Article 16(1) of Directive (EU) 2017/1132[2],

(i) specification of which personal data can be accessed;

(j) data protection safeguards.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 69(2)~~,~~ **(2),** by [one year after the transposition deadline].

PUBLIC

Article 52

Costs of establishing and interconnecting electronic auction systems

~~1. The establishment, maintenance and future development of the system of interconnection of electronic auction systems as referred to in Article 50 shall be financed from the general budget of the Union.~~

~~2.~~

[2] Article 16(1) of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law

1. Each Member State shall bear the costs of establishing and adjusting its national electronic auction systems**, as referred to in Article 50,** to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those systems. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.

2. The establishment, maintenance and future development of the system of interconnection of electronic auction systems as referred to in Article 51 shall be financed from the general budget of the Union

PUBLIC

Article 53

Responsibilities of the Commission in connection with the processing of personal data in the system of interconnection of electronic auction platforms

1. The Commission shall exercise the responsibilities of controller pursuant to Article 3(8) of Regulation (EU) 2018/1725 in accordance with its respective responsibilities defined in this Article.

2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.

3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.

4. With regard to the information from the interconnected national auction systems, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national auction systems operated by the Member States or other bodies.

Article 54

Sale of the assets by electronic auction

PUBLIC

1. Member States shall ensure that the electronic auction of assets of the insolvency estate in simplified winding-up proceedings is announced in due time in advance on the electronic auction platform referred to in Article ~~50.~~ **50.**

2. Member States shall ensure that the ~~competent authority or, where relevant, the~~ insolvency practitioner~~,~~ informs ~~through individual notices~~ all known creditors on the object, time and date of the electronic auction, as well as on the requirements to participate therein.

3. Member States shall ensure that any interested person~~, including the existing shareholders or directors of the debtor, are~~ **is** allowed to participate in the electronic auction and bid.

~~4. If there are bids both on the acquisition of the debtor's business as a going concern and on the individual assets of the insolvency estate, creditors shall decide~~ **They may, however, set out the conditions under** which ~~of the alternatives they prefer~~**the debtor's existing shareholders or managers are authorised to participate**.

Article 55

Decision on the closure of the simplified winding-up proceedings

1. Member States shall ensure that ~~after the distribution of proceeds of the sale of the debtor's business or assets,~~ **the court or** the competent authority takes a decision on the closure of the simplified winding-up proceedings ~~no later than two weeks after~~**within** **a short deadline** ~~**six months**~~ **after the** ~~**submission of the request for**~~ ~~the~~ ~~distribution of proceeds has been completed.~~**opening of the simplified winding-up proceedings. The deadline may be extended once,** ~~**by a maximum of six months**~~ **in case additional time is needed for the sale of the debtor's business or assets, or for the distribution of proceeds. In the absence of such an extension or when the extended deadline expires, the procedure must be automatically converted into an ordinary winding-up procedure.**

2. Member States shall ensure that the decision on the closure of the simplified winding-up proceedings includes a specification of the time period leading to the discharge of the entrepreneur debtor or of those ~~founders, owners or members~~**equity holders** of an unlimited liability microenterprise debtor who are personally liable for the debts of the debtor **unless they are eligible for separate insolvency proceedings**.

3. In case the debtor is a legal person, Member States shall ensure that the decision on the closure of the simplified winding-up proceedings triggers the relevant measures under national law leading to the dissolution of the legal personality of the debtor.

PUBLIC

Chapter 5

Discharge of entrepreneurs in simplified winding-up proceedings

PUBLIC

Article 56

Access to discharge

Member States shall ensure that ~~in~~**as a result of** simplified winding-up proceedings entrepreneur debtors~~, as well as~~ **have access to at least one procedure that can lead to a full discharge of debt in accordance with Title III of Directive (EU) 2019/1023. Member States shall also ensure that** those ~~founders, owners or members~~**equity holders** of an unlimited liability microenterprise debtor who are personally liable for the debts of the microenterprise ~~are fully discharged from their debts in accordance with Title III of Directive (EU) 2019/1023~~**shall have access to the same procedures concerning discharge of debt**.

Article 57

Treatment of personal guarantees provided for business-related debts

Member States shall ensure that where insolvency proceedings or individual enforcement proceedings have been brought **against a guarantor** over ~~the~~**a** personal guarantee provided for the business needs of a microenterprise that is debtor in simplified winding-up proceedings~~ against a guarantor who, in case the microenterprise concerned is a legal person, is a founder, owner or member of that legal person, or, in case the microenterprise concerned is an entrepreneur, a family member of that entrepreneur~~, the proceedings on the personal guarantee are either coordinated or consolidated with the simplified winding-up proceedings~~.~~ **where the guarantor is**:

a) a founder, owner or member of the microenterprise if the microenterprise is a legal person; or

b) a family member of the entrepreneur if the microenterprise is an entrepreneur.

IX. LATVIA

Title VI

WINDING-UP OF INSOLVENT MICROENTERPRISES

General Comments:

The objective of the regulation in this section—to establish a simplified and efficient process for the liquidation of insolvent enterprises—is, in principle, commendable.

However, Latvia maintains its objections regarding Article 2, point (j), which defines the term "microenterprise." While the provision now allows Member States to establish lower ceilings than those stipulated in the Commission Recommendation 2003/361/EC, Latvia emphasizes that, even under the revised wording, the definition will still apply to the vast majority of Latvian enterprises. Consequently, such a simplified procedure could have a significant impact on the national insolvency framework, effectively replacing the existing insolvency process, which was already designed to accommodate small and medium-sized enterprises.

