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Subject: Proposal for a Directive of the European Parliament and of the Council
harmonising certain aspects of insolvency law
- Comments from Member States on Title IX – Final Provisions

Delegations will find in the Annex comments from the Member States on the text of Title IX –
Final Provisions (doc. 15896/22) requested by CM 2218/25.

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**Comments by the German Delegation
on Title IX of the
Commission's Proposal for a Directive harmonising certain aspects of insolvency law
(COM/2022/702 final)**

I. Summary of main points

We note that the "Final Provisions" of Title IX cannot be assessed separately from the contents of the other Titles. Therefore, it must be highlighted that our **comments are based on the premise that Title VI will be deleted** as demanded by Germany and the majority of Member States. We also **reserve further comments depending on the outcome of the negotiations** on the other Titles.

We would like to highlight the following points regarding the transposition deadline in Article 71(1):

1. The **transposition deadline should be extended to four years**. Many provisions cannot simply be copied into national law but need to be tailored specifically to the context and the framework of national insolvency proceedings. Furthermore, in order to ensure the coherent and effective interplay between the provisions implementing the Directive and the remainder of national insolvency law, a deep analysis of possible modifications of national insolvency law will be necessary in order to ensure that the implementation of the Directive can actually fulfil its function in the national context.
2. The **transposition deadline should be extended further with regard to specific provisions, for instance with respect to Articles 14 to 16 regarding access to bank account register information and the EU connection BARIS**. Transposition of these provision is conditional on structural and legal steps required to be taken under the new EU AML Directive 2024/1640 which states in Article 16 para 6 that the EU Commission, in cooperation with EU member states, shall ensure the interconnection by 10 July 2029. The timing of works on relevant implementing acts is thus determined by that timeline. This needs to be taken into account when determining a transposition date for including further institutions – like insolvency courts or other authorities, in this new interconnection system.

As to the specific wording, we recommend to include a parallel wording to Article 2 para 1 sub-para 2 of Directive (EU) 2024/1654 as of 31 May 2024 which refers to BARIS access provisions in the area of criminal investigations.

3. **Member States should be able to benefit from an extension of the deadline if Member States encounter particular difficulties** in the implementation as under Article 34(2) of the Restructuring Directive (cf. our suggestion for a new Article 71(1a)). As this Directive is the first to contain substantial requirements of substantive insolvency law proper, the likelihood that Member States may encounter particular difficulties in the implementation is at least as high, if not higher, than in implementing the Restructuring Directive.
4. As already agreed in the partial General Approach, **the deadlines in Article 13(2), Article 18(3) and Article 68(3) in the version of the partial General Approach must be changed along with the amendments to Article 71**. As far as terminology is concerned, one should go back to the wording from the original Commission Proposal (“*6 months after the deadline for transposition*”). With a view to further negotiations, this wording would unmistakably express the Council’s intention that these deadlines refer to a six month-period in addition to the transposition deadline. The Partial General Approach expressed the same idea in footnotes (“*The deadline for the notification should be 6 months after the transposition deadline. In case the two-year transposition deadline currently set in Article 71 (1) changes, this 30-month deadline should be modified accordingly.*”) However, we do not think that such footnotes are an option for the final General Approach as they could be misinterpreted as the Council showing flexibility on the transposition deadlines.

II. Drafting suggestions (based on the Titles III and VIII of the partial General Approach and Title IX of the original Commission Proposal):

Title III

[...]

Article 13

Designated courts and authorities

1. [...]
2. Each Member State shall notify the Commission of its designated courts or authorities by ... *{6 months after the deadline for transposition}*, and shall notify the Commission of any changes thereto. The Commission shall publish the notifications in the *European e-Justice Portal*.

[...]

Article 18

Access by insolvency practitioners to national registers and databases

[...]

3. Member States shall notify the Commission the lists of national registers and databases referred to paragraph 1 by...*{6 months after the deadline for transposition}*, and shall notify any changes thereto.

The Commission shall publish those lists on the e-Justice portal.

Title VIII

[...]

Article 68

Key information factsheet

[...]

3. The key information factsheet shall be drawn up and submitted to the Commission in an official language of **the institutions of** the Union by ... [*6 months after the deadline for transposition*];

Title IX

FINAL PROVISIONS

Article 69

Committee

1. The Commission shall be assisted by the Committee on Restructuring and Insolvency (the 'Committee') as referred to in Article 30 of Directive (EU) 2019/1023 of the European Parliament and of the Council. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply

Article 70

Review

By [5 years after the deadline for transposition of this Directive], the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application and impact of this Directive.

