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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - Presidency compromise proposal on Titles IV, Va, VI, VII and IX

Delegations will find in the Annex the Presidency draft compromise proposal on Titles IV, Va, VI, VII, IX and the related provisions in Title I, III, V and VIII 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~~.

ANNEX

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)

PUBLIC

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 Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

[1] OJ C [...], [...], p. [...]
[2] OJ C [...], [...], p. [...]

[…]

(21) In the context of insolvent liquidation, national insolvency laws should allow for the realisation of the assets of ~~the~~**a** business to occur through the sale of the business or part thereof as a going concern. **'**Sale as a going concern**'** should **be understood to** mean, ~~in~~ **for the purpose of** this ~~context~~**Directive**, the transfer of ~~the~~**a** business, in whole or in part, to an acquirer in **such** a way that ~~the~~**that** business ~~(~~**,** or **a sufficiently significant** part thereof~~) may~~**,** **can** continue to operate as an economically productive unit~~. Sale as a going concern~~ **and** should **not** be understood ~~as opposed~~ to ~~a~~**include the** sale of the assets of the business piece by piece (piecemeal liquidation).

PUBLIC

(22) It is generally assumed that more value can be recovered in liquidation by selling ~~the~~**a** business ~~(~~**,** or part thereof~~)~~**,** as a going concern rather than by piecemeal liquidation. In order to promote **sales of a** going concern ~~sales in liquidation~~, national insolvency regimes should ~~include a pre-pack~~ **provide for a mechanism** ~~proceeding, where the~~ **by means of which a** debtor in financial distress, with the help **or under the supervision** of a ~~"~~monitor~~"~~~~, seeks possible~~**, can seek** interested acquirers and ~~prepares~~**prepare** the sale of ~~the~~**a** business as a going concern **('pre-pack mechanism')** before the formal opening of insolvency proceedings~~, so that the~~**. The remaining** assets ~~can~~**of that business can therefore** be quickly realised shortly after the opening of the formal insolvency proceedings. **This Directive should therefore lay down minimum standards for a pre-pack mechanism while allowing for ~~a degree of~~sufficient flexibility of implementation by Members States adapting those standards in existing national insolvency law**. The pre-pack ~~proceedings~~ **mechanism** should consist of two phases, namely a preparation phase and a liquidation phase. **The preparation phase should aim at finding an appropriate buyer for the debtor's business or part thereof and should ~~not~~ be confidential ~~made public~~at least as far as the efforts to find an appropriate buyer are concerned. The liquidation phase should aim at approving and executing the sale of the debtor's business or part thereof and at distributing the proceeds to the creditors, in accordance with national law. The liquidation phase should begin with a decision of a judicial body or any other competent body to formally open insolvency proceedings under national law leading to the winding up of the debtor. It is not precluded that~~~~, due to the circumstances of the case,~~ **the debtor may continue its business activity after the termination of the liquidation phase with the remaining part of the economic activity~~that was realised in liquidation or reorganisation type of insolvency proceedings~~. The liquidation phase should be carried out by means of insolvency proceedings othe~~n~~r than preventive restructuring procedures. In Member States where Regulation (EU) 2015/848 of the European Parliament and of the Council applies, the liquidation phase should be carried out by means of the insolvency proceedings that are included in Annex A other than preventive restructuring proceedings.**[3]

[3] **Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19).**

(22a) **The pre-pack mechanism should be without prejudice to Union and national law on the rights of employees in insolvency proceedings, including the involvement of employees' representatives.** ~~**The pre-pack mechanism should respect the rights of employees in insolvency proceedings as granted under EU law**~~**. Specifically, it should be governed by statutory or regulatory provisions and should be construed in a way where the transfer of all or part of an undertaking is prepared** ~~**by**~~ **with the assistance of a monitor under the supervision of the court or competent authority, prior to the institution of formal insolvency proceedings that are instituted with a view to the liquidation of the assets of the debtor. While the primary aim of the pre-pack mechanism is to enable, in the insolvency proceedings, a liquidation of the debtor's assets by the transfer of all or part of the undertaking as a going concern which satisfies to the greatest extent possible the claims of all the creditors, it can also** ~~**lead to**~~**serve** ~~**preservinges**~~ **employment preservation. Consequently, when in takes place in** ~~**winding up**~~ **proceedings which could end in the liquidation of the debtor, the liquidation phase of the pre-pack mechanism in this Directive is an eligble procedure for the purposes of article 5(1) of Council Directive 2001/23/EC[4].**

[4] Council Directive2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

(22b) The pre-pack mechanism does not replace national substantive rules, in particular, on the ranking of creditors' claims, the distribution of proceeds, the participation of creditors or the remuneration of the monitor and insolvency practitioner. Neverthe~~r~~less, such rules should not run counter to the objectives of the pre-pack mechanism. In the event that a court or competent authority does not authorise the sale of a business, or part thereof, as proposed by the monitor, insolvency proceedings should proceed in accordance with the applicable national insolvency law. The opening of the liquidation phase is subject to the requirements for the opening of insolvency proceedings under national law, such as the presence of a ground for the opening of proceedings.

(22c) The pre-pack mechanism set out in this Directive should be applied to debtors that are legal persons. Member States may extend the application of the pre-pack mechanism to natural persons who are entrepreneurs.

~~(23) For the effective management of the pre-pack proceedings, the court before which such proceedings are brought should also have the power to decide on issues closely related to the pre-pack sale of the business or part thereof.~~

PUBLIC

(24) The pre-pack ~~proceedings~~ **mechanism** should ensure that the monitor ~~appointed in the preparation phase might propose~~ **submits for authorisation to the court or competent authority** the best bid obtained during the ~~sale process for authorisation by the court only if it declares that, in its view,~~ **preparation phase. ~~It should be possible to require~~ T~~t~~he monitor ~~to~~ should assess and state whether the** piecemeal liquidation would ~~not~~ recover manifestly more value for creditors than the market price obtained ~~for~~ **through the sale of** the business ~~(~~**,** or part thereof~~)~~**,** as a going concern. ~~The~~ **As a rule, T~~t~~he** going-concern value **of a business** is~~, as a rule,~~ **may be reasonably expected to be** higher than ~~the~~**its** piecemeal liquidation value because it is based on the assumption that the business ~~continues~~**will continue** its activity with the minimum of disruption, ~~has~~**maintain** the confidence of financial creditors, shareholders and clients and ~~continues~~**continue** to generate ~~revenues~~**revenue**. Therefore, the monitor's ~~declarations~~**statement** should not require a valuation ~~being made~~**to be carried out** in every case. ~~The~~**Any conclusion by the** ~~monitor should only reasonably conclude that the~~ **going-concern** ~~sale price is not significantly lower than the proceeds that could be recovered through~~ **of** a piecemeal liquidation **~~should be duly justified.~~ National law may require the monitor to take into account elements other than price, including the public interest or ensuring the viability of a business**. However, ~~an~~**a requirement to impose** increased scrutiny should ~~be required from~~**apply where the assessment of** the monitor or the insolvency practitioner ~~in cases~~**involves a case** where the ~~only existing~~ offer **that is considered the best** is made by a party who is closely related to the debtor. ~~In such situations, the~~**The** ~~monitor or the insolvency practitioner~~ **~~concerned~~ ~~Such~~** ~~should~~ **~~be~~** ~~reject~~**~~ed~~** ~~the~~**~~such an~~** ~~offer if it does not satisfy the best-interest-of-creditors test.~~**Member States can require the monitor to justify that the bid identified as best offer does not put the creditors in a situation worse than that they would be under an alternative mechanism of addressing the debtor's insolvency. The monitor should document the preparation of the sales process, so as to provide an appropriate basis for the authorization or approval of the best offer.**

PUBLIC

(25) In order to ~~guarantee~~**ensure** that ~~the~~**a** business is sold ~~at~~**for** the best ~~market value~~**price** ~~during~~ **through** the pre-pack ~~proceedings~~**mechanism**, Member States should ~~either~~ ensure **that the sale process in the preparation phase is conducted under** high standards of competitiveness, transparency and fairness ~~of the sale process conducted in the preparation phase~~, or ~~provide~~ that ~~the court runs~~ a ~~brief public auction after the opening of the liquidation phase of the proceedings~~. **Alternatively, Member States ~~should ensure~~may provide that, after the opening of the liquidation phase or the presentation of the recommended best bidder, a public auction is run to select the best bid or the bid recommended by the monitor is approved by the creditors. It is for Member States to decide whether the approval of the creditors is given by the general meeting of creditors or creditors committee.**

(25a) It is not precluded for the Member States to provide that a court or a competent authority that established that the sale process is not competitive, transparent, fair, and meets market standards can decide to proceed with a public auction, or piecemeal liquidation of debtor's assets in insolvency proceeding commenced within pre-pack mechanism.