Latvia believes that the simplified procedure should be applied to a much more limited group of companies—those representing no more than 10-15% of active enterprises—or that Member States should retain full discretion in its implementation. Therefore, Latvia proposes the establishment of more appropriate criteria for defining microenterprises in this context.

Comments and questions on the specific provisions:

Lodgement and Admission of Claims (Article 46)

Paragraph 2 provides that creditors are to be informed via individual notices. The Latvian insolvency process does not include such a mechanism for informing creditors—creditors are instead notified through an entry in the insolvency register. The requirement to send individual notices would create an additional administrative burden and costs. Therefore, Latvia considers that such an obligation should be optional rather than mandatory.

PUBLIC

Furthermore, the 45-day period set out in paragraph 3 is too short, and creditors may not have sufficient time to react to the notice. Under Latvian legislation, a creditor has one month from the declaration of insolvency to submit a claim. However, if this deadline is missed, the creditor is still allowed to submit their claim within a maximum period of six months from the date of the insolvency declaration in the insolvency register. This must be done before the approval of the creditor claims satisfaction plan or the report on the absence of assets, which serves as the basis for closing the insolvency proceedings of a legal entity.

Such deadlines do not prolong the insolvency process but provide creditors with an adequate timeframe to submit their claims. The insolvency process is fundamentally based on the principle of creditor rights protection, and an unreasonably short deadline for lodging claims would infringe upon creditor interests. Therefore, Latvia urges the inclusion of a similar provision in the directive to ensure a balanced and fair approach.

Decision on the Procedure to Be Used (Article 49)

Paragraph 2 provides that the competent authority or court may decide to close the simplified winding-up proceedings immediately, without the realization of assets. Under the Latvian legal framework, such an option does not exist, and assets must always be realized. The proposal does not specify the subsequent handling of assets in cases where, under point (b) of paragraph 2, a decision is made not to realize them due to their low value. As a result, there is a lack of clarity regarding the further disposition of the debtor's assets in such scenarios.

PUBLIC

X. LITHUANIA

PUBLIC

In response to the invitation to the Member States to submit their comments, please find below comments on Part VI of the Proposal.

1. **Article 39:**

   1) We are of the firm view that the procedural aspects concerning the remuneration of insolvency practitioners should be governed solely by the laws of the Member States. Therefore, it is proposed to delete Article 39(2).

   2) For greater clarity, it would be advisable to specify in the Article 39(1) or Recitals the general rule regarding who performs the duties of the insolvency practitioner when a Member State chooses not to appoint one. This is now stated in different articles (e.g. Article 46(1-2), Article 48(1), Article 49(1)).

2. **Article 46(2)** states that in the absence of an insolvency practitioner, the court or the competent authority shall inform all known creditors by means of individual notices. It should be considered whether this provision is overly detailed, as the way of notification represents a relatively minor procedural aspect that may not necessitate regulation within the directive. It is suggested to provide Member States with greater flexibility, enabling them to determine the most appropriate approach for regulating procedure of notification within their national legal frameworks. This would allow for the accommodation of specific practices in each Member State.

3. **Article 47**, which set out the rules for avoidance actions, has been removed, while Article 48 paragraph 2 still mentions avoidance actions. Therefore, the question arises whether in simplified liquidation the challenge of transactions is not allowed at all, whether it must be included or whether it is left to the Member States to decide.

4. **Article 49:**

1) The exceptions for the sale of assets are outlined in paragraph 1. However, some aspects remain unclear and we would appreciate clarification on the following aspects: a) who should determine the conditions specified in the exceptions; b) whether the issue of asset sales should be addressed on an ad hoc basis or whether the exceptions mentioned in the directive should be further specified in national legislation.

2) The electronic auction, as the main method of the sale, is linked to the participation of the insolvency practitioner in the process. However, how should the sale of assets be carried out when the insolvency practitioner is not appointed and the responsibility for asset realization lies with the debtor themselves?

5. **Article 54:**

1) According to the provisions of paragraph 2, Member States are required to ensure that the insolvency practitioner informs all known creditors through individual notifications about the object, time, and date of the electronic auction, as well as the participation requirements. However, it remains unclear who should be responsible for informing the creditors if no insolvency practitioner is appointed and the assets are being realized through an electronic auction.

2) In paragraph 4, it is stated: "*They may, however, set out the conditions under which the debtor's existing shareholders or managers are authorised to participate*". The reference to "they" is unclear. It might be helpful to specify that this refers to the Member States in the text.

PUBLIC

XI. HUNGARY

The Hungarian delegation would like to thank the Polish Presidency for its efforts to redraft Title VI.

Nevertheless, the Hungarian delegation – maintaining its position expressed during the first reading – continues to request the deletion of the entire Title VI from the text, for the following reasons:

- Although the definition of microenterprises has been narrowed, the narrowed definition still covers a significant proportion of Hungarian enterprises, so that the exceptional, simplified regime would become the main rule for Hungarian insolvency proceedings.
- Assetless and insolvent enterprises should be driven out of the economy as soon as possible, without placing a disproportionate burden on the insolvency system and the budget of the Member States – in the case of a microenterprise that is in fact assetless harming the interests of creditors is out of question – so that there is no justification for winding-up assetless microenterprises.
- From a taxation point of view, it would be a major risk if a proceedings was to be created in Hungarian law to exempt persons liable for the debts of microenterprises – including persons with unlimited liability – from their financial liability. Apart from the loss of tax revenue, this would be a bad message towards the creditors and to those who pay their taxes in a law-abiding manner.
- The rules on the simplified winding-up of insolvent microenterprises do not make a substantial contribution to the achievement of a capital market union.

