



Brussels, 25 April 2025
(OR. en, fr)

8108/25

LIMITE

JUSTCIV 68
ECOFIN 439
COMPET 265
JAI 471
CODEC 440

**Interinstitutional File:
2022/0408(COD)**

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 - Comments from Member States on Title VII, new Art. 3a and Art. 1a

Delegations will find in the Annex comments from the Member States on the text of Title VII (doc. 7151/25), new Art. 3a (WK 4732/25) and Art. 1a (doc. 7803/25) requested by CM 2367/25.

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BELGIUM

COMMENTS OF THE BELGIAN DELEGATION REGARDING TITLE VII (DOC. 7151/25), NEW ART. 3A (WK 4732/25) AND ART. 1A (DOC. 7803/25) AS REQUESTED BY THE PL PRESIDENCY.

ART. 3A (WK 4732/25)

First of all, we would like to thank the Presidency for writing this new article and thus making it discussable. We consider that in itself an achievement for which we are grateful. It shows that our comments are read and discussed with interest.

We are satisfied with the result of this solution. We take a neutral position in terms of the location of this article. This can also be arranged for us directly in Title VII. Making the title optional ourselves is certainly also a sufficient solution for us.

While we can somewhat place the Commission's opposition, we cannot understand that the final form and *not* the purpose of this title is apparently the most important. At the working group meeting in late February, the Commission stated that the purpose of this title is to **inform and involve creditors**. The Commission finally also stated that **procedural involvement is also a way to protect creditors**. Indeed.

This article is exactly that. Therefore, the opposition seems inconsistent with their previous statements.

We also disagree with the Commission's rebuttal regarding cost and their argument that Title VII is already so flexibly drafted that it need not even be provided for by law.

In terms of flexibility, for Member States totally unfamiliar with the principle of a creditors' committee or with the concept of a general meetings of creditors, this system, however *large* the exceptions, is not flexible in itself. It does require a complete adaptation of the Belgian insolvency system to make it accommodate a creditors' committee, even if its application would be rather limited. The system must be equipped for this and the necessary legislative changes are necessary, but many changes will also follow in practical terms. There is no doubt that Belgium wants to make efforts to further harmonize insolvency law. As a result of the previous amendments, so many new procedures have recently been created that it is time for the population, the economy, companies, magistrates, lawyers, etc. to get used to the current system and not force changes on them all the time.

Also, the comment, “You can leave this to a request of creditors: so it should not even be regulated in the law.” is hard to understand. It actually comes down to the same reasoning: even if it can be at the request of the creditors individually, it should still be regulated by law: how this should be requested, by whom, when, who decides on this? And if the request is granted, then surely it must also be legally provided how such.

As a final compromise proposal, we would have no objection to the text of this article being tightened to the effect that creditors should have some say in the appointment of an insolvency practitioner. That way, there is harmonization after all.

In this way, the stated objectives are achieved with a minimum of cost and change, which cannot be said of the introduction of a creditors' committee right away. It was suggested at the last meeting that this could be a solution. Belgium emphasizes once again that the end result of the creation of a creditors' committee will be more disadvantageous for all creditors at the end, since its cost will only reduce the bankrupt mass.

Belgium also maintains that we must learn from the experiences of other member states (and not ignore them) and use their info to contribute to quality legislation.

TITLE VII – CREDITORS’ COMMITTEE

General remark

We refer to our previous written comments and general remarks on Title VII. This reasoning applies for all the following comments and applies under the condition that the title is not optional and Article 3a is not retained in the text.

We have the most difficulties with:

- The scope (art. 58);
- The controlling power of the creditors committee over the insolvency practitioner (art. 63-64);
- The costs (art. 65).

If at least these issues were curtailed, it would move us forward, despite the impact on our national system.

Art. 58

“Establishment of the creditors’ committee”

- Paragraph 3: Belgium welcomes the exception here, but still considers it too limited. We are in favour of extending this exception where the **size of the debts** of the debtor's company is also taken into account so that it is possible to exclude the creation of a creditors' committee if it is clear that there is too little in the estate. In addition, we would ask that ‘the costs of’ be removed: this is actually a curtailment of the exception. We do not think it is necessary to state it so *expressis verbis* here. We want to avoid asking for an estimation or valuation each time before an exception could be applied or that this would become a case-by-case approach.

Art. 64

“Function, rights, duties and powers of the creditors’ committee”

We welcome the new text of this article and we support the deletion of (c), (e), (f) and (g).

As for the newly added text of paragraph 1, we are in favour of its deletion. This seems to us superfluous and mainly a disguised method of seeing the committee as a supervisory body on the insolvency practitioner rather than ensuring the involvement of creditors. We have deleted c, which we are in favour of, but actually it is now just in the preamble. This is very difficult for us:

We do not want the creditors' committee to be above the insolvency officer. We also find the discussion on the concept of 'oversee' difficult to understand. The Commission literally said at the last working group meeting that it is just a matter of words, that oversee means 'to watch an activity to make sure its correct' and that therefore no order is created that way. In our view, this is completely incorrect: is it then really the intention that the creditors' committee should monitor the activities of the insolvency officer, but that if they find that they are not correct, they can then do nothing about it? If that is the case, then it can simply be removed from the text.

We also follow the comments of the other member states who believe that such duties and rights will cause a lot of delay. This is precisely why we are asking for only principles to be defined generally in this article. The response at the working group meeting was that one can of course limit how many times a creditor can ask for information, but this does not seem so obvious to us. So who assesses this again? This is then another side discussion that only takes time and costs away from the main procedure. That also causes delay and this sums up well why we find it difficult to understand the added value of such a committee.

Regarding (a), we do not support the text in parentheses. We would like this text to be placed in the recitals.

Article 65

“Expenses and remuneration”

It is our understanding that member states have full flexibility to regulate the costs of the creditors' committee and that they can therefore be borne by the estate itself: this is yet another clear argument for us that the added value of creating a creditors' committee will be very limited.

In general, it is the Belgian position that it is better to be able to fall back on some arrangement or framing should the need arise than not to have one. In that sense, we can support the proposal to include an emergency arrangement. It therefore seems best to us to make its scope as broad as possible and thus address as many titles as possible.

We would have liked some more clarification on the conditions stated in the article. Is it a correct reading of the first paragraph that the following, cumulative conditions therefore apply before a member state may derogate?

- Extraordinary situations
 - o If this situation seriously disrupt the economic activities in MS or regions
 - o AND if the application of the (normal) national provisions would entail a risk of widespread insolvencies
 - Including for companies that are viable under ordinary circumstances?

As said before, we support the nature of the notification. We think it would go against the purpose and spirit of this provision if the Commission had to approve the situation and the derogation (prior). We support that the text does not currently require an approval. Notification is an act of information that would allow it to consider whether this is a justified invocation of the emergency clause or not. We follow the Commission's explanation that if this would lead to abuse, then the COM can proceed with the infringement proceedings. We must keep in mind that this is by definition an emergency situation of limited duration.

That is why we do not support paragraph 4. In our view, this is not in line with the original intention: namely that it is not for the Commission to judge whether or not such a derogation is permissible, even if it is an extension. This would create a particularly high degree of legal uncertainty: we all know that in times of crisis (political) decisions are often taken at the last minute. Under no circumstances will it be known 3 months in advance. To then have to wait 3 months to see whether or not there will be an objection from the Commission, which we still can receive the last day, is not desirable and even unworkable. We want to delete this paragraph 4.

**Comments by the German Delegation
on Title VII
as displayed in the Presidency's compromise text of 14 March 2025
(doc. 7151/25)**

I. Summary of main points

1. Strict minimum-harmonisation approach

- a) We welcome the clarification in Article 3a(3) regarding minimum-harmonisation.
- b) Recital 47 should be brought in line with it.

2. Establish core tasks only and avoid the imposition of unnecessary and bureaucratic tasks.

- a) Keep the creditors' committee's task of **supervising the insolvency practitioner** (Article 64(1)).
- b) The creditors' committee **must not have the task of informing individual creditors** (cf. our deletion of Article 64 (2) and amendments to recital 55).
- c) Member **States should not have to set up documentation requirements** (cf. our amendments to Article 63(1) lit. e and recital 53 and recital 55).

3. Delete excessive exceptions that would allow Member States to undermine harmonisation under Title VII (cf. our amendments to Article 58(3) and (4) and recital 48).

- a) The current wording of Article 58 (3) opens the door for Member States not applying the Title simply due to a different national legal policy regarding creditor committees. This would lead to the **unacceptable and paradoxical result** that Member States with well developed, time-tested and functioning systems of creditors' committees would have to change their systems whereas Member States without creditor committees could, in practice, leave their systems largely untouched by carving out excessive exceptions from the Title's scope. Any exceptions, also Member State options, must therefore be restricted to cases where, exceptionally, the purposes of this Title cannot be achieved.
- b) What is necessary is an exception where in the individual case the establishment of a creditors' committee court or administrative authority finds the **delay caused by the establishment of a creditors' committee would lead to a detrimental change in the debtor's financial position**. This is necessary, for example, as sometimes members for a creditors' committee may be hard to find. (cf. our suggestions for a new Article 58(4)).

II. Drafting suggestions (based on the Presidency's Compromise text, changes compared to the Commission's text omitted for the sake of clarity)

Whereas:

[...]