(25b) In insolvency systems that are based on the principle of creditor autonomy, Member States should be able to provide that it is for the general meeting of creditors or the creditors' committee to authorise the sale of the debtor's business or part thereof in accordance with national law.

PUBLIC

(26) If a Member State opts to require high standards in the preparation phase, the ~~monitor (subsequently to be appointed as insolvency practitioner in the liquidation phase) should~~**monitor should** be responsible for ensuring that the sale process is competitive, transparent, fair and meets market standards. Complying with market standards in this context should require that the process is compatible with ~~the~~ standard rules and practice on mergers and acquisitions in the Member State concerned, ~~which includes~~**and include** an invitation to potentially interested parties to participate in the sale process, disclosing the same information to potential buyers, enabling the exercise of due diligence by interested acquirers, and obtaining the offers from the interested parties through a structured process.

(27) If a Member State opts to ~~provide~~**require** that ~~the court runs~~ a public auction **is run prior or** after the opening of the liquidation phase, the offer selected by the monitor during the preparation phase should be used as an initial bid ('stalking horse bid') **for the purposes of the auction** ~~during the auction~~. The debtor should be able to offer incentives to the 'stalking horse bidder' by agreeing, in particular, to expense reimbursements or break-up fees in the case a better offer is selected through the public auction. ~~**It should be possible to offer incentives to the "stalking horse bider" by agreeing, in particular, to expense reimbursements or break up fees in the case a better offer is selected through the public aution.**~~ Member States should, nevertheless, ensure that such incentives given by the debtors to the 'stalking horse bidders' during the preparation phase are commensurate and do not deter other potentially interested bidders from participating in the public auction in the liquidation phase.

(28) **To avoid the mere fact of a business being the subject of under insolvency proceedings depreciating its value, it is important to ensure that operational counterparties, such as suppliers or customers of the debtor concerned, are taken over by the acquirer and not, as a result, affected by insolvency proceedings.** ~~The~~**Therefore, the** opening of insolvency proceedings should not result in the early termination of contracts under which the parties still have obligations to perform ~~(executory contracts)~~**certain obligations and** which are necessary for the continuation of business operations. Such termination would unduly jeopardise the value of the business, or part thereof, to be sold ~~in~~ **through** the pre-pack ~~proceedings~~**mechanism**. It should, therefore, be ensured that ~~those~~**such** contracts are assigned to the acquirer of the business of the debtor**,** or part thereof, even without the consent of the counterparty of the debtor to ~~those contracts~~**them**. ~~Nonetheless~~**Nevertheless**, there ~~are~~**can be** situations ~~where~~**in which** the assignment of ~~the executory~~**certain obligations under such** contracts cannot be reasonably expected~~, such as when the acquirer is a competitor of the counterparty of the contract~~. ~~Similarly, the court may come to the conclusion in an individual assessment of an executory contract that its termination would serve the interests of the business of the debtor better than its assignment, such as when the assignment of the contract would result in a disproportionate burden for the business.~~ **Therefore, Member States should be able to provide that the consent of the debtor's counterparty or counterparties is required for the assignement of contractual obligations, depending on the type of contract, quality of the parties, or interests of the business concerned.** ~~The court should not be allowed, however, to terminate executory contracts~~**contractual obligations** ~~relating to licenses of~~**for** ~~intellectual and industrial property rights, as they are usually key components of the operations of the business being sold~~**a business being sold.** **Member States should be able to require the consent of the licensee to terminate contracts relating to licenses of intellectual and industrial property rights, of which the debtor is the licensor, as the protection of these rights in the case of the insolvency of the licensor endorses investing in the development of such rights.**

PUBLIC

(28a) Member States should also be able to introduce an additional safeguard for the protection of the counterparty's legitimate interests by granting the right to the counterparty to terminate the assigned contract upon a notice period of three months. Additionally, Member States should be able to provide for the counterparty's right to require a deposit or security interests or the right of retention.

(28b) In order to increase the attractiveness of asset deals for potential buyers and, thereby, to achieve higher prices in going-concern sales, Member States should ensure that purchasers acquire businesses free and clear of debts and liabilities. Therefore, creditors' claims should be satisfied from the proceeds of sale and not asserted directly against the purchaser of a business. However, claims resulting from executory contracts or contracts of employment transferred to the buyer remain with the acquirer.

(28c) The release of security interests or other encumbrances over assets belonging to the debtor's business should be governed by national law. Where the law in a Member States requires the express consent of the holder of the security interests for the release of such interest, that Member States should be able to provide for a derogation from that requirement, provided that a holder of secured claims does not objects to that release.

(28d) The best offer should not be disqualified from the preparation phase solely on the basis that it comes from a closely related party to a debtor. Closely related parties to the debtor should, therefore, be on an equal footing with other bidders and benefit from the "free and clear" acquisition of the business concerned. The eligibility of closely related parties to bid should, nevertheless, be balanced with enhanced scrutiny of the bidding process. Providing equal opportunities for other bidders, particularly in relation to access to information and ensuring information symmetry, facilitates quick and efficient pre-pack proceedings and allows other bidders to prepare their bids.

PUBLIC

(28e) **Where the offer made by a party closely related to the debtor is considered as the best offer, Member States should be able to introduce additional safeguards for the authorisation and execution of the sale of the debtor's business or part thereof. Such safeguards can include, for example, the obligation for the acquirer to ensure business continuity for a minimum period of time, or the maintenance of pending employment contracts.**

(29) The possibility ~~to enforce~~**of enforcing** pre-emption rights in the course of ~~the~~**a** sale process would distort competition in the pre-pack ~~proceedings~~**mechanism**. Potential bidders might abstain from bidding ~~because of~~**where** rights ~~that would discard~~ **holders could, at** their ~~offers at the holder's~~ discretion, **discard those bids,** irrespective of the time and resources invested and the economic value of the ~~offer.~~**offers concerned.** In order to ensure that ~~the~~ winning ~~offer reflects~~**offers reflect** the best available ~~price~~**prices** on the market, pre-emption rights should not be conceded to bidders, nor should such rights be enforced in the course of the ~~bidding process~~**liquidation phase**. Holders of pre-emption rights that were granted prior to the commencement of ~~the~~ pre-pack proceedings **should**, instead of invoking their option, ~~should~~ be invited to participate in the bidding. **Nevertheless, Member States should be able to enforce ~~legal~~ statutory pre-emption rights ~~under national law~~.**

(30) Member States should allow secured creditors to participate in the bidding process in ~~the~~ pre-pack proceedings by offering the amount of their secured claims as consideration for the purchase of the assets over which they hold a security (credit bidding). Credit bidding should not, however, be used in **such** a way ~~that provides~~**as to provide** secured creditors with an undue advantage in the bidding process, such as ~~when~~**where** the amount of their secured claim against ~~the~~**a** debtor's assets is above the market value of ~~the~~**that debtor's** business. **As such, a secured creditor should not be able to bid the whole amount of a claim against the debtor's business that is worth less than the amount of that claim, thereby deterring potential competitors from participating in the bidding process. Therefore, this Directive should restrict the amount that a creditor can bid in cases where there are undersecured or undercollateralised claims. In such cases, a secured creditor should only be allowed to bid an amount that is to be offset against the purchase price, without exceeding the market value of the business. The restricition on a creditor's ability to bid the value of a secured claim does not mean that that claim loses its security interest in respect of the portion of the claim that cannot be used in the bidding process.**

(31) This Directive should be without prejudice to the application of Union competition law, especially Council Regulation (EC) No 139/2004 ~~-~~nor should it prevent Member States from enforcing national merger control systems. When selecting the best offer, the monitor should be allowed to take into account the regulatory risks raised by offers requiring the authorisation of competition authorities and may consult with those authorities if allowed under applicable rules. **The disclosure of information by the competition authority should not be contrary to national rules on the protection of business secrets.** It should remain the responsibility of the bidders to provide all necessary information to assess those risks and to engage in timely manner with competent competition authorities in order to mitigate those risks. In order to increase the likelihood that procedures are successful, in presence of an offer that raises such risks, the monitor **or the debtor** should be required to perform ~~its~~ **their** role in a way that facilitates the presentation of alternative bids.

[…]

(34) Microenterprises often take the form of sole proprietorships or small partnerships whose founders, owners or members do not enjoy limited liability protection and thus are exposed to unlimited liability for business debts. Where microenterprises operate as limited liability entities, limited liability protection is usually illusory for microenterprises owners because they are often expected to secure microenterprises business debts using their personal assets as collateral. Moreover, since microenterprises heavily depend on payments from their clients they often face cash-flow problems and higher default risks that follow from the loss of a significant business partner or from late payments by their clients. In addition, microenterprises also face scarcity of working capital, higher interest rates and larger collateral requirements, which make raising finance, especially in situations of financial distress, difficult, if not impossible. As a consequence, they may be prone to insolvency more often than larger enterprises.