In view of the above, Hungary reiterates its request that Title VI of the proposed Directive should be deleted.

As an issue relating to the microenterprises, we would like to take this opportunity to point out that Hungary has a strong request that the entrepreneurs should be left out of the scope of the Directive, as in case of the entrepreneurs business assets and liabilities cannot be clearly separated from personal assets, i.e. insolvency estate cannot be clearly identified in the event of insolvency.

PUBLIC

XII. MALTA

General Comments

Regarding Title VI (Winding-up of Insolvent Microenterprises), Malta acknowledges that there have been improvements in the latest draft of the Presidency's compromise proposal as established in doc. 6061/25. However, Malta's position still stands that this Title should be deleted without replacement.

As previously stated, Malta has significant concerns with the definition of 'microenterprise'. Malta reiterates that many Maltese companies involved in insolvency proceedings or being close to insolvency would fall within the definition of a 'microenterprise' within the meaning of the Annex to Commission Recommendation 2003/361/EC. As a result, this simplified winding-up procedure, which is intended to be an exceptional procedure, becomes the default procedure de facto.

Maltese insolvency law does not consider the size of the company undergoing dissolution and winding up proceedings when it comes to the applicability of the provisions regulating the proceedings, and it is the Malta position that this approach should be retained.

Title VI intends to provide the smallest enterprises with less costly insolvency proceedings; however, Malta believes that there is not much added value in the proposed procedure for simplified winding-up proceedings and it might lead to negative ramifications. The proposed simplified procedure for microenterprises lacks many of the safeguards which are found in insolvency proceedings as existing under Maltese law, mainly concerning the protection of the rights of creditors and the insolvency estate in general. Also, the fact that the insolvency practitioner is only required in certain instances and if certain conditions are fulfilled (Article 39) is concerning, in the sense that, the insolvency practitioner's function is an important one especially because they work closely with the debtor in supporting the liquidation process and protecting the liquidation estate to achieve a better outcome for creditors.

Finally, Malta is concerned that the introduction of a simplified winding-up procedure, with lower safeguards, could jeopardise the Maltese economy and investment into Maltese companies, which are by and large microenterprises.

PUBLIC

XIII. NETHERLANDS

Title VI – Winding up of microenterprises

General comments

- In general, The Netherlands endorses the importance of a fast and efficient procedure for the winding-up of microenterprises. We understand that within the EU, according to the Commission, microenterprises often do not qualify for regular bankruptcy proceedings due to empty or small estates, in which case a winding up or liquidation does not take place. We understand that Title VI should fill that gap in national insolvency laws.

- The Netherlands already has some successful procedures for the winding up and liquidation of microenterprises. It is important to us that Title VI does not have an adverse impact on these procedures. Even though the revised text seems to contain improvements, we are afraid that Title VI does have an adverse impact on these successful procedures in The Netherlands.

- Related to this, we question how Title VI relates to liquidation proceedings in national law. We question if they can coexist next to each other. According to the comments of the Commission on this matter, we do think so. We favour to put this in the text of the title or in the recitals. In that way it is clear that Member States are allowed to maintain procedures which are already in use to liquidate enterprises with a low or empty estate in a fast and efficient way.

- Against this background we would like to mention that in the Netherlands, in case of a shell company (without any assets), it is possible to wind up that company quickly by means of a so-called ''turboliquidation'' (in Dutch: Turboliquidatie). In case of this kind of liquidation, the company's board is accountable through submitting documents at the Chamber of Commerce. The board also have to inform the creditors about the ''turboliquidation''. In that way creditors can check whether the company is without assets indeed and if they agree with the ''turboliquidation''. We would like to keep this effective procedure and based on the comments of the Commission during the working parties we think on this matter we think this is possible. As said, we would like some clarification about whether or not the winding up proceedings as mentioned in Title VI can coexist next to liquidation proceedings in national law, like the so-called ''turboliquidation''.

- Furthermore, our observation is that microenterprises prefer to raise capital close to home, within their Member State. Without a cross-border context, any issue with the winding-up of microenterprises, seems mainly to have effect on a national level and *not* on the capital market union.

- During the working party of 28 February 2025 the Commission made some comments about the contribution of Title VI to the capital market union. However, we are still not convinced about this contribution. For that reason we continue to question in what way harmonising the winding-up of microenterprises could strengthen the capital market union. In so far the cross-border effects of Title VI are limited, we question the need for this title, especially when a Member State already has procedures in place for the winding up of microenterprises. In this light, we don't see the added value of this title.

- However, we think the revised text is an improvement compared to the previous one. We think it is an improvement to allow Member States to limit the scope of the title and the fact that Member States can determine in which circumstances an insolvency practitioner is to be appointed. However, we still have concerns. Although Member States can limit the scope of the title, for enterprises which employ fewer than 4 persons and whose annual turnover and/or annual balance sheet total does not exceed 500.000 euro, the title still applies. Still a big part of the companies seems to fall under this definition. Our assessment therefore is that Title VI still has a major impact on national insolvency practises.