- (47) It is important to ensure that creditors are appropriately involved in the process, such that creditors' interests can be adequately considered. Creditors' committees allow for better involvement of creditors in insolvency proceedings, in particular when creditors would otherwise be inhibited from doing so individually, due to limited resources, economic significance of their claims or the lack of geographic proximity. Creditors' committees may also help cross-border creditors better exercise their rights and ensure their fair treatment. Member States should allow the establishment of a creditors' committee. A creditors' committee should be established at least whenever the general meeting of creditors so decides or requests or, where national law does not provide for a general meeting of creditors, if creditors so request in accordance with national law. Member States may decide that the courts or competent authorities can establish the creditors' committee on their own motion or upon request, in particular, of one or more creditors, the insolvency practitioner or the debtor. Member States should also be able to provide that a creditors' committee is established before insolvency proceedings are opened.
- (48) The cost of setting up and operating a creditors' committee ought to be commensurate with the benefits it generates. Therefore, Member State should be able to provide that the establishment of the creditors' committee would not be justified in those instances where the cost and burden of its set-up and operations is higher than the economic relevance of the decisions it might take. This may be the case where there are too few creditors, where the large majority of creditors has a small share in the claim against the debtor or where the expected recovery from the insolvency estate in insolvency proceedings is lower than the cost of the set-up and operation of the creditors' committee. Such situations occurs in particular in insolvency cases of concerning entrepreneur debtors and microenterprises.

- (49) Member States should clarify the requirements, duties and procedures for the appointment of members of the creditors' committee, as well as its functions. To avoid undue delays in the set-up of the creditors' committee, the members should be appointed expeditiously, to ensure an efficient running of the insolvency proceedings. Member States should cater for a fair representation of creditors in the creditors' committee and ensure that creditors that are resident in another Member State are not precluded from the participating in the creditors' committee.
- (50) Fair representation of creditors in the creditors' committee is particularly important in relation to unsecured creditors, including creditors with small claims.. Member States may provide that persons other than creditors, such as employees' representatives or creditors' associations, are also eligible for the appointment to the creditors' committee.
- (51) An important task of the creditors' committee should be to oversee that insolvency proceedings are conducted in a way that protects creditors' interests. The committee's role in the monitoring of the fairness and integrity of the proceedings can only be performed effectively if the creditors' committee and its members act independently from the insolvency practitioner and are accountable only to the creditors.
- (52) The number of members in the creditors' committee should, on the one hand, be sufficiently large to ensure diversity of views and interests in the committee and, on the other hand, remain relatively limited to deliver on its tasks effectively and timely. Nevertheless, in particular complex cases Member States should be able to increase the number of creditors' committee members to provide adequate protection of creditors' interests. Member States should clarify when and how the composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw for good reason. Member States should also clarify the conditions for the removal of members who committed a serious violation of duties with respect to the creditors' interest.

- (53) The working methods of the creditors' committee should be, transparent and effective. Member States should therefore set out the working methods, specifying procedures for voting and the necessary quorum, and how the impartiality and the confidentiality of the work of the creditors' committee is ensured. Those working methods should also be allowed to set out a role for non-creditors' representatives or transparency towards other creditors. Member States may provide that the working methods may be further specified by means of protocols.
- (53a)** Creditors should be able to participate and vote electronically or delegate their voting rights to a duly authorised third person. This possibility would be particularly beneficial for creditors resident in other Member States.
- (55) The creditors' committee should be granted sufficient rights to perform its functions efficiently and effectively. Member States should ensure that the creditors' committee can interact with insolvency practitioners, courts and the debtor-in-possession, as necessary, to enable the creditors' committee to form and communicate its views on matters of direct interest and relevance to creditors, and for those views to be duly considered in proceedings. Member States should ensure the right of the creditors' committee to request information from the insolvency practitioner and, where the debtor remains in possession, from the debtor. Member States should also enable the creditors' committee to oversee the activities of the insolvency practitioner or, where the debtor remains in possession, the debtor. [Member States could provide for a right of the creditors' committee to be consulted on major decisions.] Member States could also empower the creditors' committee to take decisions.
- (56) Since the operation of the creditors' committee incurs expenses, Member States should establish clear rules as to who pays for them. Member States should also establish safeguards to prevent that the costs of the creditors' committee reduce the recovery value of the insolvency estate in a disproportionate manner.

(57) To encourage creditors to become members of the creditors' committee, Member States should limit their civil liability when they carry out functions in accordance with this Directive. Nonetheless, members of the creditors' committee that have violated their duties intentionally or in a grossly negligent manner, can be held liable for their actions. In those cases, Member States should provide that the members are held individually liable for the detriment caused by their misconduct. Member States may decide not to apply such limitation of the civil liability when the expenses for an insurance covering the personal liability of the members of the creditors' committee members is borne by the insolvency estate.

[...]

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. [...]
2. Titles II, III and VII apply to collective proceedings which are based on national laws relating to insolvency.

By derogation from the first subparagraph, Title II, III and VII do not apply to preventive restructuring procedures and Title II does not apply to interim proceedings.

Article 2

Definitions

- 1.** For the purposes of this Directive, the following definitions apply:

[...]

- (o) ‘creditors’ committee’ means a representative body of creditors, appointed in accordance with the applicable law on insolvency proceedings, with consultative and other powers as specified in that law;

Article 3a

National law and minimum harmonisation

1. Member States may adopt or maintain laws in conformity with Union law which provide for a greater level of protection for the general body of creditors than that provided for under Titles II, V .

[...]

3. Member States may adopt or maintain laws relating to the establishment, functioning, tasks and members of creditors’ committees which provide for a greater participation of creditors in insolvency proceedings than those set out in Title VII.

Title VII

CREDITORS’ COMMITTEE

Chapter 1

Establishment and members of the creditors’ committee

Article 58

Establishment of the creditors’ committee

1. Member States shall ensure that a creditors’ committee is established after the opening of the insolvency proceedings at least if the general meeting of creditors so decides or requests or, where national law does not provide for a general meeting of creditors, if creditors so request in accordance with national law.

2. The creditors' committee can be established before the opening of insolvency proceedings in accordance with national law.

2a. Member States shall ensure that the number of members of the creditors' committee does not exceed 7.

Member States may provide for a higher number of members of the creditors' committee in particularly complex insolvency proceedings.

3. Member States may provide that a creditors' committee is not established in the following circumstances:

- a) the insolvency estate value is low compared to the overall costs of the involvement of the creditor's committee;
- b) the number of creditors is low;
- c) the debtor is a microenterprise.

- 4. Member States may provide that a creditors' committee does not have to be established where the court or administrative authority finds the delay caused by the establishment of a creditors' committee would lead to a detrimental change in the debtor's financial position.

Article 59

Composition of the creditors' committee

3. Member States shall ensure that the composition of the creditors' committee fairly reflects, as far as possible, the different interests of creditors. Member States may provide that persons other than creditors are eligible for the appointment to the creditors' committee.
4. Member States shall ensure that cross-border creditors are eligible for the appointment to the creditors' committee.

Article 60

Duty of of the creditors' committee

- Member States shall ensure that the creditors' committee represents solely the interests of the general body of creditors and acts independently of the insolvency practitioner.

Article 62

Removal of a member and replacement

1. Member States shall lay down rules specifying both the grounds and procedures for the removal and replacement of members of the creditors' committee. Those rules shall also provide for the situation where members of the creditors' committee resign or are unable to perform their duties.
2. Grounds for removal referred to in paragraph 1 shall at least include intentional or grossly negligent serious violation of duties with respect to the creditors' interests.

Chapter 2

Working methods and function of the creditors' committee

Article 63

Working method of the creditors' committee

1. Member States shall lay down rules specifying:
 - (b) the voting procedure and the necessary quorum;
 - (c) conflict of interests;
 - (d) confidentiality of information;.
4. Member States shall provide that the members of the creditors' committee are at least given the possibility to participate and vote either in person or via electronic means.
5. Member States may provide that members of the creditors' committee may be represented by a duly authorised person.

Article 64

Function, rights, duties and powers of the creditors' committee

1. For the purposes of the first subparagraph, Member States shall ensure that the creditors' committee has at least the following rights, duties and powers that safeguard its involvement in the insolvency proceedings and enable it to oversee the activities of the insolvency practitioner or, where the debtor remains in possession, the debtor, including:

- (a) the right to be heard by the insolvency practitioner or, where the debtor remains in possession, the debtor on matters of interest to the general body of creditors [including major decisions such as the sale of assets outside the ordinary course of business];
- (b) the right to be heard in insolvency proceedings;
- (d) the right to request and receive relevant and necessary information from the the insolvency practitioner or, where the debtor remains in possession, from the debtor,;

2. .

Article 65

Expenses and remuneration

1. Member States shall specify who bears the expenses incurred by the creditors' committee or its individual members in exercising the function referred to in Article 64.
2. Where the expenses referred to in paragraph 1 are borne by the insolvency estate, Member States shall ensure that the creditors' committee or its individual members keep record of such expenses and the court, insolvency practitioners or competent authority has the authority to limit unjustified andor disproportionate expenses.
3. Where Member States allow members of the creditors' committee to be remunerated and such remuneration is borne by the insolvency estate, they shall ensure that the remuneration is proportionate to the function performed and that the creditors' committee or its individual members keeps record of it.

Article 66

Liability

1. Member States shall ensure that at least one of the following rules apply:
 - (a) members of the creditors' committee are exempt from personal liability for their actions in their capacity as members of the committee unless they have been found to have violated their duties with respect to the creditors' interests intentionally or in a grossly negligent manner;
 - (b) the personal liability of the members of the creditors' committee for their actions in their capacity as members of the committee is covered by insurance which is borne by the insolvency estate in accordance with Article 65(2).