(35) National insolvency rules are not always fit to treat insolvent microenterprises properly and in a proportionate manner. Taking into account the unique characteristics of microenterprises and their specific needs in financial distress, in particular the need for faster, simpler, and affordable procedures should be acknowledged, separate insolvency proceedings should be developed at national level in accordance with the provisions of this Directive. Although the provisions of this Directive concerning simplified winding-up proceedings only apply to microenterprises, it should be possible for Member States to extend their application also to small and medium-sized enterprises that are not microenterprises.

(36) It is appropriate to ensure that the conduct and oversight of simplified winding-up proceedings may be entrusted by Member States to a competent authority which is either a court or an administrative body. The choice would depend, among other things, on the administrative and legal systems of the Member States as well as the capacities of courts and the need to ensure cost-efficiency and speed of proceedings.

PUBLIC

(37) The cessation of payments test and the balance sheet test are the two usual triggers among Member States for opening of standard insolvency proceedings. The balance sheet test may however be unfeasible for microenterprise debtors, particularly where the debtor is an individual entrepreneur, because of a possible lack of proper record and of a clear distinction between personal assets and liabilities and business assets and liabilities. Therefore, the inability to pay debts as they mature should be the criterion for the opening of simplified winding-up proceedings. Member States should also define the specific conditions under which this criterion is met, as long as these conditions are clear, simple and easily ascertainable by the microenterprise concerned.

(38) In order to establish cost-effective and expeditious simplified winding-up proceedings for microenterprises, short deadlines should be introduced. Similarly, formalities for all procedural steps, including for the opening of the proceedings, the lodgement and the admission of claims, the establishment of the insolvency estate and the realisation of the assets should be minimised. A standard form should be used for submitting a request to open simplified winding-up proceedings and electronic means should be used for all communications between the competent authority, and where relevant, the insolvency practitioner, and the parties to the proceedings.

(39) All microenterprises should be able to commence proceedings to address their financial difficulties and obtain a discharge. Access to simplified winding-up proceedings should not depend on the microenterprise's ability to cover the administrative costs of such proceedings. The laws of the Member States should introduce rules for covering the costs of administering simplified winding-up proceedings where assets and sources of revenue of the debtor are insufficient to cover those costs.

PUBLIC

(40) In simplified winding-up proceedings, the appointment of an insolvency practitioner is usually unnecessary given the simple business operations carried out by the microenterprises that make their supervision by the competent authority possible and sufficient. Therefore, the debtor should remain in control of its assets and day-to-day operation of the business. At the same time, to ensure that simplified winding-up proceedings can be conducted effectively and efficiently, the debtor should, upon commencement of and throughout the proceedings, provide accurate, reliable and complete information relating to its financial position and business affairs.

(41) A microenterprise debtor should be able to benefit from a temporary stay of individual enforcement actions, in order to be able to preserve the value of the insolvency estate and ensure a fair and orderly conduct of the proceedings. Member States, however, may allow competent authorities to exclude certain claims from the scope of the stay, in well-defined circumstances.

(42) Disputed claims should be dealt with in a way that does not unnecessarily complicate the conduct of simplified winding-up proceedings for microenterprises. If disputed claims cannot be quickly dealt with, the ability to dispute a claim may be used to create unnecessary delays. In deciding on the treatment of a disputed claim, the competent authority should be empowered to allow the continuation of the simplified winding-up proceedings with respect to undisputed claims only.

(43) In the context of simplified winding-up proceedings, avoidance actions should only be brought by a creditor or, where appointed, by the insolvency practitioner. In taking the decision to convert the simplified winding-up proceedings to standard insolvency proceedings for the purpose of the conduct of avoidance proceedings, the competent authority should weigh various considerations, including the anticipated cost, duration and complexity of avoidance proceedings, the likelihood of the successful recovery of assets and expected benefits to all creditors.

PUBLIC

(44) Member States should ensure that the assets of the insolvency estate in simplified winding-up proceedings can be realised through public on-line judicial auction, if the competent authority considers this means of realisation of assets as appropriate. For this reason, Member States should ensure that one or more electronic auction systems are maintained in their territory for that purposes. This obligation should be without prejudice to the multiple platforms that exist in some Member States for on-line judicial auctions of specific types of assets.

(45) The auction systems operated for the purposes of realising the assets of debtors in simplified winding-up proceedings should be interconnected via the European e-Justice Portal. The e-Justice Portal should serve as a central electronic access point to the on-line judicial auction processes run in the national system or systems, provide a search functionality for users and guide them to the relevant national on-line platforms if they intend to participate in the bidding. When determining the technical specifications of that interconnection system by way of implementing act, the Commission should, in accordance with the Commission's "Dual Pillar Approach"[5], present the result of the analysis of existing solutions already provided by the Commission with the potential for their reuse or should carry out a market screening for potential off-the shelf commercial solutions to use as such or with little customisation.

(46) In the case of insolvency of an unlimited liability microenterprise debtor, individuals who are personally liable for the debtor's debts should not be personally liable for unsatisfied claims following liquidation of the insolvency estate of the debtor. Therefore, Member States should ensure that in simplified winding-up proceedings entrepreneur debtors, as well as those founders, owners or members of an unlimited liability microenterprise debtor who are personally liable for the debts of the microenterprise subject to simplified winding-up proceedings, are fully discharged from their debts. For the purpose of granting such discharge, Member States should apply Title III of Directive (EU) 2019/1023 *mutatis mutandis*.

[5] For digital solutions, the dual pillar approach is about reusing existing solutions, including corporate building blocks, before considering ready-made market solutions. Customised development is the last option. See European Commission digital strategy Next generation digital Commission, C(2022) 4388 final, p. 13.

(47) It is important to ensure **that creditors are appropriately involved in the process, such that creditors' interests can be adequately considered**~~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. **Member States should also be able to provide that a creditors' committee is established before insolvency proceedings are opened. Member States are not prevented from extending the application of those provisions to preventive restructuring proceedings.** A creditors' committee should be established ~~only provided that~~ **at least whenever the general meeting of** creditors ~~agree~~**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, insolvency practitioners or competent authorities can establish the creditors' committe on their own motion or upon request of one or more creditors.** ~~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.**

PUBLIC

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 the establishment of a 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**~~T~~he 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**, where possible delays caused by the establishement of a creditors' committee would lead to a deterioration of the financial situation of 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** occur~~s~~ in particular in insolvency cases ~~of~~ **concerning entrepreneur debtors and small** ~~micro~~enterprises **or in discharge procedures**.

(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~~. 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~~ participati**ng**~~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~~-~~**, including creditors with small claims.** ~~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 also exposed to insolvency ('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) **The creditors' committee should be involved in insolvency proceedings and ensure that** ~~An important task of the creditors' committee should be to verify that insolvency proceedings~~ **they** 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 particulary complex cases Member States should be able to increase the number of creditors'commeitte 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** ~~essential~~ **serious gravity of duties with respect to the** creditors' interest.

PUBLIC

(53) ~~Members of the creditors' committee retain discretion in the organisation of the work, as long as~~ **T**~~t~~he 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, record keeping of the decisions taken by the creditors' committee**~~how meetings should be run~~**information on the activities of the creditors' committee should be made accessible**, ~~who could attend and vote,~~ and how the impartiality and the confidentiality of the work of the **creditors'** committee is ensured. Th**o**~~e~~se working methods should **also** be allowed to ~~also~~ set out a role for **non-creditors**' ~~employers'~~ 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 the**ir** voting right**s** 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** view**s** on matters of direct interest and relevance to creditors, and for th**o**~~i~~s**e** view**s** 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.

PUBLIC

(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. Where Member States entrust the creditors' committee with greater powers, allowing it, for example, to take decisions concerning the assets of the debtor or to accept transactions in insolvency proceedings, Member States should be able to provide that the members of the creditors' committee are held liable in the same manner as an insolvency pratictioner.**

[…]

PUBLIC

(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 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.

PUBLIC

(59) In order to ensure uniform conditions for the implementation of this ~~Regulation~~**Directive**, 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).

PUBLIC

(62) Regulation (EU) 2016/679 of the European Parliament and of the Council[6] applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council[7] 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*],

PUBLIC

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6 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).

7 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).

HAVE ADOPTED THIS DIRECTIVE:

Title I
GENERAL PROVISIONS

PUBLIC

Article 1

Subject matter and scope

1. This Directive lays down common rules on:

(a) avoidance actions;

(b) the tracing of assets belonging to the insolvency estate;

(c) pre-pack proceedings;

(d) the duty of directors to submit a request for the opening of insolvency proceedings;

~~(e) simplified winding-up proceedings for microenterprises;~~

(f) creditors' committees;

(g) the drawing-up of a key information factsheet by Member States on certain elements of their national law on insolvency proceedings.

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.