Article 71

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [4 years from entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

By way of derogation from the first subparagraph of this paragraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 14, 15 and 16 of this Directive, to the extent they relate to the future EU bank account registers interconnection system (BARIS) referred to in Article 16(6) of Directive (EU) 2024/1640 of the European Parliament and of the Council by the date mentioned in subparagraph 1 or 10 July 2029, whichever is later in time.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- 1a. By way of derogation from paragraph 1, Member States that encounter particular difficulties in implementing this Directive shall be able to benefit from an extension of a maximum of one year of the implementation period provided for in paragraph 1. Member States shall notify to the Commission the need to make use of this option to extend the implementation period by [4 years from entry into force].2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

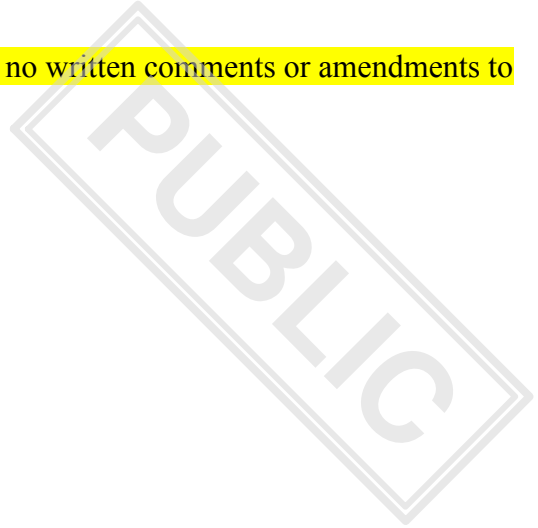
Article 72

Entry into force

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

IRELAND

Ireland confirm its support to Title IX as drafted and has no written comments or amendments to make.



LATVIA

Please see below LV comments on Section IX of the proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law:

Title IX

FINAL PROVISIONS

Latvia would like to express its appreciation for the efforts made in drafting the proposal. However, with regard to Article 71(1), Latvia wishes to underline that the transposition of the directive will require significant administrative and technical efforts, including the elaboration of substantial amendments to national legislation, adjustments to state registers, and adaptations of national IT systems. In light of the above, Latvia considers that the proposed transposition period of two years is not sufficient. Therefore, Latvia proposes that Article 71(1) be amended to provide for a minimum transposition period of three years.

Latvia does not have any comments or objections concerning the other provisions of Section IX.

LITHUANIA

Comments by the Lithuanian Delegation on Title IX of the Commission's proposal for a Directive harmonizing certain aspects of insolvency law

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

Lithuania does not raise significant objections to this Title. However, considering the scope of the Proposal and the areas to be regulated, we would kindly suggest that consideration be given to the possibility of extending the transposition period for the provisions of the Directive by an additional year. A similar transposition period was set forth in the Restructuring Directive.

HUNGARY

<p>A magyar delegáció észrevételei a fizetésképtelenségi jog egyes szempontjainak összehangolásáról szóló irányelvjavaslat IX. címének záró rendelkezésekkel kapcsolatos szövegéhez a következők:</p>	<p>Comments by the Hungarian delegation on the Presidency compromise text on Title IX on Final Provisions of the Proposal for a Directive harmonising certain aspects of insolvency law are the following:</p>
<p>Először is a magyar delegáció szeretné megköszönni a lengyel elnökség munkáját és javaslattételre való lehetőséget.</p>	<p>First of all, the Hungarian delegation would like to thank the Polish Presidency for its work and the opportunity to make proposals.</p>
<p>Magyarország álláspontja szerint a IX. Cím 71. cikk (1) bekezdésében az átültetésre biztosított 2 éves határidő túl rövid – tekintettel az Irányelv terjedelmére és komplexitására – ezért kérjük az átültetési határidőnek az Irányelv hatálybalépését követő legalább <u>három évben</u> történő megállapítását.</p>	<p>In Hungary's view, the two-year deadline for transposition provided for in Article 71(1) of Title IX is too short - given the scope and complexity of the Directive - and we therefore request that the transposition deadline be set at least <u>three years</u> after the entry into force of the Directive.</p>