Comments by the German Delegation
on Article 3a(4)
in the Presidency's compromise text of 09 April 2025
(doc. WK 4732/2025)

While we appreciate the Presidency's efforts towards finding compromises, we **are strictly opposed to Article 3a(4)** as suggested in the Presidency Compromise Proposal. That provision cannot form part of any general approach that Germany will be able to support:

1. Already *prima facie* it is obvious that Article 3a(4) has nothing to do with the Article's minimum-harmonisation approach. On the contrary, the exception has the potential of **undermining the purpose of Title VII** to strengthen creditors' rights and to ensure creditor autonomy. It makes any harmonization in that area **illusory**.

2. More (and worse) than that: Article 3a(4) would lead to the unacceptable and paradoxical result that **Member States with well-established, time-tested and functioning systems of creditors' committees**, even going far beyond the Title's requirements, **would have to adapt their systems whereas Member States without creditor committees could leave their systems untouched**. What from our view would be acceptable regarding the contents of Title VII in the spirit of compromise and for the sake of a harmonized framework, is pointless and unacceptable, where no meaningful European minimum standard can be achieved.

3. **The exception, accompanied by the rationale given in the recitals, violates the principle of creditor autonomy that Title VII intends to strengthen.**

- The suggestion that Title VII is about individual creditors' access to information seems to refer the most misguided provision in Title VII (Article 64(2)) and to argue for the superfluity of creditors' committees on this basis.

First, information of individual creditors should not be a rationale for the setting up of creditors' committees, and it certainly should not be the sole or primary rationale. Seen as a medium for the distribution of information, the creditors' committee would, indeed, be an ineffective and inefficient, cost-consuming institution. The key functions of the committee should rather be: the involvement of creditors in the process and the supervision/control of the insolvency practitioner or, as the case may be, the debtor in possession.

Second, the information that individual creditors and that the creditors' committee can obtain are fundamentally different. For instance, it is hard to imagine that national law would allow individual creditors to receive detailed information about the sale of the debtor's business in the phase of negotiations as, among others, business secrets will be involved. For creditors to actually be able to effectively influence the sale process at this important stage, it is indispensable that a creditor' committee under a duty of confidentiality be involved from the beginning to stay informed about and to supervise the sale process.

- Finally, where Member States' "*laws provide for a separate institution in form of a person or a body with the same scope of functions, duties and rights to protect creditors' interests as it is envisaged for creditors' committee in Title VII*", these cannot fulfill the same function as a creditors' committee. The very idea behind a creditors' committee is that **supervisory and decision-making tasks** should be assigned to **creditors themselves**: Creditors are the ones affected by the insolvency proceedings. Economically speaking, they are the owners of the company and should thus have supervisory and decision-making powers. Indeed, under German law, they decide on all issues of special importance to the insolvency proceedings.
- We would like to highlight that Title VII must be entirely in line with the minimum-harmonisation approach. The creditors' committee cannot be understood to be "*a separate institution [...] with limited powers and rights as provided for in Title VII*", as the recitals suggest.

Comments by the German Delegation
on Article 1a
in the Presidency's compromise text of 7 April 2025
(doc. 7803/25)

I. Summary of main points

4. Art. 1a is a necessary and indispensable element of the framework.
5. The necessity and indispensability of Art. 1a follows directly from the principles of proportionality and of subsidiarity, as Member States must be able to manage crises of local or national scale and to implement in the framework of such crisis management measures that are appropriate in light of the specifics of the crisis and local/or national circumstances.
6. However, some important amendments are necessary, if Art. 1a is to perform its function effectively.
7. **First**, we do not agree that **avoiding unnecessary insolvencies** should be the sole justification for deviations from the Directive. Another aspect that is as important as avoiding unnecessary insolvencies is to **avoid the application of insolvency resolution techniques**, where such application is **not appropriate in times of severe crises**. To give an example: Where the resolution technique used relies heavily on the availability of a market price, in particular (but not limited to) for the going concern of the debtor's business, it would be inappropriate to use such techniques, where markets are disrupted and, thus, a fire sale would have to be conducted that would produce heavy losses to the creditors and other constituencies.

Thus, deviations should not only be permissible in order to avoid insolvencies altogether, but (a maiore ad minus and as a far less intrusive measure) also where insolvency proceedings can be opened, but there is a need to dispense with certain provisions the application of which would lead to a risk of inefficient results, thus **"aggravating the serious disruption of economic activities"**

The breadth of this justification base would not create a risk of unreasonable use (or even abuse), given that Art. 1a(2) ensures that any deviation be justified and proportionate in light of that justification (in terms of, not only, time, but also scale and substance).

8. **Second** and consequently, we do not agree with the deletion of Titles IV from the list of titles that Member States may deviate from.

Title IV relies heavily of the existence and functioning of market mechanisms. The very idea is to realize the going concern value. Where credit markets or M&A markets are under stress, the resulting "best offer" will most likely not deliver the real value that could be obtained, once the crisis has been resolved. Thus, it must be possible to temporarily dispense also with Title IV.

9. The deletion of **Title VI** is acceptable on condition only that there will be no such Title in the final text.
10. The proportionality test in Art. 1a(2) should be specified in order to allow deviations that are **mitigating the crisis**.
11. It remains highly important that the **initial application** of emergency measures **not** be made **subject to approval or objection by the Commission** as such measures must be taken with highest urgency. We understand the Compromise text to achieve exactly that.
12. We can accept the maximum time periods of one year with the possibility of an extension. In a spirit of compromise, we can also agree to the possibility of the Commission to object to such an extension. However, this is subject to **two indispensable conditions**
 - There must be clarity that the **Commission can only object on the grounds that the legal requirements for such an extension are not met**.
 - There must be **a clear deadline (our suggestion: six weeks) for the Commission to object to the extension**. At some point in time, Member States have must certainty that there is no objection. This point in time must leave Member States sufficient time to carry out accelerated legislative proceedings. The Commission should have to decide on its objection within six weeks after the receipt of the Member States' request for an extension.

II. Drafting suggestions:

Article 1a¹

Emergency measures

1. Member States may derogate from applying national provisions transposing Title II and Titles IV 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 aggravating the serious disruption to economic activities], in particular 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, mitigating, 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 within six weeks on the grounds that the requirements for an extension are not met.

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 at the level of a Member State or its regions, 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 Member States should be able to temporarily derogate from certain provisions of this Directive where, and to the extent that, the application of the national provisions transposing those Titles would entail a risk of aggravating disruptions of economic activities, in particular a risk of widespread insolvencies including for companies that are viable under ordinary circumstances, or a risk of businesses being sold in circumstances of extraordinary market failure. The derogations should be limited in scope and time to ~~the extent~~ what is essential ~~absolutely necessary~~ to address the exceptional situation, for example by being restricted geographically to the ~~area~~ region in the Member States that is 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. 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.

IRELAND

Proposal for a Directive of the European Parliament and of the Council
harmonising certain aspects of insolvency law
Presidency Request for written contributions on
Title VII (doc. 7151/25), new Art. 3a (WK 4732/25) and Art. 1a (doc. 7803/25)

Ireland

15 April 2025

Title VII

CREDITORS' COMMITTEE

General comments

Ireland is supportive of the concept of creditors' committees for corporate insolvency in principle and supports the streamlining of insolvency proceedings and improving cross-border cooperation generally.

However, we consider it important to any proposals continue to maintain as much flexibility in the text as possible, where appropriate, through the adoption of a principles based approach as there remains a danger in the current draft of imposing new costs and increasing the regulatory burden which could decrease the attractiveness of setting up creditors' committees.

Ireland is maintaining its general scrutiny reservation on this Title.

It continues to be important to Ireland that any changes to our well-functioning insolvency regime brought about by this Title and the Directive generally are a step forward and do not, as mentioned, increase costs or the administrative burden for companies, particularly small businesses.

Title VII Creditors Committees

New Article 3a para 4

We continue to be supportive of Title VII in principle. We appreciate the Presidency's efforts to take into account the differing situations in Member States. We think it is most appropriate for this Article, if it remains, to go into Title VII.

Definitions

We would prefer if the reference to “applicable law” was changed to national law as per the below.

1. For the purposes of this Directive, the following definitions apply:

[...]

- (o) ‘creditors’ committee’ means a representative body of creditors, appointed in accordance with Member States’ national law ~~the applicable law~~ on insolvency proceedings with consultative and other powers as specified in that law;

Article 58

Establishment of the creditors committee

As mentioned in our previous comments on this Title, Ireland provides for the establishment of a ‘*committee of inspection*’ which is a version of a creditors’ committee that may be established in the event a company becomes insolvent.

In Ireland, *committees of inspection* can be established by an insolvency practitioner.

As previously suggested Para 58 (1) should be amended to include them:

1. Member States shall ensure that a creditors’ committee is established **after the opening of the insolvency proceedings at least only if the authority competent for the insolvency proceedings or the general meeting of creditors or the insolvency practitioner so decides or requests or, where national law does not provide for a general meeting of creditors, if creditors so request in accordance with national law.**

We welcome the explanation and clarification of the matter provided by the Commission at the Working Party meeting of 27 February in respect of the scope of the remit of the Creditors Committee.