3.~~2.~~ **[…]**

4. **The pre-pack proceedings apply to debtors that are legal persons.**

5. […]

PUBLIC

Article 2

Definitions

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

[…]

~~(c) 'competent authority' means a judicial or administrative authority of a Member State that is responsible for conduct or oversight, or both, of simplified winding-up proceedings, in accordance with Title VI of this Directive;~~

[…]

(g) 'executory contract' means a contract between a debtor and one or more counterparties under which the parties still have obligations to perform at the time of the opening of insolvency proceedings in the liquidation phase in Title IV;

(h) 'best-interest-of-creditors test' means the test whereby no creditor would be worse off under a liquidation in **the context of a** pre-pack ~~proceedings~~ **mechanism** than such a creditor would be if the normal ranking of liquidation priorities were applied in the event of a piecemeal liquidation **or, where Member States so provide, in the event of the next-best-alternative scenario**;

(i) 'interim financing' means any new financial assistance, provided by an existing or a new creditor, that includes, as a minimum, financial assistance during pre-pack proceedings, and that is reasonable and immediately necessary for the debtor's business or part thereof to continue operating, or to preserve or enhance the value of that business;

~~(j) 'microenterprise' means a microenterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC;~~

~~(k) 'unlimited liability microenterprise'~~ **debtor'** ~~means a microenterprise~~ **debtor** ~~with or without separate legal personality and without limited liability protection of any of its founders, owners or members;~~

~~(l) 'entrepreneur' means an entrepreneur as defined in Article 2(1), point (9) of Directive (EU) 2019/1023;~~

~~(m) 'full discharge of debt' means the situation in which either: i) the enforcement of outstanding dischargeable debts against entrepreneurs or~~ **natural persons who are equity holders** ~~against those individuals who are founders, owners or members of an unlimited liability microenterprise~~ **debtor,** ~~and are personally liable for the debts of the microenterprise~~ **debtor,** ~~is precluded; or ii) outstanding dischargeable debts as such are cancelled, as part of simplified winding-up~~**insolvency** ~~proceedings~~ **which could include a realisation of assets or a repayment plan or both**~~;~~

~~(n) 'repayment plan' means a programme of payments5 of specified amounts on specified dates to creditors by a natural person benefiting from a full discharge of debt, or a plan setting out periodic transfers to creditors of a certain part of the disposable income of the natural person concerned during the discharge period;~~

(o) 'creditors' committee' means a representative body of creditors**,** appointed in accordance with ~~the applicable~~ **national** law on insolvency proceedings**,** with consultative and other powers as specified in that law;(p) 'pre-pack ~~proceedings'~~ **mechanism'** means ~~expedited liquidation proceedings~~**a mechanism, comprising a preparation phase and a liquidation phase,** that allow for the sale of the business of the debtor, in whole or in part, as a going-concern to the best bidder~~, with a view to the liquidation of the assets of the debtor~~**in the course of insolvency proceedings for the debtor**~~as a result of the established insolvency of the debtor~~;

PUBLIC

(pa) 'preparation phase' means the phase of the pre-pack mechanism aiming at finding an appropriate buyer for the debtor's business or part thereof;

(pb) 'liquidation phase' means the phase of the pre-pack mechanism aiming at approving and executing the sale of the debtor's business or part thereof and at distributing the proceeds to the creditors;

(q) 'party closely related to the debtor' means:

(a) for the purposes of Title II, the following:

[…]

(b) for the purposes of Title IV, the persons listed under point (a) and any other persons, including legal persons, with preferential access to non-public information on the affairs of the debtor.

2. […]

Article 3

Relevant point in time in relation to close relatedness

The point in time for determining whether a party is closely related to the debtor shall be:

(a) […]

(b) for the purposes of Title IV, the day when the ~~preparation~~ **liquidation** phase **of the pre-pack ~~proceedings~~ mechanism** starts or **during a period falling at least** ~~three~~ **six** months prior to the ~~start~~**commencement** of the preparation phase.

PUBLIC

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 and V.

2. […]

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 that provided for in Title VII.

~~**4. Member States may choose not to provide for an establishment of creditors' committee in accordance with the provisions of Title VII, 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, selected by the creditors, 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.**~~

PUBLIC

Title III
TRACING ASSETS BELONGING TO THE INSOLVENCY ESTATE

PUBLIC

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 Directive*~~[8]], 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…[42 months from the date of entry into force of this Directive][9], and shall notify any changes thereto.

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

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8 *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."*

9 *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 IV

PRE-PACK ~~PROCEEDINGS~~MECHANISM

Chapter 1

General provisions

Article 19

Pre-pack ~~proceedings~~mechanism

1. **Member States shall ensure that debtors have access to the pre-pack mechanism in accordance with this Title.**

1a. Member States shall ensure that debtors who enter the pre-pack mechanism are authorised to undertake at least acts of ordinary management during the preparation phase. Member States may provide that that authorisation can be limited or not granted, where debtors have been sentenced for serious breaches of accounting or bookkeeping obligations under national law.

~~Member States shall ensure that pre-pack proceedings are composed of the following two consecutive phases:~~

~~(a) the preparation phase, which aims at finding an appropriate buyer for the debtor's business or part thereof;~~

~~(b) the liquidation phase, which aims at approving and executing the sale of the debtor's business or part thereof and at distributing the proceeds to the creditors.~~

2. ~~Pre-pack proceedings shall comply with the conditions set out in this Title.~~ **National law applies to**~~As regards all other~~ matters **not regulated by this Title**, including the ranking of claims~~, and the rules on~~ **the** distribution of proceeds**, the participation of creditors, the responsabilities and liability of the debtor and the debtor's directors and the remuneration of the monitor and the insolvency practitioner,** ~~Member States shall apply national provisions on winding-up proceedings, provided that they are compatible with Union law,~~ **provided that such laws are consistent with the objectives of this Title.** ~~including the rules laid down in this Title~~.

PUBLIC

Article 20

Relationship with other Union legal acts

1. The liquidation phase ~~referred to in Article 19, paragraph 1,~~ shall be **carried out by means of** ~~considered to be an~~ insolvency proceedings **other than preventive restructuring procedures. In Member States where Regulation (EU) 2015/848 applies, the liquidation phase shall be carried out by means of insolvency proceedings** as **set out in Annex A** ~~defined in Article 2, point (4), of~~ **to** Regulation (EU) 2015/848 **other than preventive restructuring proceedings**.

   ~~Monitors referred to in Article 22 may be considered to be insolvency practitioners as defined in Article 2, point (5), of Regulation (EU) 2015/848.~~

2. **This Directive is without prejudice Council Directive 2001/23/EC[10] and national rules implementing it.**

   For the purposes of Article 5(1) of Council Directive 2001/23/EC~~[11]~~, **when it takes place in ~~winding-up~~ proceedings which can end in the liquidation of the debtor,** the liquidation phase shall be considered to be bankruptcy **proceedings** or **any analogous** insolvency proceedings instituted with a view to the liquidation of the assets of the transferor under the supervision of a competent public authority.

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10 **Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).**

~~11~~ ~~Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).~~

~~Article 21~~

~~**Jurisdiction in pre-pack proceedings**~~

~~The court having jurisdiction in pre-pack proceedings shall have exclusive jurisdiction in matters relating to the scope and effects of the sale of the debtor's business or a part thereof in pre-pack proceedings on the debts and liabilities, as referred to in Article 28.~~

Chapter 2

Preparation Phase

Article 22

~~**The m**~~**Appointment of the m~~M~~onitor**

1. **Member States shall ensure that t~~T~~he preparation phase ~~shall~~ start~~s~~ when a monitor is appointed. The procedure for the appointment of the monitor shall be set in accordance with national law.**

1a. Member States shall ensure that the monitor is independent from the debtor, the debtor's shareholders, the creditors and any other party having a legal or economic interest in the debtor or the debtor's business. 2~~3~~. Member States shall ensure that only ~~those~~ persons who ~~fulfil both of the following conditions can be appointed as monitor:~~

~~(a) they~~ satisfy the eligibility criteria applicable to insolvency practitioners in the Member State where the pre-pack ~~proceedings~~ **mechanism** ~~are opened~~**is used**~~;~~ **can be appointed as monitor.**

~~(b) they may be actually appointed as insolvency practitioners in the subsequent liquidation phase.~~

Article 22a

Principles of the preparation phase

1. Member States shall ensure that the sale process is competitive, transparent, fair, and meets market standards.

2. Member States shall ensure that the monitor**, if necessary with the assistance of the debtor:**

~~(a) documents and reports each step of the sale process;~~

(**a~~b~~**) justifies why it considers that the ~~sale is competitive, transparent, fair and meets market standards~~**requirement under paragraph 1 is fulfilled**;

(**be**) recommend~~s~~ the best bidder as the pre-pack acquirer, in accordance with Article 30;

(**c~~d~~**) state~~s whether it considers~~ that**, on the basis of its assesment,** the best bid does not **prima facie** constitute a ~~manifest~~ breach of the best-interest-of-creditors test.

