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NOTE

From:	Presidency
To:	Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - Emergency measures

Delegations will find in Annex a new Presidency compromise proposal on Article 1a - Emergency measures.

ANNEX

PUBLIC

Article 1a[1]

Emergency measures

1. **Member States may derogate from applying national provisions transposing Title II, ~~and Titles I~~V and~~to~~ VII of this Directive in the event of extraordinary situations which seriously disrupt the economic activities ~~in~~ at the level of the Member States or their regions, where, and to the extent that, the application of the national provisions transposing those Titles would entail a risk of widespread insolvencies including for companies that are viable under ordinary circumstances.**

2. **A derogation as referred to in paragraph 1 and its duration shall be proportionate and limited to what is essential for containing, resolving or preventing the ~~significant~~ serious disruption to economic activities.**

3. **A derogation as referred to in paragraph 1 shall be notified to the Commission without undue delay. The notification shall list the provisions of this Directive from which the measures derogate, the nature and extent of the exceptional circumstances on which the derogation is based, the duration of the derogation, and the reasons for which the derogation is considered essential for containing, resolving or preventing significant disruption to economic activities. The Commission shall inform the other Member States thereof without undue delay.**

4. **A derogation as referred to in paragraph 1 can be notified for a maximum period of one year. Where and to the extent that the extraordinary situation which seriously disrupts economic activities persists, an extension of the derogation is possible, unless the Commission, after receiving a request to that effect no later than three months before the expiration of the initial derogation period, has objected to the extension.**

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1 *Placement of the article not definitive; could be moved in the Title IX.*

Recital (X)

(X) In the event of exceptional emergency situations stemming from natural disasters or other catastrophic events which seriously disrupt economic activities <u>at the level of a Member State or its regions</u>, Member States should be able to act quickly in order to minimise the adverse impact of those situations on the economy. Such situations have arisen in the context of the Covid pandemic and may arise in the context of a systemic crisis as defined in Article 2(1), point (30), of Directive 2014/59/EU or in situations where State aid is compatible with the internal market to repair damage caused by natural disasters or exceptional occurrences pursuant to Article 107(2), point (b), TFEU. In such situations, which imply the risk of widespread insolvencies, including for companies that are viable under ordinary circumstances, Member States should be able to temporarily derogate from certain provisions of this Directive. The derogations should be limited in scope and time to ~~the extent~~<u>what is essential</u> ~~absolutely necessary~~ to address the exceptional situation, for example by being restricted geographically to the ~~area~~ <u>region in the Member States that is</u> affected by a natural disaster. Member States shall notify the Commission of the measures which derogate from this Directive, their territorial scope, their duration and a justification of the necessity of their implementation. The obligation of Member States to notify those measures shall not affect their entry into force and application. <u>The notification, which facilitates the Commission's monitoring of the compliance of derogations with the relevant requirements, should be brought to the attention of other Member States without undue delay. The maximum time of the derogation is one year comprising a possibility of an extension with an additional controlling mechanism, obliging a Member State to notify the request no later than three months before its expiration and allowing the Commission to oppose it.</u>

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