While it is accepted that the text of paragraph 3 in the current draft provides for the ability of individual Member States to *not* establish Creditors' Committee due to circumstances related to the nature of scope of the debtor's business and that this should be achieved through defining this within national legislation, the wording on the scope of these exceptions should be made clearer.

This is to ensure that there is absolutely no ambiguity in providing Member States with the sufficient flexibility to specifically exclude small businesses and natural persons from such arrangements.

Article 59

Composition of ~~the members of the~~ creditors' committee

Ireland welcomes the new wording in paragraph 59.3 that "**Member States may provide that persons other than creditors are eligible for the appointment to the creditors' committee.**"

Ireland's national legislation provides for the possibility of both employee and company member representation on our committees of inspections in addition to creditors.

Article 60

Duty of the creditors' committee

Ireland can support calls by other Member States to merge Article 60 with Article 64.

Article 63

Working method of the creditors' committee

Ireland is suggesting that "ensure" is changed to "provide" as per the below

4. Member States shall **provide** ~~ensure~~ that the members of the creditors' committee are given the possibility to participate and vote either in person, **in writing** or via electronic means.

Article 64

Function, rights, duties and powers of the creditors' committee

The reference to “*the first subparagraph*” below does not make sense and should be deleted.

Ireland is also suggesting a further deletion to para 1 as the use of “oversee” suggests a hierarchical supervisory relationship in favour of the creditors' committee vis-a-vis the insolvency practitioner.

1. To that end ~~For the purposes of the first subparagraph,~~ Member States shall ensure that the creditors' committee has at least the following rights, duties and powers that safeguard its involvement in the insolvency proceedings and enable it to oversee the activities of the insolvency practitioners, including:

Article 65

Expenses and remuneration

Ireland welcomes the inclusion of “insolvency practitioners” in para 1 and also the clarification at the last working party from both the Presidency and Commission that it is up to Member States to decide who bears the cost of the establishment of the Creditors' Committee.

Title TBC

Article 1a

Emergency measures

Ireland is supportive of the latest draft regarding Article 1a *Emergency Measures* to allow Member States' to temporarily derogate from certain provisions of this Directive in exceptional emergency situations in order to minimise the adverse impact of such situations on the economy.

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires et propositions rédactionnelles des autorités françaises sur les dernières propositions de compromis de la présidence présentées lors de la réunion du groupe de travail – insolvabilité du 10 avril 2025 sur le Titre VII, l'article 3a et l'article 1a de la proposition de directive sur l'harmonisation de certains aspects du droit de l'insolvabilité –
Note des autorités françaises

Ref : ST7151/25 , WK4732/25, ST 7808/25

Dans le cadre des discussions relatives à la proposition de directive sur l'harmonisation de certains aspects du droit de l'insolvabilité, la présidence polonaise a sollicité les commentaires des délégations concernant le Titre VII, l'article 3a et l'article 1a de la proposition de directive.

Les autorités françaises souhaitent faire valoir les éléments ci-dessous :

Les modifications demandées par les autorités françaises sont indiquées directement en rouge dans le texte et font l'objet d'explications en commentaires.

The changes requested by the French authorities are shown directly in red in the text and are explained in the comments.

TITRE VII - COMITE DES CREANCIERS / CREDITORS- COMMITTEE

- (47) It is important to ensure a fair balance between the interests of the debtor and creditors in insolvency proceedings. Creditors' committees allow for better involvement of creditors in insolvency proceedings, in particular when creditors would otherwise be inhibited from doing so individually, due to limited resources, economic significance of their claims or the lack of geographic proximity. Creditors' committees can especially help cross-border creditors better exercise their rights and ensure their fair treatment. Member States should allow the establishment of a creditors' committee once insolvency proceedings are opened. A creditors' committee should be established ~~only provided that~~ at least ~~whenever the general body meeting of creditors agrees or decides or requests~~ or, where national law does not provide for a general meeting of creditors, if creditors so request in accordance with national law. Member States may decide that the courts, insolvency practitioners or competent authorities can establish the creditors' committee on their own motion or upon request of one or more creditors. Member States should also be able to provide that a creditors' committee is ~~allowed to be established~~ established ~~before~~ before insolvency proceedings are opened ~~and after the filing for insolvency~~. In this case, however, Member States should provide that creditors agree to its continuation and composition at the general meeting. If creditors disagree with the composition, they may also establish a new creditors' committee.
- [47a] It should be noted that in some Member States the protection of creditors rights in the insolvency proceedings is effectively realised by ~~direct access of creditors to the relevant and necessary information provided by insolvency practitioner, the debtor or the court, by means of different forms of communication. Creditors interests are also ensured by providing them with the right to be heard in the insolvency proceedings by the insolvency practitioner and by the court that is supervising the whole proceedings including the insolvency practitioner. In such systems, it is not necessary to establish a separate institution of creditors' committee with limited powers and rights as provided for in Title VII.~~

~~The same is true for those Member States whose laws provide for~~ a separate institution in form of a person or a body with the same scope of functions, duties and rights to protect creditors' interests as it is envisaged for creditors' committee in Title VII.

Therefore these Member States, by way of derogation from the provisions of Title VII, should have the choice not to provide for an establishment of creditors' committee.]

- (48) The cost of setting up and operating a creditors' committee ~~should~~ **ought to** be commensurate ~~to~~ **with** the value ~~benefits~~ **benefits** it generates. **Therefore, Member State should be able to provide that** ~~The establishment of the creditors' committee should~~ **would** not be justified in those instances where the cost **and burden** of its set-up and operations is significantly higher than the economic relevance of the decisions it ~~may~~ **might** take. This may be the case where there are too few creditors, where the large majority of creditors has a small share in the claim against the debtor or where the expected recovery from the insolvency estate in insolvency proceedings is significantly lower than the cost of the set-up and operation of the creditors' committee. ~~This~~ **Such situations** occurs in particular in insolvency cases ~~of~~ **concerning entrepreneur debtors and small microenterprises.**
- (49) Member States should clarify the requirements, duties and procedures for the appointment of members of the creditors' committee, as well as ~~the~~ **its** functions ~~attributed to the creditors' committee.~~ Member States should be given the option to decide whether the appointment should be done by the general meeting of creditors, or by the court **or by the competent authority.** To avoid undue delays in the set-up of the creditors' committee, the members should be appointed expeditiously, ~~meaning as quickly as possible to ensure an efficient running of the insolvency proceedings.~~ Member States should cater for a fair representation of creditors in the **creditors'** committee and ensure that **creditors that are resident in another Member State are not precluded from** ~~the participating on~~ in the creditors' committee ~~is not precluded to creditors whose claim is not yet admitted or to creditors that are resident in another Member State.~~

- (50) Fair representation of creditors in the creditors' committee is particularly important in relation to unsecured creditors that are micro, small or medium-sized enterprises, which in the case of insolvency of a debtor which is a large enterprise, ~~if not paid promptly,~~ are **often** also exposed to **a risk of** insolvency (**so-called** 'domino effect'). ~~Proper representation in the creditors' committee of such creditors could ensure that in the course of the distribution of the recovered proceeds they receive their parts more expeditiously.~~ **Member States may provide that persons other than creditors, such as employees' representatives or creditors' associations, are also eligible for the appointment to the creditors' committee.**
- (51) ~~An important task of t~~The creditors' committee should be ~~to verify oversee that insolvency proceedings are conducted in a way that protects~~ **involved in insolvency proceedings to ensure the protection of** creditors' interests. The committee's role in the monitoring of the fairness and integrity of the proceedings can only be performed effectively if the creditors' committee and its members act independently from the insolvency practitioner and are accountable only to the creditors ~~who established it.~~
- (52) The number of members in the creditors' committee should, on the one hand, be sufficiently large to ensure diversity of views and interests in the committee and, on the other hand, remain relatively limited to deliver on its tasks effectively and timely. **Nevertheless, in particular complex cases Member States should be able to increase the number of creditors' committee members to provide adequate protection of creditors' interests.** Member States should clarify when and how the composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw. ~~They~~ **Member States** should also clarify the conditions for the removal of members ~~that~~ **who acted relentlessly against committed a serious violation of duties with respect to the** creditors' interest.

- (53) ~~Members of the creditors' committee retain discretion in the organisation of the work, as long as~~ **the working methods of the creditors' committee should be** ~~are~~ **lawful, transparent and effective. Member States should therefore require that the creditors' committee to** ~~set out the working methods, specifying~~ **procedures for voting and the necessary quorum**, ~~how meetings should be~~ **undocumented**, ~~who could attend and vote,~~ and how the impartiality and the confidentiality of the work of the **creditors'** committee is ensured. ~~These working methods should~~ **also** ~~be allowed to also set out a role for~~ **non-creditors'** ~~employeers' representatives or transparency towards other creditors. Member States may provide that the working methods may be further specified by means of protocols.~~
- (53a) Creditors should be able to participate and vote electronically or delegate their voting rights to a **duly authorised** third person, ~~provided this person is duly authorised~~. This possibility would be particularly beneficial for creditors resident in other Member States.
- ~~(54) Member States should ensure that the court has the power to determine the working methods for of the creditors' committee, if they are not established expeditiously. The Commission should establish standard working methods that should facilitate the task of the creditors' committee and reduce the need for courts to intervene in the case of missing working methods.~~
- (55) The creditors' committee should be granted sufficient rights to perform its functions efficiently and effectively. Member States should ensure that the creditors' committee **acts in a transparent manner and** can interact with insolvency practitioners, courts, the debtor **in-possession**, ~~external advisors and the creditors whom~~ **that** it represents, as necessary, to enable the **creditors'** committee to form and communicate ~~a~~ **its** ~~views~~ on matters of direct interest and relevance to creditors, and for ~~those~~ **its** ~~views~~ to be duly considered in proceedings. **Member States should ensure the right of the creditors' committee to request information from the insolvency practitioner and, where the debtor remains in possession, from the debtor. †Member States could provide for a right of the creditors' committee to be consulted on major decisions.†** Member States could also empower the creditors' committee to ~~make~~ **take** decisions.