~~Actions by the monitor listed in the first subparagraph shall be done in writing, be made available in digital format and in a timely manner to all parties involved in the preparation phase.~~

The monitor shall document and report each step of the sale process ~~and make the relevant documents and reports available in digital format and in a timely manner to all parties involved in the preparation phase~~.

3. Member States may provide that a public auction be conducted prior to, or at the beginning of, the liquidation phase in order to ensure the realisation of a fair market price. ~~In that case~~Where such a public auction is conducted, Member States ~~shall ensure~~may provide that the obligations set out in paragraph 1 and paragraph 2, point (a), do not apply to the monitor.

4. Member States may provide that, where the recommendation referred to in paragraph 2, point (b), is approved by creditors in accordance with national law, paragraph 1 and paragraph 2, point (a), do not apply.

5. Member States may provide that the preparation phase not be initiated in cases where the debtor is generally unable to pay its debts as they fall due in accordance with national law.

6. Member States may provide that the preparation phase can be initiated only when the debtor is in a state of likelihood of insolvency in accordance with national law.

~~Member States shall provide that, upon request of the debtor, the court appoints a monitor.~~

~~The appointment of the monitor shall start the preparation phase referred to in Article 19, paragraph 1.~~

~~4. Member States shall ensure that, in the course of the preparation phase, the debtor remains in control of its assets and the day-to-day operation of the business.~~

~~5. Member States shall ensure that the remuneration of the monitor is:~~

~~(a) by the debtor where no subsequent liquidation phase ensues;~~

~~(b) by the insolvency estate as a preferential administrative expense where the liquidation phase ensues.~~

PUBLIC

Article 23

Stay of individual enforcement actions

1. Member States ~~shall~~ **may provide** that**,** during the preparation phase, where the debtor is in a situation of likelihood of insolvency or is insolvent in accordance with national law, the debtor can benefit from a stay of individual enforcement actions in accordance with Articles 6 and 7 of Directive (EU) 2019/1023, where ~~it~~ **that stay** facilitates the seamless and effective roll-out of the pre-pack ~~proceedings~~**mechanism**.

   The monitor shall be heard prior to the decision on the stay of individual enforcement actions.

Article 23a

Suspension of the opening of the liquidaition phase

Member States may provide that when a creditor files for insolvency during the preparation phase, the opening of the liquidation phase can be suspended if, taking into account the circumstances of the case, that opening would not be in the general interest of creditors.

Article 23b

Termination of the preparation phase

1. Member States may provide that the preparation phase is limited in time.

2. Member States may provide that the preparatory phase can be terminated if:

a) the debtor fails to provide the necessary assistance in accordance with Article 22a (2);

b) the debtor fails to conduct the preparation phase with due diligence; or

c) the preparation phase does not have any reasonable prospects of success.

PUBLIC

~~Article 24~~

~~Principles applicable to the sale process~~

~~1. Member States shall ensure that the sale process carried out during the preparation phase is competitive, transparent, fair and meets market standards.~~

~~2. Where the sale process only produces one binding offer, that offer shall be deemed to reflect the business market price.~~

~~3. Member States may depart from paragraph 1 only where the court runs a public auction in the liquidation phase in accordance with Article 26. In this case, Article 22(2), point (b) shall not apply.~~

Chapter 3

Liquidation Phase

Article 25

Appointment of the insolvency practitioner

The liquidation phase starts when a decision on the opening of liquidation proceedings is taken, and the insolvency practitioner is appointed, in accordance with national law.

~~Member States shall ensure that, when the liquidation phase is opened, the court appoints the monitor referred to in Article 22 as insolvency practitioner.~~

PUBLIC

Article 26

~~**Authorisation of the sale of the debtor's business or part thereof**~~

Principles applicable to the liquidation phase

1. Member States shall ensure that, when the liquidation phase is opened, the court **or competent authority** authorises the sale of the debtor's business or part thereof**, at least in one of the following cases,** ~~to the acquirer **that is:** proposed by the monitor, provided that~~

   a) the aquirer is proposed by the monitor, provided that the ~~latter~~ **monitor** has issued an opinion confirming that the sale process ~~run~~ **that took place** during the preparation phase complied with the requirements laid down in Article 22**a** (~~2~~**1**) ~~and (3), and Article 24 (1) and (2)~~ **and**~~.~~ **the court or competent authority is satisfied that those requirements are complied with;**

   b) the aquirer is selected in the public auction, where Member States provide for such an auction in the pre-pack mechanism in accordance with Article 22a (3); or

   c) the sale to the aquirer is approved by the creditors as reffered to in Article 22a (4).

1a. Member States may provide that the sale of the debtor's business or part thereof under paragraph 1 point c) is approved by the creditors without the authorisation of the court or competent authority where, under national law, the sale of the debtor's business or part thereof requires the consent of the creditors.

~~The court shall not authorise the sale where the requirements laid down in Article 22 (2) and (3) and Article 24 (1) and (2) are not met. Member States shall ensure that, in the latter case, the court continues with the insolvency proceedings.~~

2. ~~In case Member States apply Article 24(3), t~~**T**he public auction referred to in **Article 22a (3),** ~~that provision shall last no longer than four weeks and shall be initiated within two weeks as of the opening of the liquidation phase~~ **shall last no longer than three months**. The offer selected by the monitor shall be used as the initial bid in the public auction. Member States shall ensure that the protections granted to the initial bidder in the preparation phase~~, such as expense reimbursement or break-up fees,~~ are commensurate and proportionate~~, and do not deter potentially interested parties from bidding in the liquidation phase.~~

3. Member States may provide that, upon decision of the court or the competent authority, on its own motion or where a creditor challenges the statement of the monitor referred to in Article 22a, paragraph 2, point (c), on the ground that the best bid does not meet the best-interests-of-creditor-test, a valuation of the business of the debtor as a going concern shall be carried out.

Article 27

Assignment or termination of executory contracts

~~1. Member States shall ensure that the acquirer of the debtor's business or part thereof is assigned the executory contracts which are necessary for the continuation of the debtor's business and the suspension of which would lead to a business standstill. The assignment shall not require the consent of the debtor's counterparty or counterparties.~~

~~The first subparagraph shall not apply if the acquirer of the debtor's business or part thereof is a competitor to the debtor's counterparty or counterparties.~~

~~2. Member States shall ensure that the court may decide to terminate the executory contracts referred to in paragraph 1, first subparagraph, provided that one of the following conditions applies:~~

~~(a) the termination is in the interest of the debtor's business or part thereof;~~

PUBLIC

~~(b) the executory contract contains public service obligations for which the counterparty is a public authority and the acquirer of the debtor's business or part thereof does not meet the technical and legal obligations to carry out the services provided for in such contract.~~

~~Point (a) of the first subparagraph shall not apply to executory contracts relating to licenses of intellectual and industrial property rights.~~

~~3. The law applicable to the assignment or to the termination of executory contracts shall be the law of the Member State where the liquidation phase has been opened.~~

1. Member States shall ensure that the acquirer of the debtor's business, or part thereof, is assigned the executory contracts which are necessary for the continuation of that business and the suspension of which would lead to a business standstill. The assignment shall not require the consent of the debtor's counterparty or counterparties.

1a. Member States may provide that the consent of the debtor's counterparty or counterparties is required depending on the type of contract, the quality of the parties, or the interests of the business. Member States may, in particular, provide that the consent of the counterparty or counterparties is required for netting arrangements, including close-out netting arrangements, on financial markets, energy markets and commodity markets if such arrangements are enforceable under national insolvency law.

1b. Without prejudice to other termination rights under national law, Member States may provide that the counterparty or counterparties can terminate the assigned contract under paragraph 1 subject to a notice period no shorter than three months of the assignment. [Member States may provide for the counterparty's right to require a deposit or security interests or the right of retention.]

2. If the acquirer of the debtor's business, or part thereof, is a competitor to the debtor's counterparty or counterparties, the executory contract may be assigned only with the consent of the counterparty or counterparties.

3. Member States ~~shall~~ may ~~ensure~~ provide that executory contracts relating to licenses of intellectual and industrial property rights, of which the debtor is the licensor, are not terminated without the consent of the licensee.

~~**5. Without prejudice to this Article, the termination of executory contracts shall be governed by the national law.**~~

~~**6. This Article is without prejudice to Council Directive 2001/23/EC and the protection afforded to employees under national laws.**~~

Article 28

Debts and liabilities of the business acquired via the pre-pack ~~proceedings~~mechanism

1. Without prejudice to A~~a~~rticle 27 and Article 34 (3) and (4), as well as to the obligations arising from a contract of employment relations, concerned by the sale of business or part thereof, Member States shall ensure that the acquirer acquires the debtor's business**,** or part thereof**,** free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.

2. ~~Member States may provide that the first~~ Pparagraph 1 is without prejudice to national rules on liability for environmental damages.

PUBLIC

3. Paragraph 1 is without prejudice to national laws providing that the conduct of the debtor is taken into account in the assessment the acquirer's liability for damages, if that conduct is imputable to the acquirer under the applicable insolvency law.