- Furthermore, we welcome the possibility for Member States to determine in which circumstances an insolvency practitioner is to be appointed. However, Title VI seems to imply that the role of the insolvency practitioner is limited to liquidate the insolvent microenterprise and therefore the insolvency practitioner does not conduct an investigation into possible irregularities and avoidance actions. We think this makes the title susceptible for abuse. We have concerns about this.

- In summary, the essence of our questions and comments comes down to the following:
    1. Relation of Title VI to national insolvency/winding up procedures: Can they coexist? According to the comments of the Commission on this point, we do think so. This should be clarified in the text of the tItle or in the recital.
    2. Added value: What is the added value of Title VI when this title does not contribute to strengthening the capital market union?
    3. Susceptibility for abuse: The title seems to imply that the role of the insolvency practitioner is limited to only liquidate the insolvent microenterprise and therefore does not conduct an investigation into possible irregularities. We think this makes the title susceptible for abuse.
    4. Efficiency: The Netherlands notes that many mandatory steps must be completed, such as inventory of claims and the mandatory electronic auction. In these aspects it seems that the title could be more (cost)efficient.

- We can imagine that simplified insolvency proceedings in the spirit of Title VI can be of added value for Member States that are of the opinion to have a gap in their national insolvency law. In that light, we could agree with this title as an option for Member States or as a recommendation.

Article 2 (j) – Definitions

- The scope of Title VI is not limited to companies that do not qualify for regular bankruptcy proceedings. Although we think it is an improvement to allow Member States to limit the scope of the title. But for enterprises which employ fewer than 4 persons and whose annual turnover and/or annual balance sheet total does not exceed 500.000 euro, the title still applies. A big part of the companies still seems to fall under this definition. Our assessment therefore is that Title VI still has a major impact on national insolvency practises.

- Furthermore, as stated earlier, we question if Title VI can coexist with national liquidation proceedings, also outside of insolvency. This should be clarified in the text of the article 2 or in the recitals.

Chapter 1 – General rules

Article 38 – Rules on winding-up microenterprises

- We note that the proposed title has no reference moment for determining whether an enterprise qualifies as a microenterprise. This makes it unclear which companies have access to the simplified winding up procedure. We still question if this is up to national law.

- Furthermore, we question if the simplified winding-up procedure is mandatory for microenterprises or if they may prefer other national procedures that provide in winding-up. According to the comments of the Commission on this point, we do think so. We favour to put this in the text of the title or in the recitals.

Paragraph 3

- On the basis of article 38 paragraph 3 opening of the winding-up proceedings may not be denied on the ground that the assets of the debtor are not sufficient to cover the costs of the simplified winding-up proceedings. How does this relates to article 42 paragraph 3 which states that Member States may provide that the court or the competent authority can decide to close the proceedings in case the assets in the insolvency estate are not sufficient to cover the costs of the simplified liquidation proceedings?

- On the basis of the comments of the Commission on this point we understand that the purpose of article 38 paragraph 3 is that microenterprises should have access to simplified winding-up proceedings, even if there are no assets. In that case the question remains what the added value is of opening of winding-up proceedings when they can be closed again at the same time (on the basis of article 42 paragraph 3). This should be clarified in the recitals.

Article 39 – Insolvency practitioner

- We think it is an improvement to allow Member States to determine whether and in which circumstances an insolvency practitioner can be appointed in simplified winding-up proceedings. This could be a safeguard for the interest of the creditors and prevent abuse.

- However, Title VI seems to imply that the insolvency practitioner is only appointed to liquidate the insolvent microenterprise and therefore does not conduct an investigation into possible irregularities and avoidance actions. We think this makes the title susceptible for abuse. We have concerns about this.

- According to paragraph 2, we support the aim of this paragraph, but have many questions on what Member States would need to do. For example: Would all costs need to be covered? Or could this be limited up to a certain amount? Would this provision leave the option open to have for instance certain creditors cover the costs? Or enterprises in general? This should be clarified.

- Also a technical remark: the reference to article 38 (2) is incorrect.

Article 41 – Request for the opening of simplified winding-up proceedings

- We think the revised text of article 41 is an improvement. We understand article 41 in such way that it is up to Member States to determine what defines as 'insolvent'. This should be included in the text of the recitals.

PUBLIC

Chapter 2 – Opening of simplified winding-up proceedings

Article 42 – Decision on the request for the opening of simplified winding-up proceedings

Paragraph 3

- Article 42 paragraph 3 states that Member States may provide that the court or the competent authority can decide to close the proceedings in case the assets in the insolvency estate are not sufficient to cover the costs of the simplified liquidation proceedings. It is unclear how this relates to article 38 paragraph 3 which states that the opening of simplified winding-up proceedings may not be denied on the ground that the assets of the debtor are not sufficient to cover the costs of simplified winding-up proceedings. As stated earlier, we question what is the added value is of opening winding-up proceedings when they can be closed again at the same time.

- In addition, it is unclear what data the court or the competent authority should rely on when deciding whether or not to close the proceedings. Should the court rely on data from the debtor? We question how the court could know if these data is truthful. This should be clarified. We think this modus operandi is susceptible for abuse.