- (56) Since the operation of the creditors' committee incurs expenses, Member States should ~~determine upfront~~ **establish clear rules as to** who pays for them. Member States should also establish safeguards to prevent that the costs of the creditors' committee reduce the recovery value of the insolvency estate in a disproportionate manner.
- (57) To encourage creditors to become members of the creditors' committee, Member States should limit their ~~individual~~ civil liability when they carry out functions in accordance with this Directive. Nonetheless, members of the creditors' committee ~~acting fraudulently or negligently~~ **that have violated their duties intentionally or in a grossly negligent manner;** ~~when carrying out those functions,~~ can be removed and held liable for their actions. In those cases, Member States should provide that the members are held individually liable for the detriment caused by their misconduct. **Member States may decide not to apply such limitation of the civil liability when the expenses for an insurance covering the personal liability of the members of the creditors' committee members is borne by the insolvency estate.**

[...]

Article 1

Subject matter and scope

1. [...]
2. **Titles II, III and VII apply to collective proceedings which are based on national laws relating to insolvency.**

By derogation from the first subparagraph, Title II, III and VII do not apply to preventive restructuring procedures ~~under national law~~ and Title II does not apply to interim proceedings.

Article 2

Definitions

- 1.** For the purposes of this Directive, the following definitions apply:

[...]

- (o) ‘creditors’ committee’ means a representative body of creditors, appointed in accordance with the applicable law on insolvency proceedings, with consultative and other powers as specified in that law;

Article 3a

National law and minimum harmonisation

1. **Member States may adopt or maintain laws in conformity with Union law which provide for a greater level of protection for the general body of creditors than that provided for under Titles II, V ~~[...]~~ and VII.**

[...]

3. Member States may adopt or maintain laws relating to the establishment, functioning, tasks and members of creditors' committees which provide for a greater participation of creditors in insolvency proceedings than those set out in Title VII.

[4. By way of derogation from the provisions of Title VII Member States may choose not to provide for an establishment of creditors' committee where their national law:

~~a) ensures that creditors in the insolvency proceedings have at least the right to be heard and to have access to relevant and necessary information from the insolvency practitioner or the debtor, through different means of communication, or~~

b) provides for the possibility to establish in the insolvency proceedings a person or a body, independent from the insolvency practitioner, that represents interests of general body of creditors and has at least comparable rights and powers as provided for creditors' committee in Article 64.]

Title VII
CREDITORS' COMMITTEE

Chapter 1

Establishment and members of the creditors' committee

Article 58

Establishment of the creditors' committee

1. Member States shall ensure that a creditors' committee is established **after the opening of the insolvency proceedings** ~~at least only if the authority competent for the insolvency proceedings or~~ the general meeting of creditors so decides **or requests** or, where national law does not provide for a general meeting of creditors, if creditors so request in accordance with national law.
- 1a. Member States may decide that the courts, insolvency practitioners or competent authorities can establish the creditors' committee on their own motion or upon request of one or more creditors.
2. By way of derogation from paragraph ~~(1)~~, Member States may provide that, before the opening of insolvency proceedings, the creditors' committee can be established as of the submission of ~~when~~ a request for ~~before~~ the opening of insolvency proceedings **is submitted**, where one or more creditors submit a request to the court for the establishment of such ~~the~~ creditors' committee **can be established before the opening of insolvency proceedings in accordance with national law** ~~upon request of one or more creditors to the court.~~
- 2a. Member States shall ensure that ~~the first general meeting of creditors decides on the continuation and the composition of the creditors' committee established in accordance with subparagraph 1~~ **the number of members of the creditors' committee does not exceed 7~~9~~.**

Member States may provide for a higher number of members of the creditors' committee in particularly complex insolvency proceedings.

3. Member States may exclude in national law the possibility to establish a **provide that a creditors' committee is not established —in insolvency proceedings, where, due to circumstances related to the nature and scope of the debtor's business, it determines that the costs or the burden of the establishment of the creditors' committee would ~~not be justified~~outweigh the benefits.**

Where a Member State provides **for such an exception** ~~under pursuant to the first subparagraph~~, it shall ensure that the circumstances in which the exception applies are clearly defined in national law.

~~When the overall costs of the involvement of such a committee are not justified in view of the low economic relevance of the insolvency estate, of the low number of creditors or the circumstance that debtor is a microenterprise.~~

Article 59

Appointment Composition of the members of the creditors' committee

- ~~1. Member States shall ensure that the members of the creditors' committee are appointed either at the general meeting of creditors or by decision of the court, within 30 days from the date of the opening of the proceedings as referred to in Article 24(2), point (a) of Regulation (EU) 2015/848.~~
- ~~2. Where the members of the creditors' committee are appointed at the general meeting of creditors, Member States shall ensure that the court certifies the appointment within 5 days from the date of the communication of the appointment to the court.~~
3. Member States shall ensure that the **composition of the** appointed members of the creditors' committee fairly reflects, **as far as possible**, the different interests of creditors or groups thereof. **Member States may provide that persons other than creditors are eligible for the appointment to the creditors' committee.**

4. ~~Member States shall ensure that creditors whose claims have only been provisionally admitted and cross-border creditors are also eligible for the appointment to the creditors' committee.~~
5. ~~Member States shall ensure that any interested party may challenge before the court the appointment of one or more members of the creditors' committee on the ground that the appointment was not done in accordance with applicable law.~~

Article 60

Duty of creditors as members of the creditors' committee

1. ~~Member States shall ensure that members of the creditors' committee represents solely the interests of the whole~~**general** ~~body of creditors and acts independently of the insolvency practitioner.~~

By way of derogation from the previous subparagraph, Member States may maintain national provisions that allow to set up more than one creditors' committee representing different groups of creditors in the same insolvency proceedings. In this case, the members of the creditors' committee represent solely the interests of the creditors who appointed them.

2. ~~The creditors' committee owes the duties to all creditors it represents.~~

Article 61

Number of members

~~Member States shall ensure that the number of members composing the creditors' committee is at least 3 and does not exceed 7.~~

Removal of a member and replacement

1. Member States shall lay down rules specifying ~~both the grounds and procedures for the~~ removal and replacement of members of the creditors' committee ~~and the related procedures~~. Those rules shall also ~~provide~~ **provide** ~~for~~ for the situation where members of the creditors' committee resign or are unable to perform ~~their duties required functions, such as in cases of serious illness or death~~.
2. Grounds for removal **referred to in paragraph 1** shall at least include ~~fraudulent intentional~~ or grossly negligent **serious violation of conduct**, ~~wilful misconduct, or breach of fiduciary~~ duties with respect to the creditors' interests.

Chapter 2

Working methods and function of the creditors' committee

Article 63

Working method of the creditors' committee

1. ~~Member States shall ensure that a creditors' committee lays down a protocol of working methods~~ **lay down rules specifying:** ~~within 15 working days following the appointment of the members. If the creditors' committee fails to comply with this obligation, the court shall be empowered to lay down the protocol on behalf of the creditors' committee within 15 working days following the expiry of the first 15 working day period. In the first meeting of the creditors' committee, its members shall approve the working methods by simple majority of the present members.~~
2. ~~That protocol referred to in paragraph (1) shall at least address the following matters:~~
 - (a) ~~eligibility to attend and participate in the creditors' committee's meetings;~~
 - (b) **the eligibility to vote** ing procedure and the necessary quorum;
 - (c) conflict of interests;
 - (d) confidentiality of information;
 - (e) the documentation of the activity of the creditors' committee.**
3. ~~Member States shall ensure that the protocol referred to in paragraph (1) is available to all creditors, the court and the insolvency practitioner.~~
4. Member States shall ensure that the members of the creditors' committee are given the possibility to participate and vote either in person, **in writing** or via electronic means.
5. Member States ~~shall ensure~~ **may provide** that members of the creditors' committee may be represented by a **duly authorised person** ~~party supplied with a power of attorney.~~

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

Article 64

Function, rights, duties and powers of the creditors' committee

1. **Member States shall ensure that the creditors' committee represents solely the interests of the general body of creditors and acts independently of the insolvency practitioner.**
2. ~~To that end~~ **For the purposes of the first subparagraph,** Member States shall ensure that the creditors' committee has at least the following rights, duties and powers **that safeguard allow its involvement in the insolvency proceedings and enable it to oversee the activities of the insolvency practitioners, including:**
 - (a) the right to hear ~~and to be heard by~~ the insolvency practitioner **on matters of interest to the general body of creditors including major decisions such as the sale of assets outside the ordinary course of business** at any time;
 - (b) the right to appear and to be heard in insolvency proceedings;
 - (c) ~~the duty to supervise the insolvency practitioner, including by consulting with the insolvency practitioner and informing the insolvency practitioner of the wishes of creditors;~~
 - (d) the power ~~right~~ to request **and receive** relevant and necessary information from the debtor, the court or the insolvency practitioner **or, where the debtor remains in possession, from the debtor,** at any time during insolvency proceedings;
 - (e) ~~the duty to provide information to the creditors represented by the creditors' committee and the right to receive information from those creditors;~~

~~(f) the right to receive notice of and be consulted on matters in which the creditors represented by the creditors' committee have an interest, including the sale of assets outside the ordinary course of business;~~

~~(g) the power to request external advice on matters in which the creditors represented by the creditors' committee have an interest.~~

2. In performing its duties, upon request, the creditors' committee shall inform creditors about its activity, subject to rules on confidentiality.