Article 29

S~~pecific rules on the~~ suspensive effects of appeals

1. Member States ~~shall~~ **may** ~~ensure~~ **provide** that appeals against decisions of the court **or competent authority** relating to the authorisation or execution of the sale of the debtor's business or part thereof may have suspensive effects**, in accordance with national law** ~~only subject to the provision by the appellant of a security that is adequate to cover the potential damages caused by the stay of the realisation of the sale~~.

2. ~~Member States shall ensure that the court hearing the appeal has discretion to exempt a natural person appellant, totally or partially, from the provision of a security if it considers such exemption appropriate in light of the circumstances of the given case.~~

Chapter 4

Common p~~P~~Provisions ~~relevant to both phases of the pre-pack proceedings~~

Article 30

Criteria to select the best offer

Member States shall ensure that the criteria to select the best bid in the pre-pack ~~proceedings~~ **mechanism** are **set out in national law and are** the same as the criteria ~~used~~ to **be applied to** select between competing offers in ~~winding-up~~ **insolvency** proceedings.

PUBLIC

Article 31

Civil liability of the monitor and of the insolvency practitioner

Member States shall ensure that the monitor and the insolvency practitioner are liable for the damages ~~that~~ **caused to creditors by** their **intentional or negligent** failure to comply with their obligations under this Title ~~causes to creditors and third parties affected by the pre-pack proceedings~~.

Article 32

Parties closely related to the debtor ~~in the sale process~~

1. Member States shall ensure that parties closely related to the debtor are eligible to acquire the debtor's business or part thereof, provided that all of the following conditions are met:

   (a) **the parties closely related to the debtor**~~they~~ disclose **in the bid** ~~in a timely manner~~ to the monitor ~~and to the court~~ their relation to the debtor;

   (b) ~~other~~ parties **other than those reffered in point (a)** ~~to the sale process~~ receive adequate information on the existence of parties closely related to the debtor and their relation to the latter~~;~~**.**

   (ba) in the case under article 26(1), point (a), a valuation of the business as a going concern is carried out for the purposes of the statement of the monitor referred to in Article 22a(2), point (c).

   (d) parties not closely related to the debtor are granted sufficient time to make an offer.

   Member States may provide that**,** where it is prove~~nd~~ that **a party closely related to the debtor failed to comply with the conditions** ~~the disclosure duty referred to in~~**under** the first subparagraph, point (a)~~, was breached~~, the court **or competent authority** revokes the benefits referred to in Article 28.

2. Where the offer made by a party closely related to the debtor is ~~the only~~**considered as the best** ~~existing~~ offer, Member States ~~shall~~ **may** introduce additional safeguards for the authorisation and execution of the sale of the debtor's business or part thereof. ~~These safeguards shall at least include the duty for the monitor and the insolvency practitioner to reject the offer from the party closely related to the debtor if the offer does not satisfy the best-interest-of-creditors test.~~

Article 33

~~**Measures to maximize the value of the debtor's business or part thereof**~~**Interim financing**

1. Where interim financing is needed, Member States shall ensure that:

~~(a) the monitor or the insolvency practitioner takes the necessary steps to obtain interim financing at the lowest possible cost;~~

~~(b) grantors of interim financing are entitled to receive payment with priority in the context of subsequent insolvency procedures in relation to other creditors that would otherwise have superior or equal claims;~~

(~~a~~c) security interests over the sale proceeds may **can** be granted to providers of interim financing in order to secure reimbursement;

[(~~b~~d) interim financing is eligible to be set-off against the price to be disbursed under the adjudicated offer, when provided by interested bidders**;.]**

(c) interim financing is not declared void, voidable or unenforceable; and

(d) the grantors of interim financing do not incur civil, administrative or criminal liability, on the ground that such financing is detrimental to the general body of creditors, unless national law provides for other grounds for such liability.

PUBLIC

1a. Where interim financing is needed, Member States my provide that security interests over the sale proceeds can be granted to providers of interim financing in order to secure reimbursement;

2. Member States may provide that paragraph 1 only applies to interim financing which has been subject to *ex ante* control.

Article 33a

Pre-emption rights and credit bidding ~~rights~~

1~~2~~. Member States shall ensure that no pre-emption rights are ~~conceded~~ **granted** to bidders. **Member States may provide that pre-emption rights established under national law that are not affected by the insolvency of the debtor are mantained and are enforceable.**

2~~3~~. Member States shall ensure that, where security interests encumber the business subject to the pre-pack ~~proceedings~~**mechanism**, creditors who are the beneficiaries of those security interests may offset their claims **against the purchase price** ~~in their bid~~ only **to a an amount not exceeding** ~~provided that the value of those claims is significantly below~~ **the** market value of the business.

Article 34

Protection of the interests of the creditors

~~1. Member States **may**shall ensure **provide** that creditors **of,** as well as holders of equity of **in,** the debtor's business have the right to be heard by the court **or competent authority** before the authorisation or the execution of the sale of the debtor's business or part thereof.~~

~~Member States shall lay down detailed rules in order to ensure the effectiveness of the right to be heard under the first subparagraph.~~

PUBLIC

~~2. By way of derogation from paragraph 1, Member States may by law not grant the right to be heard to:~~

~~(a) the creditors or holders of equity who would not receive any payment or keep any interest according to the normal ranking of liquidation priorities under national law;~~

~~(b) the creditors of executory contracts whose claims against the debtor arose before the authorisation of the sale of the debtor's business or part thereof and are supposed to be paid in full under the terms of the pre-pack offer.~~

3. Member States shall ensure that security interests **or other encumbrances** are released in **the course of the** pre-pack ~~proceedings~~ **mechanism** under the same requirements that would apply in ~~winding-up~~ **the insolvency** proceedings **under national law**.

4. Member States **whose law makes the release of security interests conditional upon the** ~~in which~~ consent ~~from~~ **of** holders of secured claims ~~is required in~~ **to the** ~~**liquidation**~~ **insolvency** ~~winding-up~~ proceedings ~~for the release of security interests~~ may ~~depart from requiring~~ **provide that** such consent **is not required.** ~~, provided that the security interests relate to assets that are necessary for the continuation of the day-to-day operations of the debtor's business or part thereof and one of the following conditions is fulfilled:~~

~~(a) creditors of secured claims fail to prove that the pre-pack offer does not satisfy the best-interest-of-creditors test;~~

~~(b) creditors of secured claims have not filed, (directly or through a third party,) an alternative binding acquisition offer that allows the insolvency estate to obtain a better recovery than with the proposed pre-pack offer.~~

PUBLIC

Article 35

Impact of competition law procedures on the timing or the successful outcome of the bid

1. Member States shall ensure that, where there is an appreciable risk of a delay ensuing from a procedure based on competition law or of a negative decision by a competition authority in relation to an offer made in the course of the preparation phase, the monitor **or the debtor takes appropriate steps to** ~~shall facilitates the~~ present~~ation of~~ alternative bids.

2. Member States shall ensure that the monitor may receive information on the applicable competition law procedures and their outcomes that may affect the timing or the successful outcome of the bid**, provided that the disclosure of information by the competition authority is not contrary to national rules on the protection of business secrets**~~, in particular through the disclosure of information by the bidders or the provision of a waiver to exchange information with competition authorities, where applicable~~. In that regard, the monitor shall be made subject to a duty of ~~full~~ confidentiality **in accordance with national law**.

3. Member States shall ensure that, where an offer entails an appreciable risk of a delay as referred to in paragraph 1, that offer may be disregarded, provided that both of the following conditions apply:

   (a) such offer is not the only ~~existing~~ offer;

   (b) the delay in the conclusion of the ~~pre-pack business~~ sale ~~with~~ **to** the bidder concerned would result in ~~a~~ damage ~~for~~ **to** the debtor's business or part thereof.

Title V

DIRECTORS' DUTY TO REQUEST THE OPENING OF INSOLVENCY PROCEEDINGS AND CIVIL LIABILITY

PUBLIC

Article 36a

Non-application or suspension of the duty to submit a request for the opening of insolvency proceedings

~~2.~~ ~~[…]~~[12].