Article 44 – Stay of individual enforcement actions

Paragraph 1

- In the Netherlands, after the declaration of bankruptcy, there can be no judicial enforcement on any part of the bankrupt's assets, but this does not apply in relation to creditors who can exercise their right as if there was no bankruptcy. These include security creditors. We are wondering if this construction is still possible under article 44. If not, we expect big problems for the financing practice, as security holders would not be able to enforce their security rights during the bankruptcy. In the recitals should be included that a construction as mentioned before remains possible under article 44.

Chapter 3 – List of claims and establishment of the insolvency estate

Article 46 – Lodgement and admission of claims

- It is not clear what the procedure is if the debtor does not cooperate in winding up the microenterprise. What if the debtor does not submit a list of creditors? What are the consequences for the debtor? Is this up to national law? This should be clarified in the text of the title or in the recitals.

- According to paragraph 3 any creditor may lodge claims not contained in the list of creditors within 45 days from the publication of the opening of simplified winding-up proceedings in the insolvency register. In case the debtor submits a incomplete list of creditors, we think a term of 45 days is quite short.

- Paragraph 3 seems to imply that the insolvency practitioner cannot contest claims listed on the list of creditors and claims. We think the insolvency practitioner should have this option, otherwise this procedure is susceptible for fraud.

Article 47 – Avoidance actions

- We can support the deletion of article 47, because this is in line with a more principle based approach. However with the deletion of article 47 we are wondering if the rules regarding avoidance actions in Title II are also applicable for microenterprises. This should be clarified.

PUBLIC

Article 48 – Establishment of the insolvency estate

- According to article 48, the insolvency practitioner establishes a final list of assets of the insolvency estate. To establish such a list the debtor must cooperate. We are wondering what the procedure is when the debtor does not cooperate. Can the debtor be forced to cooperate? Is this up to national law? This should be clarified.

- Furthermore, we question what the procedure is if the final list turns out to be incomplete. The recitals should clarify this.

Chapter 4 – Realisation of the assets and distribution of the proceeds

Article 49 – Decision on the procedure to be used

- According to article 49 paragraph 2 the court or competent authority can close the proceedings without realisation of the assets when the assets of the debtor are of such a low value that it would not justify the costs or time of their sale. We question what does happen to the assets in that case. This should be clarified in the recitals.

- Since in many cases the court will not be able to estimate the value of the assets, it is unclear on what ground the court should base its judgment to terminate the winding-up proceedings or not.

- Furthermore, we question what the relation is with article 38 paragraph 3 and 42 paragraph 3.

- At this point, we are in favour of a more flexible approach. Member States should have the option to deviate from this article and decide for themselves in which cases the court or competent authority could close the simplified winding-up proceedings.

Article 50 – Electronic auction systems for the sale of the assets of the debtor

- In the Netherlands electronic auction systems for the sale of assets of the debtor are already in use offered by market parties. We question whether these systems comply with paragraph 1 or that Member States should set up an auction by themselves.

Article 51 – Interconnection of the electronic auction systems

- The Netherlands endorses that an electronic auction system can contribute to an efficient winding-up procedure. In the Netherlands insolvency practitioners already use these auction systems offered by market parties.

- As such systems are already offered by different market parties, we question what the added value of the uniform auction system is.

- In addition, we question whether the costs involved in setting up such a uniform auction system, outweigh its benefits, considering that such auction systems already exist and already used in practice.

- In other words: we think the current proposal is too strict in this regard. More flexibility is needed.

- Furthermore, we are not in favour of introducing a uniform auction system if it becomes the only way to sell the assets of the insolvent microenterprises. In some situations a different, physical, way to sell goods is preferable. This should remain possible. More flexibility is needed here as well.

PUBLIC

Article 52 – Costs of establishing and interconnecting electronic auction systems
Article 53 – Responsibilities of the Commission in connection with the processing of personal data in the system of interconnection of electronic auction platforms

- As said before, we question whether the costs involved in setting up a uniform auction system, outweigh its benefits, considering that such auction systems already exist and already used in practice. We think such an interconnecting electronic auction system has no added value. For that reason, we do not support setting up such an interconnecting electronic auction system. Moreover, we do not think this should be funded by public means.

Article 54 – Sale of the assets by electronic auction

- As said, we are not in favour of it when the electronic auction becomes the only way the assets can be sold. In each individual case the best way to sell will have to be considered.

Article 55 – Decision on the closure of the simplified winding-up proceedings

- According to paragraph 1 the court takes a decision on closure of the simplified winding-up proceedings within six months after the submission of the request for the opening of the simplified winding-up proceedings. This short term implies that the role of the insolvency practitioner is limited to selling debtor's assets and distributing the proceeds to the creditors, and therefore no investigation into irregulaties takes place. We are wondering if this interpretation is correct. We would like to see some clarification on this matter.

- Also in light of the discharge of the entrepreneur debtor or of those equity holders of the microenterprise debtor, we consider it is necessary that an insolvency practitioner conducts an investigation into irregularities.

Chapter 5 – Discharge of entrepreneurs in simplified winding-up proceedings

Article 56 – Access to discharge

- Full discharge of debts in a simplified winding-up procedure is far-reaching and have a major impact on the position of creditors. If the debtor is given access to discharge without an additional juridical test, we think the position of the creditor will be undermined. We continue to have concerns about this. In the Netherlands, among other things, you have to be in good faith to be admitted to a procedure that leads to discharge of debts. In that light, we think an additional juridical test is needed to decide whether or not a debtor can access a procedure that can lead to a full discharge of debts.