~~2. Where Member States entrust the creditors' committee with the power to approve certain decisions or legal acts, they shall clearly specify the matters on which such approval is required.~~

Article 65

Expenses and remuneration

1. Member States shall specify who bears the expenses incurred by the creditors' committee **or its individual members** in exercising ~~its~~ the function referred to in Article [64](#).
2. Where the expenses referred to in paragraph 1 are borne by the insolvency estate, Member States shall ensure that the creditors' committee **or its individual members** keep record of such expenses and the court, **insolvency practitioners or competent authority** has the authority to limit unjustified ~~and~~ or disproportionate expenses.
3. Where Member States allow members of the creditors' committee to be remunerated and such remuneration is borne by the insolvency estate, they shall ensure that the remuneration is proportionate to the function performed ~~by the members~~ and that the creditors' committee **or its individual members** keeps record of it.

Article 66

Liability

1. Member States shall ensure that at least one of the following rules apply:

- (a) ~~m~~Members of ~~the~~a creditors' committee are exempt from individual personal liability for their actions in their capacity as members of the committee unless they have committed been found to have violated their duties with respect to the creditors' interests intentionally or in a grossly negligent manner; grossly negligent or fraudulent conduct, wilful misconduct, or have breached a fiduciary duty to the creditors they represent.**
- (b) the personal liability of the members of the creditors' committee for their actions in their capacity as members of the committee is covered by insurance which is borne by the insolvency estate in accordance with Article 65(2).**

Article 67

Appeal

- ~~1. Where Member States entrust the creditors' committee with the power to approve certain decisions or transactions, they shall also provide for a right to appeal against such an approval.~~
- ~~2. Member States shall ensure that the appeal procedure is efficient and expeditious.~~

ARTICLE 1A – MESURES D'URGENCE / EMERGENCY MEASURES

1. Member States may derogate from applying national provisions transposing Title II, ~~and Titles IV and~~ 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 within a month of its entry into force. 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, for maximum additional period of one year, 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.

Recital (X)

(X) In the event of exceptional emergency situations stemming from natural disasters or other catastrophic events which seriously disrupt economic activities at the level of a Member State or its regions, 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~~what is essential ~~absolutely necessary~~ to address the exceptional situation, ~~for example by being restricted geographically to the area~~ region in the Member States that is 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. 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.

LATVIA

Latvian comments on article 1a and article 3a (4) of the Insolvency proposal.

Comments on Article 1a:

Latvia welcomes the revised Presidency compromise text on Article 1a.

In Latvia's view, the proposed provision offers a well-calibrated and flexible approach to addressing exceptional circumstances which may require temporary derogations from national provisions transposing Titles II and VII of the directive. The mechanism appropriately allows Member States to adopt such derogations, provided they are proportionate, necessary and limited in scope and duration. We therefore express our support for the Presidency's compromise text.

Comment on Article 3a(4):

Latvia welcomes the introduction of the derogation clause in Article 3a(4), together with the Recital (47a), which appropriately reflects the diversity of national insolvency frameworks and the principle of proportionality.

Latvia has consistently maintained that the mandatory establishment of a creditors' committee is neither necessary nor appropriate in legal systems where effective creditor participation and oversight are already ensured through alternative mechanisms. In this regard, Latvian insolvency law provides for the rights of creditors to be informed and consulted, including access to relevant and necessary information from the insolvency practitioner or the debtor, as well as the possibility to be heard in the proceedings. Furthermore, oversight of the insolvency practitioner is exercised by the court and the competent administrative authority, with additional control mechanisms available through the creditors' meeting.

Latvia therefore fully supports the approach taken in Article 3a(4), which permits Member States to forgo the establishment of a creditors' committee where equivalent safeguards are in place. This provision ensures necessary flexibility while maintaining a high level of creditor protection, and Latvia considers it essential that this derogation be preserved in the final text of the directive.

Written comments 14 April 2025 – Article 3a and Title VII – Creditors’ committee

Article 3a

- The Netherlands has a scrutiny reservation regarding article 3a. We endorse the objective of the Presidency’s objective of making the regulation concerning the creditors’ committee more flexible. However, the current wording is somewhat unclear. For instance about what information the creditors’ committee should receive and in what way and time the creditors’ committee should be heard. These aspects will need to be described more clearly in the text of the Directive and in the recitals.
- The Netherlands has a statutory regulation concerning the creditors’ committee, but the establishment of the creditors’ committee is not mandatory under Dutch law. When established, the creditors’ committee in the Netherlands represents the interest of joint creditors.
- In the Netherlands the creditors’ committee has, amongst others, the right to obtain information from the insolvency practitioner and right to be heard in the ruling of the supervisory judge on the cessation of the business. In that way, we think the creditors’ committee under Dutch law has comparable rights and power as provide for creditors’ committee in article 64. However, it is not exactly clear what is meant by comparable rights and powers as mentioned in sub b and when this is the case. Therefore, we are not entirely sure whether the Dutch system complies with article 3 paragraph 4. In the text of the Directive and in the recitals should be clarified what exact rights and powers the creditors’ committee should have.

In case the national procedures comply with sub a and b, we question whether Member States may derogate from Title VII in its entirety or whether some principles should still apply, for example about liability of the members of the creditors’ committee (article 66).

Written comments 14 April 2025 – Article 3a and Title VII – Creditors’ committee

Title VII – Creditors’ committee

General comments

- In general, the Netherlands supports the title on the creditors’ committee. Especially in larger insolvencies, more creditor involvement may increase the quality of the liquidation process. A creditors’ committee is one way to ensure more creditor involvement. Closer involvement of creditors may well be useful and provide additional oversight and more confidence in the resolution of the bankruptcy.
- The Netherlands wants to find a right balance so that a creditors' committee is established only when it is necessary. The revised text seems to contain improvement on this point.

Chapter 1 – Establishment and members of the creditors’ committee

Article 58 – Establishment of the creditors’ committee; recital 48, 52

- We think the revised text of article 58 contains improvements, but we still have some comments and concerns.
- We welcome the revised text of paragraph 1. Where national laws do not provide for a general body, the creditors can request in accordance to national law. This gives Member States more space when transposing this provision into national law.
- The Netherlands believes that limiting the number of members of the creditors’ committee has no added value. However, we welcome the adjustment of paragraph 2a and recital 52 that Member States may provide for a higher number of members in complex insolvency proceedings.
- We welcome the clarification of the text of article 58 paragraph 3 and recital 48. This allows Member States to make an exception to the establishment of a creditors’ committee, when there are circumstances related to the nature and scope of the debtor’s business that establishment of creditors’ committee would outweigh its benefits.
- However, on the basis of recital 48, Member States seem to have more freedom not to set up a creditors’ committee than is stated in article 58 paragraph 1. On the basis of recital 48 Member States should be able to provide that the establishment of the creditors’ committee would not be justified in those instances the cost and burden of its set-up and operations is higher than the economic relevance of the decisions might take. Under article 58 that freedom seems somewhat limited. We would like to see article 58 more in line with recital 48.
- We would be in favour that the time it takes to set up a creditors’ committee, and thus affect the duration of the bankruptcy, could also be included into the decision on whether or not to establish a creditors’ committee. We think that is possible under recital 48, but not under 58. Therefore, we would like to see article 58 more in line with recital 48.

Chapter 2 – Working methods and function of the creditors’ committee

Article 59 – Appointment of the members of the creditors’ committee; recital 50

- We welcome the possibility of appointing non-creditors as well, such as employees of the bankrupt, as stated in the revised text of paragraph 3 and recital 50.

Article 62 – Removal of a member and replacement

- We think the text of paragraph 2 is an improvement. This gives Member States more room when transposing this article into national law.

Article 63 – Working method of the creditors’ committee

- According to paragraph 5, we welcome the possibility that a member of the creditors’ committee is able to be represented by a party supplied with a duly authorised person. In that way members of the creditors’ committee can also be represented by a person holding a written proxy. We are in favour of that.

Article 65 – Expenses and remuneration; recital 38 and 56

According to paragraph 1, we have a question on what Member States would need to do. We question whether Member States could also provide that creditors’ committee bears its own costs? We would like to see this clarified in the text of the recitals or in the text of article 65.

AUSTRIA

Austria would like to express its gratitude for the hard work you have put into the negotiations regarding this directive.

We want to come back to your offer to share once more some comments concerning the remaining provisions of this dossier.

In addition to our statements at yesterday's and today's session, we would greatly welcome the addition of the "*creditors' committee*" in Article 19 (2) as an optional alternative to the mentioned "*creditors*".

Regarding Article 3a(4), we would like to point out that this provision renders Title VII meaningless.

In Austria, the creditors' committee has been an essential part of insolvency proceedings for many years. We consider its inclusion an important tool against abuse.