[12] *Since Title IV is still under negotiation, the Presidency suggests that the reference to pre-pack proceedings under Title IV should only be finalized after the final text of Title IV is known. This element of this Article will not be part of the envisaged Partial General Approach.*

~~Title Va~~

~~Access to discharge of debt~~

~~*Article 38*~~

~~Access to discharge~~

~~Member States shall ensure that insolvent natural persons who are equity holders personally liable for the debts of an debtor with unlimited liability have access to at least one procedure that can lead to a full discharge of debt in accordance with the Directive (EU) 2019/1023.~~

~~*Article 39*~~

~~Relation to insolvency proceedings of the debtor~~

~~Member States shall ensure that access to a full discharge of debt in accordance with Directive (EU) 2019/1023 is provided even in cases where no insolvency proceedings can be opened against the debtor in accordance with national law over the debtor, in respect of the debts for which the entrepreneur or natural person equity holder is liable, on the ground that that the debtor does not have sufficient assets to cover the costs of insolvency proceedings.~~

~~*Article 40*~~

~~Personal guarantees~~

~~Member States shall ensure that where a family member of a debtor, who is an entrepreneur or a natural person equity holder subject to a debt-discharge procedure in accordance with the Directive (EU) 2019/1023, is insolvent or subject to individual enforcement proceedings because that family member provided a personal guarantee for the business needs of the debtor, the family member has access to a full discharge of debt in accordance with the Directive (EU) 2019/1023 either through a separate debt discharge procedure or as a consolidated part of the debt discharge procedure concerning the entrepreneur or natural person equity holder.~~

PUBLIC

~~Title VI~~

~~WINDING-UP OF INSOLVENT MICROENTERPRISES~~

PUBLIC

~~Chapter 1~~

~~General rules~~

~~Article 38~~

~~Rules on winding-up of microenterprises~~

~~1. Member States shall ensure that microenterprises, when insolvent, have access to simplified winding-up proceedings that comply with the provisions laid down in this Title.~~

~~2. A microenterprise shall be deemed insolvent for the purposes of simplified winding-up proceedings when it is generally unable to pay its debts as they mature. Member States shall set out the conditions under which a microenterprise is deemed to be generally unable to pay its debts as they mature and ensure that these conditions are clear, simple and easily ascertainable by the microenterprise concerned.~~

~~3. The opening and conduct of simplified winding-up proceedings may not be denied on the ground that the debtor has no assets or its assets are not sufficient to cover the costs of the simplified winding-up proceedings.~~

~~4. Member States shall ensure that the costs of the simplified winding-up proceedings are covered in the situations set out in paragraph 3.~~

Article 39

Insolvency practitioner

Member States shall ensure that in simplified winding-up proceedings an insolvency practitioner may only be appointed if both of the following conditions are met:

(a) the debtor, a creditor or a group of creditors requests such an appointment;

(b) the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that requested the appointment.

Article 40

Means of communication

Member States shall ensure that in simplified winding-up proceedings all communications between the competent authority and, where relevant, the insolvency practitioner, on the one hand, and the parties to such proceedings, on the other hand, can be performed by electronic means, in accordance with Article 28 of Directive (EU) 2019/1023.

Chapter 2

Opening of simplified winding-up proceedings

Article 41

Request for the opening of simplified winding-up proceedings

1. Member States shall ensure that insolvent microenterprises can submit a request for the opening of simplified winding-up proceedings to a competent authority.

PUBLIC

2. Member States shall ensure that any creditor of an insolvent microenterprise can submit a request for the opening of simplified winding-up proceedings against the microenterprise to a competent authority. The microenterprise concerned shall be given the opportunity to respond to the request, by contesting or consenting to it.

3. Member States shall ensure that microenterprises can submit a request for the opening of simplified winding-up proceedings using a standard form.

4. The standard form referred to in paragraph 3 shall allow for the inclusion, among others, of the following information:

(a) if the microenterprise is a legal person, the debtor's name, registration number, registered office or, if different, postal address;

(b) if the microenterprise is an entrepreneur, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;

(c) a list of the assets of the microenterprise;

(d) name, address or other contact details of creditors of the microenterprise, as known to the microenterprise at the time of the submission of the request,

(e) the list of the claims against the microenterprise and, for each claim, its amount specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;

(f) if security in rem or a reservation of title is alleged in respect of a certain claim and, if so, what assets are covered by the security interest.

5. The Commission shall establish the standard form referred to in paragraph 3 by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 69(2)

PUBLIC

6. Member States shall ensure that when the request for opening simplified winding-up proceedings is submitted by a creditor, and the microenterprise expressed its consent to the opening of the proceedings, the microenterprise is required to submit the information listed in paragraph 4 together with the response referred to in paragraph 2 of this Article, where available.

7. Member States shall ensure that when the request for opening simplified winding-up proceedings is submitted by a creditor and the competent authority opens such proceedings despite the microenterprise contesting or not responding to the request the microenterprise is required to submit the information listed in paragraph 4 of this Article no later than two weeks following the receipt of the notice of opening.

Article 42

Decision on the request for the opening of simplified winding-up proceedings

1. Member States shall ensure that the competent authority takes a decision on the request for the opening of simplified winding-up proceedings no later than two weeks after receiving the request.

2. The opening of simplified winding-up proceedings may be refused only if one or more of the following conditions is fulfilled:

(a) the debtor is not a microenterprise;

(b) the debtor is not insolvent pursuant to Article 38(2) of this Directive;

(c) the competent authority where the request was submitted has no jurisdiction over the case;

(d) the Member State where the request was submitted has no international jurisdiction over the case.

3. Member States shall ensure that the microenterprise or any creditor of the microenterprise may challenge before a court the decision on the request for the opening of simplified winding-up proceedings. The challenge has no suspensive effect on the opening of simplified winding-up proceedings and shall be dealt with promptly by the court.

Article 43

Debtor in possession

1. Member States shall ensure that, subject to the conditions laid down in paragraphs 2, 3 and 4, debtors accessing simplified winding-up proceedings remain in control of their assets and the day-to-day operation of the business.

2. Member States shall ensure that, where an insolvency practitioner is appointed, the competent authority specifies in the decision on the appointment whether the rights and duties to manage and dispose of the debtor's assets are transferred to the insolvency practitioner.

3. Member States shall specify the circumstances in which the competent authority may, exceptionally, decide to remove the debtor's right to manage and dispose of its assets. Such a decision must be based on a case-by-case assessment in view of all relevant elements of law and facts.

4. Member States shall ensure that, where the debtor no longer holds the right to manage and dispose of its assets and no insolvency practitioner is appointed, one of the following applies:

(a) any decision of the debtor to that effect becomes subject to the approval of the competent authority, or

(b) the competent authority entrusts the right to manage and dispose of the assets of the debtor to a creditor.

PUBLIC

Article 44

Stay of individual enforcement actions

1. Member States shall ensure that debtors benefit from a stay of individual enforcement actions upon the decision of the competent authority to open simplified winding-up proceedings and until the closure of that proceedings.

2. Member States may provide that the competent authority excludes, upon request by the debtor or a creditor, a claim from the scope of the stay of individual enforcement actions where both of the following conditions are fulfilled:

(a) the enforcement is not likely to jeopardise the legitimate expectations of the general body of creditors and;

(b) the stay would unfairly prejudice the creditor of that claim.

Article 45

Publicity of the opening of simplified winding-up proceedings

1. Member States shall ensure that the information on the opening of simplified winding-up proceedings is published in the insolvency register referred to in Article 24 of Regulation (EU) 2015/848, as soon as possible after the opening.

2. Member States shall ensure that the competent authority immediately informs the debtor and all known creditors, by individual notices, of the opening of simplified winding-up proceedings.

The notice shall include, in particular:

(a) the list of claims against the debtor as indicated by the debtor;

PUBLIC

(b) an invitation to the creditor to lodge any claims not included in the list referred to in point (a) or to rectify any incorrect statement on those claims no later than 30 days upon the receipt of the notice;

(c) a statement to the effect that, without further action by the creditor, the claims included in the list referred to in point (a) will be considered as lodged by the creditor concerned.

Chapter 3

List of claims and establishment of the insolvency estate

Article 46

Lodgement and admission of claims

1. Member States shall ensure that the claims against the debtor are considered as lodged without any further action from the creditors concerned, where those claims are indicated by the debtor in one of the following submissions:

(a) in its request for the opening of simplified winding-up proceedings;

(b) in its response to the request for the opening of such proceedings submitted by a creditor;

(c) in its submission pursuant to Article 41(7).

2. Member States shall ensure that any creditor may lodge claims not contained in the submissions referred to in paragraph 1 or make statements of objection or raise concern on claims included in one of that submissions, within 30 days from the publication of the date of the opening of simplified winding-up proceedings in the insolvency register or, in case of a known creditor, of the receipt of the individual notice referred to in Article 45 whichever is the latest.

PUBLIC

3. Member States shall ensure that, in the absence of any objection or concern communicated by a creditor within the time period indicated in paragraph 2, a claim included in the submissions referred to in paragraph 1 is deemed to be undisputed and shall be definitively admitted as stated therein.

4. Member States shall ensure that the competent authority or, where appointed, the insolvency practitioner may admit or deny admission of claims lodged by a creditor, in addition to the claims referred to in paragraph 1, in accordance with paragraph 2 and the appropriate criteria defined by national law.

5. Member States shall ensure that the disputed claims are dealt with promptly either by the competent authority or by a court. The competent authority may decide to continue the simplified winding-up proceedings with respect to undisputed claims.