- Gross neglect or fraud should be grounds to deny access to the procedure that leads to discharge of debts.

Article 57 – Treatment of personal guarantees provided for business-related debts

- As said before, we think an additional juridical test is needed to decide whether or not a debtor or guarantor can access a procedure that can lead to a full discharge of debts.

- Gross neglect or fraud should be grounds to deny access to the procedure that leads to discharge of debts.

PUBLIC

XIV. AUSTRIA

We are very surprised that Title VI has been revised and discussed, after a large majority of member states called for the deletion of Title VI.

We acknowledge that the presidency has attempted to accommodate the member states with the new draft. However, our opinion has not changed. Title VI should be deleted for the following reasons:

- The aim of the directive is to complete the Capital Markets Union. Austria supports the Capital Markets Union and all measures that are suitable to improve it.

  However, Title VI does not contribute to the Capital Markets Union; small businesses neither have the financial nor the economic resources to participate in the Capital Markets Union.

- The European Commission justifies Title VI by stating that even microenterprises must have access to a well-functioning insolvency law and insolvency proceedings. According to the European Commission, microenterprises do not have access to appropriate insolvency proceedings.

  This does not apply to Austria. No further procedure is required to meet the needs of microenterprises. In Austria, all companies have access to insolvency proceedings. Small companies not only have access to a liquidation procedure, they also have the option of a payment plan where they are even subject to favorable regulations.

- Even though the scope has been restricted in the new draft, too many proceedings would still fall under this scope.

- The opening of insolvency proceedings without cost-covering assets has already been discussed and rejected.

- We fundamentally reject the automatic lodgement of claims.

PUBLIC

- The provisions in the draft are still impractical. The debtor is not capable of maintaining a list of his creditors and claims.

- Furthermore, there are also many contradictions in the new text; eg if the proceedings are no longer made public, creditors will not be able to lodge their claims.

- The implementation of some provisions would lead to high costs and administrative effort, eg the provisions regarding the electronic auction system. The benefits of these provisions do not justify the associated costs.

Even though we see an accommodation by the presidency, the new provisions in the draft are still not acceptable for us. Title VI still contains problematic provisions that cannot be resolved. Our position on Title VI has not changed. We continue to reject Title VI and advocate for its deletion.

The Polish presidency wishes to achieve a general approach under its presidency. We support the Polish presidency in achieving this goal, but further discussions must focus on the other titles in order to achieve this goal by June 2025.

PUBLIC

XV. ROMANIA

We appreciate the Presidency's efforts to render the text of Title VI more flexible, but even with these interventions, the proposed provisions still raise issues that, in our view, could not be resolved within the time horizon dedicated to this analysis. We therefore consider that it would be more useful to focus efforts on reaching a compromise on other pending provisions (i.e. Title IV and Title VII). Such a direction would respond to the repeated calls of leaders on the need to advance actions steering to the integration of capital markets, but also to current policy directions that recognize the importance of ensuring a coherent, consistent and well-grounded law-making process.

PUBLIC

In this respect, we would point out that, given the significant number of debtors that would fall under the provisions of Title VI, a regulation of a procedure substantially different from that provided for by the national insolvency legal framework could generate an important impact on the business environment and on the activity of the courts.

In particular, we note the following problematic aspects in relation to the revised Title VI (doc. 6061/25):

1. There is a risk of creating a fragmentation of the insolvency regime by applying the definition of micro-enterprises (Article 2(j) of the Proposal), even in the more flexible version in the compromise text, which would mean replacing the national procedure in a considerable number of cases.

2. This Title seems to be based on the assumption that micro-enterprises would not benefit from a debt discharge procedure, thereby ignoring the mechanisms already in place in national legislation that envisage debt discharge or accelerated treatment dedicated to debtors without assets or with insufficient assets.

3. The proposed legal treatment of the stay of individual enforcement actions (which is not, in a winding-up procedure, a benefit for the debtor, but a measure to protect the collective interests of creditors) should benefit from clearer regulation as an institution with a key role in winding-up proceedings.

4. As regards the list of creditors and the admissibility of claims, the proposed provisions are substantially different from the national ones, making it difficult to integrate them into the internal insolvency framework, which, most likely, would hinder the implementation of the new procedure by its recipients. Thus, we list a number of issues that would raise problems: (i) the way in which claims are admitted to the table, by a simple entry made by the debtor/liquidator, on the basis of the data provided by the debtor; (ii) the inclusion of potentially confusing solutions (continuation of simplified winding-up proceedings in respect of uncontested claims); (iii) the use of concepts unknown in national law (e.g. *raise concerns*).

5. In relation to the type of sale of the assets, we consider that the decision to choose the method of recovery must remain the undisputed prerogative of the creditors. Also, even if the benefits of using an electronic auction platform can be recognised, we note that it cannot remain the main way of valorisation, its non-application being necessary to be justified based on the limited circumstances set out in the Proposal. We believe that the text of the Proposal should reflect the principle that creditors are best placed to decide on the appropriate methods of realising assets, individually or as a going-concern.

6. Regarding the interconnection of electronic auction platforms, we note with concern the issue of costs, but also of overlaps with functional platforms already developed at Member State level (including by private or professional bodies).