Therefore, we generally agree with Title VII but we are also fine with its deletion. If Article 3a(4) remains, we want to point out that Title VII would only do some use for those Member States that aim to newly introduce a creditors' committee into their system.

SLOVAKIA

Comments of the Slovak Republic on Title VII and Article 3a (CM/2367/25)

First of all, Slovakia would like to express its gratitude to the Polish Presidency for providing the revised document and for giving us the opportunity to present our observations.

We welcome the harmonisation of the creditors committee, in order to reach a compromise, we do not object the flexibility proposed in Article 3a para. 4.

Regarding the rest of Title VII and Article 3a, we have the following comments:

Article 3a para. 3

We think, that the new wording in para 3 reduces the flexibility of the MS, as it limits to specific aspects of the creditors' committee with the aim of increasing the participation of creditors in the insolvency proceedings. Originally proposed para 1 was more general and referred to a higher level of creditor protection, which we prefer.

For this reason, we propose to retain the original wording of para 1 and to delete the proposed para 3.

Article 64

Technical comment:

In the heading under Article 64, we propose to delete the word "powers" as the para 2, which referred to the powers of the creditors' committee, was deleted and at the same time, Article 64 does not provide for other powers of the creditors' committee.

FINLAND: COMMENTS ON TITLE VII (REVISED TEXT)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

² OJ C [...], [...], p. [...]

³ OJ C [...], [...], p. [...]

Whereas:

[...]

- (47) It is important to ensure a fair balance between the interests of the debtor and creditors in insolvency proceedings. Creditors' committees allow for better involvement of creditors in insolvency proceedings, in particular when creditors would otherwise be inhibited from doing so individually, due to limited resources, economic significance of their claims or the lack of geographic proximity. Creditors' committees can especially help cross-border creditors better exercise their rights and ensure their fair treatment. Member States should allow the establishment of a creditors' committee once **insolvency** proceedings are opened. A creditors' committee should be established ~~only provided that~~ **at least whenever the general body meeting of creditors agrees or decides or requests or, where national law does not provide for a general meeting of creditors, if creditors so request in accordance with national law.** Member States may decide that the courts, **insolvency practitioners** or competent authorities can establish the creditors' committee on their own motion or upon request of one or more creditors. Member States **should also be able to provide that a creditors' committee is** ~~allow to be established~~ ~~it~~ before **insolvency** proceedings are opened ~~and after the filing for insolvency.~~ ~~In this case, however, Member States should provide that creditors agree to its continuation and composition at the general meeting. If creditors disagree with the composition, they may also establish a new creditors' committee.~~
- (48) The cost of setting up and operating a creditors' committee ~~should~~ **ought to be** commensurate ~~to~~ ~~with~~ the value ~~benefits~~ it generates. **Therefore, Member State should be able to provide that** ~~t~~ ~~The~~ establishment of the creditors' committee ~~should~~ **would** not be justified in those instances where the cost **and burden** of its set-up and operations is ~~significantly~~ higher than the economic relevance of the decisions it ~~may~~ **might** take. This may be the case where there are too few creditors, where the large majority of creditors has a small share in the claim against the debtor or where the expected recovery from the insolvency estate in insolvency proceedings is ~~significantly~~ lower than the cost of the set-up and operation of the creditors' committee. ~~This~~ **Such situations** occurs in particular in insolvency cases ~~of~~ **concerning entrepreneur debtors and small** ~~micro~~ enterprises.

- (49) Member States should clarify the requirements, duties and procedures for the appointment of members of the creditors' committee, as well as ~~the its functions attributed to the creditors' committee.~~ Member States should be given the option to decide whether the appointment should be done by the general meeting of creditors, or by the court ~~or by the competent authority.~~ To avoid undue delays in the set-up of the creditors' committee, the members should be appointed expeditiously, ~~meaning as quickly as possible to ensure an efficient running of the insolvency proceedings.~~ Member States should cater for a fair representation of creditors in the creditors' committee and ensure that **creditors that are resident in another Member State are not precluded from** ~~the participating in the creditors' committee is not precluded to creditors whose claim is not yet admitted or to creditors that are resident in another Member State.~~
- (50) Fair representation of creditors in the creditors' committee is particularly important in relation to unsecured creditors that are micro, small or medium-sized enterprises, which in the case of insolvency of a debtor which is a large enterprise, ~~if not paid promptly,~~ are **often** also exposed to a risk of insolvency (so-called 'domino effect'). ~~Proper representation in the creditors' committee of such creditors could ensure that in the course of the distribution of the recovered proceeds they receive their parts more expeditiously.~~ **Member States may provide that persons other than creditors, such as employees' representatives or creditors' associations, are also eligible for the appointment to the creditors' committee.**
- (51) An important task of the creditors' committee should be to ~~verify~~ **oversee** that insolvency proceedings are conducted in a way that protects creditors' interests. The committee's role in the monitoring of the fairness and integrity of the proceedings can only be performed effectively if the creditors' committee and its members act independently from the insolvency practitioner and are accountable only to the creditors ~~who established it.~~

- (52) The number of members in the creditors' committee should, on the one hand, be sufficiently large to ensure diversity of views and interests in the committee and, on the other hand, remain relatively limited to deliver on its tasks effectively and timely. **Nevertheless, in particular large or complex cases Member States should be able to increase the number of creditors' committee members to provide adequate protection of creditors' interests.** Member States should clarify when and how the composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw. They **Member States** should also clarify the conditions for the removal of members ~~that~~ **who** acted relentlessly against **committed a serious violation of duties with respect to the** creditors' interest.
- (53) ~~Members of the creditors' committee retain discretion in the organisation of the work, as long as~~ **The working methods of the creditors' committee should be** are lawful, transparent and effective. Member States should therefore ~~require that the creditors' committee to~~ lay down rules specifying those working methods, including **the eligibility to vote and the necessary quorum,** ~~who could attend and vote,~~ and how the impartiality and the confidentiality of the work of the **creditors'** committee is ensured. ~~Those~~ working methods should **also** be allowed to ~~also~~ set out a role for **non-creditors'** employees' representatives or transparency towards other creditors. **Member States may provide that the working methods may be further specified by means of protocols.**
- (53a) Creditors should be able to participate and vote electronically or delegate their voting rights to a **duly authorised** third person, ~~provided this person is duly authorised.~~ This possibility would be particularly beneficial for creditors resident in other Member States.

- (54) ~~Member States should ensure that the court has the power to determine the working methods for of the creditors' committee, if they are not established expeditiously. The Commission should establish standard working methods that should facilitate the task of the creditors' committee and reduce the need for courts to intervene in the case of missing working methods.~~
- (55) The creditors' committee should be granted sufficient rights to perform its functions efficiently and effectively. Member States should ensure that the creditors' committee **acts in a transparent manner and** can interact with insolvency practitioners, courts, , external advisors and the creditors ~~whom~~ **that** it represents, as necessary, to enable the **creditors'** committee to form and communicate ~~a~~ **its** views on matters of direct interest and relevance to creditors, and for ~~tho~~ **is** views to be duly considered in proceedings. **Member States should ensure the right of the creditors' committee to request information from the insolvency practitioner or, wherean insolvency practitioner has not been appointed, from the debtor. [Member States could provide for a right of the creditors' committee to be consulted on major decisions.]** Member States could also empower the creditors' committee to ~~make~~ **take** decisions.
- (56) Since the operation of the creditors' committee incurs expenses, Member States should ~~determine upfront~~ **establish clear rules as to** who pays for them. Member States should also establish safeguards to prevent that the costs of the creditors' committee reduce the recovery value of the insolvency estate in a disproportionate manner.

(57) To encourage creditors to become members of the creditors' committee, Member States should limit their ~~individual~~ civil liability when they carry out functions in accordance with this Directive. Nonetheless, members of the creditors' committee ~~acting fraudulently or negligently~~ **that have violated their duties intentionally or in a grossly negligent manner, when carrying out those functions,** can be removed and held liable for their actions. In those cases, Member States should provide that the members are held individually liable for the detriment caused by their misconduct. **Member States may decide not to apply such limitation of the civil liability when the expenses for an insurance covering the personal liability of the members of the creditors' committee members is borne by the insolvency estate.**

[...]

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. [...]
2. **Titles II, III and VII apply to collective proceedings which are based on national laws relating to insolvency.**

By derogation from the first subparagraph, Title II, III and VII do not apply to preventive restructuring procedures ~~under national law~~, Title II does not apply to interim proceedings and Title VII does not apply to [insolvency proceedings concerning entrepreneurs] / [debt discharge proceedings].

Article 2

Definitions

1. For the purposes of this Directive, the following definitions apply:

[...]

- (o) ‘creditors’ committee’ means a representative body of creditors, appointed in accordance with the applicable law on insolvency proceedings, with consultative and other powers as specified in that law;

Article 3a

National law and minimum harmonisation

1. Member States may adopt or maintain laws in conformity with Union law which provide for a greater level of protection for the general body of creditors than that provided for under Titles II, V ~~{...}~~ and VII.

[...]

3. Member States may adopt or maintain laws relating to the establishment, functioning, tasks and members of creditors’ committees which provide for a greater participation of creditors in insolvency proceedings than those set out in Title VII.