NETHERLANDS

- The Netherlands reserves the right to make further comments where Titles not yet agreed upon are concerned.
- We are of the opinion that the transposition deadline should be extended to 4 years. Many provisions cannot easily be implemented into national law. Especially implementing the provisions about Title II (avoidance actions), III (asset tracing) and Title V (directors' duties) will take time. Dutch insolvency law will have to undergo drastic changes in these areas.
- As also invoked by Germany, the transposition deadline should be extended further with regard to Articles 14 to 16 regarding access to bank account register information and the EU connection BARIS. Transposition of these provisions is conditional on legal steps required to be taken under the new EU AML Directive 2024/1640 which states in Article 16 paragraph 6 that the EU Commission, in cooperation with EU member states, shall ensure the interconnection by 10 July 2029. The timing of works on relevant implementing acts is thus determined by that timeline. This needs to be taken into account when determining a transposition date for including further institutions – like insolvency courts or other authorities, in this new interconnection system.
- As also mentioned in article 34 paragraph 2 of the Restructuring Directive we would like to see an extension of the transposition deadline in case Member States face particular difficulties in transposing this Directive. In that case Member States shall be able to benefit from an extension of a maximum of one year of the implementation period when they encounter particular difficulties.
- More technical: other deadlines mentioned in the Directive, for example for notification in article 68, should be modified accordingly with the changes in article 71.
- Furthermore, we note that there is no provision for transitional rules. Especially in the area of avoidance actions (Title II) we think transitional rules are necessary. We would like to see an article containing transitional rules included in Title IX.

AUSTRIA

Comments from Austria on Title IX (doc. 15896/22)

Austria thanks the presidency for the opportunity to submit written comments regarding the Title mentioned above.

General remarks

We request the inclusion of a provision similar to Article 34 para 2 of the Restructuring Directive 2019, so that Member States that encounter particular difficulties in implementing the Directive shall be able to benefit from an extension of the implementation period.

We agree with a deadline of one year, as provided for in the 2019 directive.

Art 71

The Austrian Federal Ministry of Finance, Department I/9 has the following request:

Implementation Period under the Final Provisions – Title III / Court Access to the Bank Account Register

With reference to the implementation period of two years as set out in the final provisions, we would like to point out that, in our view – particularly regarding the implementation of Title III and the required connection to the Bank Account Register (BARIS) – this timeframe is not sufficient.

The technical, organizational, and financial requirements are so extensive that implementation within two years is, realistically, not feasible. From our current perspective, an implementation period of at **least four years** would be necessary to allocate the required resources and to ensure a proper and legally compliant integration into the existing system.

We therefore kindly ask for this situation to be taken into account and explicitly support an appropriate extension of the implementation period.

Comments of the Slovak Republic on Title IX (CM 2218/25)

Title IX

In general, we support the text of this Title. Nevertheless, we would like to submit a substantive proposal for amending the transposition period.

Article 72 para. 1

We propose an extension of the transposition period to a minimum of three years, upon the request of a Member State facing specific challenges in implementing this Directive. The rationale for this proposal is twofold:

- a) The Slovak Republic believes that ensuring direct and prompt access to all national registers within the two-year transposition period is not feasible. This is due to the fact that the registers are managed by various national authorities, with whom the negotiations and technical harmonization will be necessary in order to transpose the directive into national regulation. Moreover, a new type of proceedings, such as pre-pack proceedings, must be thoroughly prepared and consulted with both entrepreneurs and professionals.
- b) A three-year period is also consistent with the 2019/1023 Directive. We propose aligning both texts to ensure consistency in their phrasing. Article 34 (2) of the 2019/1023 Directive states *„By way of derogation from paragraph 1, Member States that encounter particular difficulties in implementing this Directive shall be able to benefit from an extension of a maximum of one year of the implementation period provided for in paragraph 1. Member States shall notify to the Commission the need to make use of this option to extend the implementation period by (.....). “.*

SWEDEN

Written comments by the delegation of Sweden –

Title IX in the proposal for a directive harmonising certain aspects of insolvency law

We would like to thank the Presidency for the opportunity to provide written comments on Title IX (final provisions) in the proposal for a directive harmonising certain aspects of insolvency law.

Our remarks on Title IX concern **article 71** regarding transposition.

For many Member States, this directive means that new elements have to be introduced in the national insolvency proceedings. For us, this applies to, for instance, creditors' committees and the prepack-procedure. Also, the rules on asset tracing in title III will likely require technical adaptations that need sufficient time to be developed and enforced.

Against this background, we stress that the transposition time should be longer than two years, at least three years as a minimum. If title VI on winding-up of insolvent microenterprises is kept in the directive, the transposition time needs to be even longer.

We can also support adding a derogation corresponding to article 34.2 in directive 2019/1023, which gives Member States that encounter particular difficulties in implementing the directive the option to extend the implementation period.