7. We are also reserved on the solution of setting an overall deadline for the simplified procedure, especially when it is triggered by the creditors of the micro-enterprise (given the contentious nature of the procedure), a solution that is not in line with the Romanian procedural-civil law. At the same time, such an approach would not allow for the integration of simplified proceedings into the internal insolvency framework without substantially amending it.

8. The Internal consultations conducted revealed concerns of representative banking associations regarding the treatment of third-party guarantors and the solution of coordinating or consolidating collective or individual enforcement actions against a third-party guarantor with the simplified winding-up procedure of the micro-enterprise. The banking associations pointed out that the proposed provisions could lead to a situation where certain categories would not be liable for the debts of the liquidated micro-enterprise, which would lead to the abusive use of this procedure to circumvent liability. At the same time, stakeholders considered that the coordinated application of the enforcement proceedings of personal guarantees with the simplified winding-up procedures of the micro-enterprise entails (i) the limitation of the creditors' rights to satisfy their claim through a procedure for the enforcement of guarantors independently of the simplified insolvency procedure, respectively (ii) the substantial limitation of the possibilities to recover bank claims.

Moreover, we have reservations about the proposed coordination/consolidation solution, given that, according to the national procedural-civil law, the institution of connecting (in Romanian, conexare) of enforcement proceedings applies only to individual enforcements and under the conditions exhaustively provided for by this legislation. Although the concept of consolidation of proceedings has been implemented in Romanian insolvency law in the transposition of Directive (EU) 2019/1023, this mechanism aims at consolidating proceedings against the same debtor, and not insolvency proceedings (collective enforcement) against different debtors, or enforcements of a distinct nature, individual or collective, directed against different debtors.

PUBLIC

XVI. SLOVENIA

PUBLIC

We thank the Presidency for providing the opportunity to present written comments. Please find below comments from the Slovenian delegation on the Title VI. The comments refer to the text of the document 6061/25.

We recognize and acknowledge that the current draft is a marked improvement in almost every possible way. However, for various reasons, the amendments to the previous text still do not remedy the flaws in the concept and in the details and, finally, the whole title has no relevance for the capital markets union.

The original concept of the Title VI was that of a winding-up proceedings initiated and conducted by the debtor himself without an insolvency practitioner. This would mean that a special, new type of winding-up proceedings should be introduced into national laws. This concept was abandoned. However, many features of the concept remain in the current draft.

The text itself still retains a special set of rules which would be applicable only for insolvent microenterprises. However, it includes provisions which seem to be now self-evident and therefore superfluous, like those on the right of the debtor and creditor to file for the opening of winding-up proceedings (Article 41), or when it states that the Member States have the right to determine whether an insolvency practitioner is to be appointed (Article 39(1).

Some other provisions are a deviation from the generally accepted rules and not justified.

The principle that the stay of individual enforcement actions is a necessary legal consequence of the opening of the winding-up proceedings seems to be a generally accepted rule so that there is no need to include Article 44(1) in a text specifically dedicated to the insolvency of microenterprises. The stay is a pre-condition for an equal treatment of creditors (“par conditio creditorum”) in any winding-up proceedings. Such provision seems to one of those which are therefore obviously superfluous. As the principle is well-founded, it should not be hollowed out by Article 44(2) for which there is no need and no justification.

The European Commission declared that one of the goals is to take care that microenterprises may be a party in a winding-up proceedings and these proceedings are done in an orderly manner. This endeavour is reasonable and should be supported. However, the proposed rules on winding-up proceedings do not have any specific connection to the microenterprises.

No preparatory work has been submitted, like a study on possible specific rules for the winding-up proceedings for the insolvent microenterprises, which could make the winding-up proceedings more appropriate to their small size and insolvency estate. Many Member States, and certainly Slovenia, do not have any. However, the declaration of the European Commission rather points out that specific rules are necessary for the insolvency of enterprises in which the insolvency estate does not cover the costs of the winding-up proceedings – but that is a problem that could not exist only in the cases of insolvent microenterprises; it can happen in any insolvency irrespective of the size of the enterprise, i.e, even when the enterprise is not a microenterprise.

It is the intrinsic feature of microenterprises that they provide goods and services for a local market only as they are too small in terms of capital, number of employees, know-how, language skills etc to expand beyond the local market. For the same reasons they are barely capable of participation in the capital markets except on a micro scale and entirely locally. Their cross-border business is negligible. They cannot contribute to the capital markets union of the European Union as they operate outside the Member State of their seat only exceptionally.

There are therefore plenty of reasons to refrain from any further negotiations in the working party on the insolvency of microenterprises as the time schedule is too tight to remedy the text of the Title VI.

The very limited time we still have at our disposal should be rather dedicated to Titles IV and VII, where the impact to the capital and market union is appreciable and the concept and details of the proposals are less controversial.

XVII. SLOVAK REPUBLIC

Title VI

First of all, we would like to thank the PRES for preparing the new proposal in which we identify many positive changes. We also appreciate the flexibility from the KOM. However, our position stays unchanged- we cannot support title VI as a whole, as it achieves the goal of making bankruptcy proceeding available to micro enterprises in a manner that has proven to be inefficient in the Slovak Republic. We also believe that other parts of the proposal, such as Title II (Avoidance actions), Title IV (Pre-pack) or other Titles, are more essential for the CMU than microenterprise insolvency, which should be tailored to local legal, social and economic conditions.