Title VII

CREDITORS' COMMITTEE

Chapter 1

Establishment and members of the creditors' committee

Article 58

Establishment of the creditors' committee

1. Member States shall ensure that a creditors' committee is established **after the opening of the insolvency proceedings at least only if the authority competent for the insolvency proceedings or the general meeting of creditors so decides or requests or, where national law does not provide for a general meeting of creditors, if creditors so request in accordance with national law.**

2. By way of derogation from paragraph (1) Member States may provide that, before the opening of insolvency proceedings, the creditors' committee can be established as of the submission of ~~when~~ a request for ~~before~~ the opening of insolvency proceedings **is submitted, where one or more creditors submit a request to the court for the establishment of such the creditors' committee can be established before the opening of insolvency proceedings in accordance with national law upon request of one or more creditors to the court.**

- 2a. Member States shall ensure that ~~the first general meeting of creditors decides on the continuation and the composition of the creditors' committee established in accordance with subparagraph 1~~ **the number of members of the creditors' committee does not exceed 79.**

Member States may provide for a higher number of members of the creditors' committee in particularly large or complex insolvency proceedings.

3. Member States may ~~exclude in national law the possibility to establish a~~ **provide that a** creditors' committee is **not established** ~~in insolvency proceedings, where, due to~~ **circumstances related to the nature and scope of the debtor's business, it determines that** **the costs of the establishment of the creditors' committee would not be justified** **outweigh** **the benefits.**

Where a Member State provides ~~for an exception under~~ pursuant to the first subparagraph, it shall ensure that the circumstances in which the exception applies are clearly defined in national law.

~~When the overall costs of the involvement of such a committee are not justified in view of the low economic relevance of the insolvency estate, of the low number of creditors or the circumstance that debtor is a microenterprise.~~

Article 59

Appointment Composition of the members of the creditors' committee

1. ~~Member States shall ensure that the members of the creditors' committee are appointed either at the general meeting of creditors or by decision of the court, within 30 days from the date of the opening of the proceedings as referred to in Article 24(2), point (a) of Regulation (EU) 2015/848.~~

- ~~2. Where the members of the creditors' committee are appointed at the general meeting of creditors, Member States shall ensure that the court certifies the appointment within 5 days from the date of the communication of the appointment to the court.~~
3. Member States shall ensure that the **composition of the** appointed members of the creditors' committee fairly reflects, **as far as possible**, the different interests of creditors or groups thereof. **Member States may provide that persons other than creditors are eligible for the appointment to the creditors' committee.**
4. Member States shall ensure that creditors whose claims have only been provisionally admitted and cross-border creditors are also eligible for the appointment to the creditors' committee.
- ~~5. Member States shall ensure that any interested party may challenge before the court the appointment of one or more members of the creditors' committee on the ground that the appointment was not done in accordance with applicable law.~~

Article 60

Duty of creditors as members of the creditors' committee

~~1.~~ Member States shall ensure that ~~members of the creditors' committee~~ represents solely the interests of the ~~whole~~**general** body of creditors and acts independently of the insolvency practitioner.

~~By way of derogation from the previous subparagraph, Member States may maintain national provisions that allow to set up more than one creditors' committee representing different groups of creditors in the same insolvency proceedings. In this case, the members of the creditors' committee represent solely the interests of the creditors who appointed them.~~

~~2.~~ The creditors' committee owes the duties to all creditors it represents.

Article 61

Number of members

~~Member States shall ensure that the number of members composing the creditors' committee is at least 3 and does not exceed 7.~~

Article 62

Removal of a member and replacement

1. Member States shall lay down rules specifying ~~both the grounds and procedures for the~~ removal and replacement of members of the creditors' committee ~~and the related procedures~~. Those rules shall also ~~provide~~ **provide** ~~for~~ the situation where members of the creditors' committee resign or are unable to perform ~~their duties required functions, such as in cases of serious illness or death~~.
2. Grounds for removal **referred to in paragraph 1** shall at least include ~~fraudulent intentional~~ or grossly negligent **serious violation of** ~~conduct, wilful misconduct, or breach of fiduciary~~ duties with respect to the creditors' interests.

Chapter 2

Working methods and function of the creditors' committee

Article 63

Working method of the creditors' committee

1. Member States shall ensure that a creditors' committee lays down a protocol of working methods **lay down rules specifying:** within 15 working days following the appointment of the members. If the creditors' committee fails to comply with this obligation, the court shall be empowered to lay down the protocol on behalf of the creditors' committee within 15 working days following the expiry of the first 15 working day period. In the first meeting of the creditors' committee, its members shall approve the working methods by simple majority of the present members.
2. That protocol referred to in paragraph (1) shall at least address the following matters:
 - (a) eligibility to attend and participate in the creditors' committee's meetings;
 - (b) **the eligibility to vote** eligibility to and the necessary quorum;
 - (c) conflict of interests;
 - (d) confidentiality of information;
3. Member States shall ensure that the protocol referred to in paragraph (1) is available to all creditors, the court and the insolvency practitioner.
4. Member States shall ensure that the members of the creditors' committee are given the possibility to participate and vote either in person, **in writing** or via electronic means.
5. Member States shall ensure **may provide** that members of the creditors' committee may be represented by a **duly authorised person** party supplied with a power of attorney.

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

Article 64

Function, rights, duties and powers of the creditors' committee

1. ~~To that end~~ **For the purposes of the first subparagraph**, Member States shall ensure that the creditors' committee has at least the following rights, duties and powers **that safeguard its involvement in the insolvency proceedings and enable it to oversee the activities of the insolvency practitioners, including:**
- (a) the right to ~~hear and to be heard by~~ the insolvency practitioner **on matters of interest to the general body of creditors [including major decisions such as the sale of assets outside the ordinary course of business]** at any time;
 - (b) the right to appear and to be heard in insolvency proceedings;
 - (c) ~~the duty to supervise the insolvency practitioner, including by consulting with the insolvency practitioner and informing the insolvency practitioner of the wishes of creditors;~~
 - (d) the ~~power~~ **right** to request **and receive** relevant and necessary information from ~~the debtor, the court or the insolvency practitioner or, where an insolvency practitioner has not been appointed, from the debtor, subject to rules on confidentiality, at any time during insolvency proceedings;~~

- ~~(e) the duty to provide information to the creditors represented by the creditors' committee and the right to receive information from those creditors;~~
- ~~(f) the right to receive notice of and be consulted on matters in which the creditors represented by the creditors' committee have an interest, including the sale of assets outside the ordinary course of business;~~
- ~~(g) the power to request external advice on matters in which the creditors represented by the creditors' committee have an interest.~~

2. In performing its duties, upon request, the creditors' committee shall inform creditors about its activity, subject to rules on confidentiality.

- ~~2. Where Member States entrust the creditors' committee with the power to approve certain decisions or legal acts, they shall clearly specify the matters on which such approval is required.~~

Article 65

Expenses and remuneration

1. Member States shall specify who bears the expenses incurred by the creditors' committee **or its individual members** in exercising ~~its~~ the function referred to in Article [64](#).
2. Where the expenses referred to in paragraph 1 are borne by the insolvency estate, Member States shall ensure that the creditors' committee **or its individual members** keep record of such expenses and the court, **insolvency practitioners or competent authority** has the authority to limit unjustified ~~and~~ disproportionate expenses.
3. Where Member States allow members of the creditors' committee to be remunerated and such remuneration is borne by the insolvency estate, they shall ensure that the remuneration is proportionate to the function performed ~~by the members~~ and that the creditors' committee **or its individual members** keeps record of it.

Article 66

Liability

1. Member States shall ensure that at least one of the following rules apply:

(a) m~~Members of thea creditors' committee are exempt from individual~~ **personal** liability for their actions in their capacity as members of the committee unless they have ~~committed~~ **been found to have violated their duties with respect to the creditors' interests intentionally or in a grossly negligent manner;** ~~grossly negligent or fraudulent conduct, wilful misconduct, or have breached a fiduciary duty to the creditors they represent.~~

(b) the personal liability of the members of the creditors' committee for their actions in their capacity as members of the committee is covered by insurance which is borne by the insolvency estate in accordance with Article 65(2).

Article 67

Appeal

- ~~1. Where Member States entrust the creditors' committee with the power to approve certain decisions or transactions, they shall also provide for a right to appeal against such an approval.~~
 - ~~2. Member States shall ensure that the appeal procedure is efficient and expeditious.~~
-

Finland:

Comments on Article 3a(4) of the Insolvency Directive

Finland generally recognizes that the same objectives can be reached via different means in different insolvency systems. In addition, Finland generally welcomes any compromise proposals that are designed to provide more flexibility for Member States in the implementation of the proposed Directive.

Therefore, Finland is not generally opposed to the compromise proposal presented by the Presidency regarding Title VII of the proposed Directive.

The above position is based on the assumption that Title VI will be deleted from the final Directive as consistently requested by Finland and the majority of Member States.

Finland:

Comments on Article 1a of the Insolvency Directive

Finland preferred the previous version of Article 1a where a maximum period for the derogation and the related extension mechanism were not included. In our view, it would be sufficient to require that any derogations under Article 1a are proportionate and limited to what is essential.

Either way, Finland considers Article 1a to be an essential part of the proposed Directive and continues to support the inclusion of Article 1a in the final Directive.

Finland emphasizes that it is important to ensure that the entry into force or application of the initial derogations will not depend on the approval of the Commission. In the event of extraordinary situations which entail the risk of seriously disrupting the economic activities in Member States or in specific regions of Member States, time is of the essence and postponing the entry into force or application of the derogations until the Commission has had the time to process and approve them could seriously undermine the objectives and efficiency of the derogations.
