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NOTE

From: General Secretariat of the Council
To: Delegations

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Subject: Proposal for a Directive of the European Parliament and of the Council
harmonising certain aspects of insolvency law
- Presidency draft compromise proposal on Title IX, including the provision
on emergency measures

Delegations will find in Annex the Presidency compromise proposal on Title IX, including the provision on emergency measures, of the above mentioned directive.

Changes in comparison to the Commission's proposal are indicated in **bold** or ~~strikethrough~~, while changes in comparison with the last version of the compromise text are indicated **in bold and underline** or ~~strikethrough~~.

[...]

(58a) 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 what is essential to address the exceptional situation, for example by being restricted geographically to the 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~~ extending it by six-month-periods 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.

(59) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

- (60) Since the objectives of this Directive cannot be sufficiently achieved by the Member States because differences between national insolvency frameworks would continue to raise obstacles to the free movement of capital and the freedom of establishment, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (61) This Directive respects the fundamental rights and observes the principles recognised by the Charter of the Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter), the freedom to choose an occupation and right to engage in work (Article 15 of the Charter), the freedom to conduct a business (Article 16 of the Charter), the right to property (Article 17 of the Charter), workers' right to information and consultation (Article 27 of the Charter) as well as the right to a fair trial (Article 47(2) of the Charter).
- (62) Regulation (EU) 2016/679 of the European Parliament and of the Council¹ applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council² applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive.
- (63) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on [*OP: add data of publication*],

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Title III
TRACING ASSETS BELONGING TO THE INSOLVENCY
ESTATE

Article 13

Designated courts

[...]

2. Each Member State shall notify the Commission of its designated courts **or authorities** by ... ~~[6 months from transposition]~~ **30-42 months from the date of entry into force of this Directive³**, and shall notify the Commission of any ~~amendment~~ **changes** thereto. The Commission shall publish the notifications in the *Official Journal of the European Union* ~~European e-Justice Portal~~.

Article 18

Access by insolvency practitioners to national asset registers

[...]

3. Member States shall notify the Commission the lists of national registers and databases referred to paragraph 1 by... ~~[30-42 months from the date of entry into force of this Directive]~~⁴, and shall notify any changes thereto.

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

³ *From the Partial General Approach: “The deadline for the notification should be 6 months after the transposition deadline. In case the two-year transposition deadline currently set in Article 71 (1) changes, this 30-month deadline should be modified accordingly.”*

⁴ *From the Partial General Approach: The deadline for the notification should be 6 months after the transposition deadline. In case the two-year transposition deadline currently set in Article 71 (1) changes, this 30-month deadline should be modified accordingly.”*

Title VIII
MEASURES ENHANCING TRANSPARENCY OF NATIONAL
INSOLVENCY LAWS

Article 68

Key information factsheet

[...]

3. The key information factsheet shall:

- (a) —be drawn up and submitted to the Commission in an official language of **the institutions of the Union** by ... [~~42~~³⁰ *6 months after the deadline for transposition from the entry into force of this Directive*];

⁵ *From the Partial General Approach: “The deadline for the notification should be 6 months after the transposition deadline. In case the two-year transposition deadline currently set in Article 71 (1) changes, this 30-month deadline should be modified accordingly.”*

Title IX

FINAL PROVISIONS

Article ~~1a~~68a

Emergency measures

1. Member States may derogate from applying national provisions transposing Title II, V and VII of this Directive in the event of extraordinary situations which seriously disrupt ~~the~~ economic activities 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. ~~The~~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 serious disruption referred to in that paragraph ~~to economic activities~~.
 3. ~~The~~A derogation as referred to in paragraph 1 shall be notified to the Commission without undue delay within a month from its entry into force.
- ~~The~~When notifying ~~ieation~~ the Commission in accordance with the first subparagraph, the Commission 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 serious significant ~~disruption~~ to economic activities as referred to in paragraph 1. The Commission shall inform the other Member States thereof without undue delay.
4. ~~The~~A derogation as referred to in paragraph 1 may have ~~can be notified for~~ a maximum duration period ~~of~~ one year.

[Where and to the extent that the extraordinary situation which seriously disrupts economic activities persists, an extension of the derogation may be extended by periods of up to 6 months is possible, unless provided that the Member State notifies the Commission to that effect no later than 3 months before the expiration of the initial derogation period, 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. That extension shall take effect unless the Commission objects, at the latest one month before the expiration of that initial derogation period, on the basis that the extension does not comply with the requirements referred to in paragraph 1 and 2.]

Article 69

Committee

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

Article 70

Review

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

Transposition⁶

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [~~32~~ years from the entry into force of this Directive] ~~at the latest~~. They shall forthwith communicate to the Commission the text of those provisions.

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

- 1a. By way of derogation from paragraph 1, Member States that encounter particular difficulties in implementing this Directive may bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [4 years from the entry into force of this Directive].**

When a Member State make use of the option set out in the first subparagraph, it shall notify the Commission thereof by ... [30 months from the entry into force of this Directive].

- 1b. Member States shall ensure that Title II applies only to legal acts perfected after the date of the entry into force of the laws, regulations and administrative provisions necessary to comply with this Directive referred to in the first subparagraph of paragraph 1.**

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

⁶ *From the Partial General Approach: "A provision in Title IX on Final provisions would clarify that Title II will apply to legal acts perfected after the transposition deadline of the Directive."*

Article 72

Entry into force

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

Article 73

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

[...]

For the Council

The President

[...]