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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	15896/22 + ADD 1 + ADD 2 + ADD 3 + ADD 4
Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - Position of the Slovak Republic on the above proposal

Delegations will find below the general position of the Slovak Republic on the proposal for a Directive harmonizing certain aspects of insolvency law (ST 15896/22 + ADD 1 + ADD 2 + ADD 3 + ADD 4) and its position on Articles 1 to 12:

“Our general position to the Proposal as a whole is rather positive, although there are a few reservations to certain Articles, mainly microenterprise insolvency.

When it comes to the Article-by-Article discussion, our Position is following:

Article 1

The Slovak Republic generally agrees with the Article 1 of the proposal. However, we suggest supplementing the text with paragraph similar to Article 1 para 3 of the Preventive Restructuring Directive No. 2019/1023, which reads:

„Member States may exclude from the scope of this Directive procedures referred to in paragraph 1 that concern debtors which are financial entities, other than those referred to in paragraph 2, providing financial services which are subject to special arrangements under which the national supervisory or resolution authorities have wide-ranging powers of intervention comparable to those laid down in Union and national law in relation to the financial entities referred to in paragraph 2. Member States shall communicate those special arrangements to the Commission.“

The text of this paragraph needs to be adapted, since there is no reference to procedures in paragraph 1 of this proposal, but its meaning would be unchanged, which means that a Member State could exclude from the scope of this Proposal some debtors which are financial entities other than those referred to in Paragraph 2.

Article 2

The Slovak republic agrees with the majority of definitions in Article 2. Our definition of „microenterprise“ is different, since it works with maximum amount of debt and assets belonging to the debtor, but we presume that it covers (more or less) the same group of entities. We are still discussing this issue internally however and therefore we apply a scrutiny reservation.

Article 3

No reservations here.

Title II

Chapter 1

The Slovak legislation of avoidance actions is very similar (or even identical to some extent) to the Directive Proposal. According to our expert the definition of legal act including omissions does not pose a major problem in negotiations. Therefore we can agree with the text of this Chapter as it is.

Chapter 2

Slovak legislation provides a higher degree of creditor's protection than the Directive Proposal. Since the Proposal enables us to keep this degree of protection, we do not oppose to Article 6 para 1 little a). However, our experts expressed the opinion, that a three-month period for such act is too short. Different legislation concerning these periods will certainly raise the risk of forum shopping for the debtors.

Chapter 3

Slovak legislation provides a higher degree of creditor's protection than the Directive Proposal. Since the Proposal enables us to keep this degree of protection, we do not oppose this Chapter. However, we apply a scrutiny reservation to this Chapter, since there are some minor issues that we are still discussing with our experts."