The main reason for our negative position to Title VI is that, although we acknowledge the importance of the goal set by the COM, we are convinced that it can be achieved through different means that are better suited to local conditions. Slovakia as a small economy with limited resources has chosen to divide the costs of proceedings between the debtor and creditors. As a result, we created three insolvency proceedings, that conceptually differ from the proposal.

Since 2016 for discharge proceedings and 2021 for Small bankruptcy, we were able to transform the ineffective, slow and procedurally cumbersome types of proceeding into a simple, efficient, economical and fast liquidation/instalment proceedings. Our aim has been to improve key parameters related to liquidation proceedings- recovery time and the recovery rate. The inspiration for this legislation was the institute of the discharge of debt. Based on the above, we can conclude, that our regulation shares the same objectives as this proposal, but (despite all the changes), it fulfils the goal in a different manner which we consider incompatible with this proposal. At the same time, it seems that the proposal is still very detailed.

In this paper we shortly explain the basis of our legislation and then in the conclusion we suggest a way forward.

Slovak proceedings - explanation

We currently have three individual proceedings, which aim at microenterprises or natural persons (regardless of their entrepreneurial status)

- small bankruptcy proceedings (only for legal persons)

- discharge by bankruptcy (for natural persons)

- discharge by instalments plan (for natural persons)

All of these proceeding require a small fee to be paid upon applying for the opening. This fee covers the cost of an insolvency practitioner who conducts a basic assessment of debtor´s assets, liabilities and his overall situation. A thorough assessment, search or recovery is conducted only at the creditor´s initiative and upon (his) payment of the associated costs.

A creditor has a special right following the discharge of a debtor, which enables him to sue and claim lack of honest intent of the debtor.

PUBLIC

This possibility does not exist in small bankruptcies, which is offset by the court´s ability to fine the debtor´s management if, before the declaration of a small bankruptcy, the debtor reported negative equity and after the cancellation of bankruptcy there were unsatisfied claims exceeding the total amount of EUR 50 000.

These three types of proceedings contain further simplifications, cost-cutting measures and acceleration features such as meeting of creditors only upon request and creditor´s representative instead of a creditor´s committee.

An example of such a feature is the mandatory representation of a natural person by The Legal Aid Centre, which assists an individual in completing the application form. Without this representation, many individuals, who are often laypersons and do not understand legal language – would be unable to access a discharge or would burden the court with demanding and unnecessary work.

Another example is the special regime for secured claims, as secured creditors form the backbone of our monetary market and any interference with these rights could disrupt credit options for all entrepreneurs in Slovakia.

PUBLIC

Conclusion

As stated on the WP (28/2/2025), the aim of the proposal is to enable access to insolvency proceedings to everyone; we think **this goal can be achieved without creating difficulties for the majority of Member States; e.g. introducing a general provision**.

Our national regulation of the "small bankruptcy" applies only to legal entities. Natural persons and natural persons-entrepreneurs are covered with a complex and effective institution of discharge of debt, the change of which we cannot agree to.

Further, the proposed definition of microenterprise should be due to the different structure of enterprises left to national legislation of Member states; in Slovakia it would cover app. 99% of subjects in our economy.

Differences for the procedure of requesting the opening of the proceedings, mandatory representation (or a ban thereof) or the lodgement and admission of claims are so significant that the draft proposal cannot be tailored to the needs of each Member States. Moreover, this proceeding is so crucial for national economies that it has the potential to cause significant disruption of functioning national mechanisms.

Based on these reasons, we do not see the added value of this title, on the contrary, the implementation of the proposed rules could lead to the opposite of the intended goal and simultaneously disrupt the already functioning national mechanisms.

To conclude, we also see the calls of the of the European Council as well as of the Eurogroup in order to speed up the negotiations on this proposal. We are still not convinced how the harmonization proposed in Title VI should strengthen the Capital Markets Union. We are therefore convinced that it is more beneficial to focus on the other parts of the directive in order to adopt a general approach during PL PRES.

XVIII. SWEDEN

We would like to thank the Presidency for the opportunity to provide written comments on the compromise proposal on Title VI (doc. 6061/25) in the proposal for a directive harmonising certain aspects of insolvency law.

As expressed at political level in JHA Council on 7 March 2025, we maintain our position that Title VI on winding-up of insolvent microenterprises should be removed from the directive, without any replacement. We believe that a harmonised simplified liquidation procedure for microenterprises does not have much to contribute to facilitating cross-border investments.

We acknowledge the importance of ensuring that all insolvent companies within the Union, including microenterprises, have access to an efficient winding-up procedure. However, this is already the case in many Member States. In our view, there is little value in having a uniform simplified procedure for insolvent microenterprises across all Member States. On the contrary, such rules risk complicating the insolvency framework further. We believe that the important thing is that all insolvent microenterprises can be subject to an insolvency proceeding, and that this can be achieved in various ways.

The compromise proposal does not fully address the concerns previously raised by us and other Member States. The safeguards in order to prevent abuse and other financial irregularities are insufficient, particularly in cases where an insolvency practitioner is not appointed. For instance, it is unacceptable that the debtor shall handle the realisation of the assets and the distribution of the proceeds.

Additionally, we do not find it appropriate that Member States shall establish national electronic auction platforms, interconnected with each other, for the sale of insolvent microenterprises' assets. In our view, the costs of establishing and maintaining such a system outweigh the potential benefits.

Should you have any questions regarding our comments, we are available for further discussions at your convenience.

PUBLIC