Article 47

Avoidance actions

Member States shall ensure that the rules on avoidance actions apply as follows in simplified winding-up proceedings:

(a) the pursuit and enforcement of avoidance actions shall not be mandatory, but shall be left to the discretion of creditors or, when applicable, of the insolvency practitioner;

(b) any decision by creditors not to commence avoidance actions shall not affect the liability of the debtor under civil or criminal law, where it is later discovered that the information communicated by the debtor about assets or liabilities was concealed or forged;

(c) the competent authority may convert simplified winding-up proceedings into standard insolvency proceedings, where the conduct of avoidance proceedings under simplified winding-up proceedings would not be possible due to the significance of the claims subject to avoidance proceedings in relation to the value of the insolvency estate, and due to the anticipated length of avoidance proceedings.

PUBLIC

Article 48

Establishment of the insolvency estate

1. Member States shall ensure that the competent authority or, where appointed, the insolvency practitioner, determines the final list of assets that constitute the insolvency estate, on the basis of the list of assets submitted by the debtor as referred to Article 41(4), point (c) and of the relevant additional information received thereafter.

2. The assets of the insolvency estate shall include assets in the possession of the debtor at the time of the opening of simplified winding-up proceedings, assets acquired after the submission of the request for opening of such proceedings and assets recovered through avoidance actions or other actions.

3. Member States shall ensure that, where the debtor is an entrepreneur, the competent authority or, if appointed, the insolvency practitioner specifies which assets are excluded from the insolvency estate and can therefore be retained by the debtor.

Chapter 4

Realisation of the assets and distribution of the proceeds

Article 49

Decision on the procedure to be used

1. Member States shall ensure that in simplified winding-up proceedings once the insolvency estate has been established and the list of claims against the debtor has been determined, the competent authority:

(a) proceeds with the realisation of the assets and the distribution of the proceeds; or

(b) takes a decision on the closure of the simplified winding-up proceedings without any realisation of the assets, in accordance with paragraph 2.

PUBLIC

2. Member States shall ensure that the competent authority can take a decision on the immediate closure of the simplified winding-up proceedings without any realisation of the assets, only if any of the following conditions is fulfilled:

(a) there are no assets in the insolvency estate;

(b) the assets of the insolvency estate are of such a low value that it would not justify the costs or time of their sale and of the distribution of proceeds;

(c) the apparent value of encumbered assets is lower than the amount owed to the secured creditor(s) and the competent authority considers it justified to allow those secured creditor(s) to take over the asset(s).

3. Member States shall ensure that, where the competent authority proceeds with the realisation of the debtor's assets as referred to in paragraph 1, point (a), the competent authority also specifies the means of realisation of the assets. Other means than the sale of the debtor's assets through an electronic public auction may only be selected, if their use is deemed more appropriate in light of the nature of the assets or the circumstances of the proceedings.

Article 50

Electronic auction systems for the sale of the assets of the debtor

1. Member States shall ensure that one or several electronic auction platforms are established and maintained in their territory for the purpose of the sale of the assets of the insolvency estate in simplified winding-up proceedings.

Member States may set out that for the purpose of the sale of the debtor's assets users may also place bids for the purchase of the debtor's business as a going concern.

PUBLIC

2. Member States shall ensure that the electronic auction platforms, as referred to in paragraph 1, are used whenever the debtor's business or assets subject to simplified winding-up proceedings are realised through auction.

3. Member States may extend the use of the electronic auction systems, as referred to in paragraph 1, to the sale of the debtor's business or assets that are subject to other types of insolvency proceedings opened in their territory.

4. Member States shall ensure that the electronic auction platforms, as referred to in paragraph 1, are accessible by all natural and legal persons with domicile or place of registration in their territory or in the territory of another Member State. Access to the auction system may be subject to electronic identification of the user, in which case persons with domicile or place of registration in another Member State shall be able to use their national electronic identification schemes, in accordance with Regulation (EU) No 910/2014[13]

Article 51

Interconnection of the electronic auction systems

1. The Commission shall establish a system for the interconnection of the national electronic auction systems as referred to in Article 50 by means of implementing acts. The system shall be composed of national electronic auction systems interconnected via the European e-Justice Portal, which shall serve as a central electronic access point in the system. The system shall contain in all the official languages of the Union information on all auction processes announced in national electronic auction platforms, enable the search among these auction processes and provide hyperlinks leading to the pages of the national systems where offers may be directly submitted.

[13] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

2. The Commission shall lay down by means of implementing acts technical specifications and procedures necessary to provide for the interconnection of Member States' national electronic auction systems, setting out:

(a) the technical specification or specifications defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of the electronic auction systems;

(b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of electronic auction systems;

(c) the minimum set of information that shall be made accessible through the central platform;

(d) the minimum criteria for the presentation of announced auction processes via the European e-Justice Portal;

(e) the minimum criteria for the search of announced auction processes via the European e-Justice Portal;

(f) minimum criteria for guiding the users to the platform of the national auction system of the Member State where they may submit their offers directly in the announced auction processes;

(g) the means and the technical conditions of availability of services provided by the system of interconnection;

(h) the use of the European unique identifier referred to in Article 16(1) of Directive (EU) 2017/1132[14],

[14] Article 16(1) of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law

PUBLIC

(i) specification of which personal data can be accessed;

(j) data protection safeguards.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 69(2), by [*one year after the transposition deadline*].

Article 52

Costs of establishing and interconnecting electronic auction systems

1. The establishment, maintenance and future development of the system of interconnection of electronic auction systems as referred to in Article 50 shall be financed from the general budget of the Union.

2. Each Member State shall bear the costs of establishing and adjusting its national electronic auction systems to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those systems. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.

Article 53

Responsibilities of the Commission in connection with the processing of personal data in the system of interconnection of electronic auction platforms

1. The Commission shall exercise the responsibilities of controller pursuant to Article 3(8) of Regulation (EU) 2018/1725 in accordance with its respective responsibilities defined in this Article.

2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.

PUBLIC

3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.

4. With regard to the information from the interconnected national auction systems, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national auction systems operated by the Member States or other bodies.

Article 54

Sale of the assets by electronic auction

1. Member States shall ensure that the electronic auction of assets of the insolvency estate in simplified winding-up proceedings is announced in due time in advance on the electronic auction platform referred to in Article 50.

2. Member States shall ensure that the competent authority or, where relevant, the insolvency practitioner, informs through individual notices all known creditors on the object, time and date of the electronic auction, as well as on the requirements to participate therein.

3. Member States shall ensure that any interested person, including the existing shareholders or directors of the debtor, are allowed to participate in the electronic auction and bid.

4. If there are bids both on the acquisition of the debtor's business as a going concern and on the individual assets of the insolvency estate, creditors shall decide which of the alternatives they prefer.

PUBLIC

Article 55

Decision on the closure of the simplified winding-up proceedings

1. Member States shall ensure that after the distribution of proceeds of the sale of the debtor's business or assets, the competent authority takes a decision on the closure of the simplified winding-up proceedings no later than two weeks after the distribution of proceeds has been completed.

2. Member States shall ensure that the decision on the closure of the simplified winding-up proceedings includes a specification of the time period leading to the discharge of the entrepreneur debtor or of those founders, owners or members of an unlimited liability microenterprise debtor who are personally liable for the debts of the debtor.

Chapter 5

Discharge of entrepreneurs in simplified winding-up proceedings

Article 56

Access to discharge

Member States shall ensure that in simplified winding-up proceedings entrepreneur debtors, as well as those founders, owners or members of an unlimited liability microenterprise debtor who are personally liable for the debts of the microenterprise are fully discharged from their debts in accordance with Title III of Directive (EU) 2019/1023.

PUBLIC

Article 57

Treatment of personal guarantees provided for business-related debts

Member States shall ensure that where insolvency proceedings or individual enforcement proceedings have been brought over the personal guarantee provided for the business needs of a microenterprise that is debtor in simplified winding-up proceedings against a guarantor who, in case the microenterprise concerned is a legal person, is a founder, owner or member of that legal person, or, in case the microenterprise concerned is an entrepreneur, a family member of that entrepreneur, the proceedings on the personal guarantee are either coordinated or consolidated with the simplified winding-up proceedings.

PUBLIC

Title VII

CREDITORS'[1] COMMITTEE

Chapter 1

Establishment and members of the creditors' committee

Article 58

Establishment of the creditors'[1] committee

1. Member States shall ensure that a creditors' committee is established **after the opening of ~~the~~ insolvency proceedings at least** ~~only~~ 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. ~~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 a request for the opening of insolvency proceedings~~**,** ~~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**.

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~~.~~ and is an odd number**.

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

PUBLIC

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 establishment of the creditors' committee would outweigh the benefits**.

~~**Where a** **Member States** **provides pursuant to the first subparagraph, it** **shall ensure that these 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** ~~appointed members of~~ the creditors' committee fairly reflect**s, 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.**

PUBLIC

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. 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.~~

PUBLIC

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**~~cater~~ for the situation where members of the creditors' committee resign or are unable to perform the**ir 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 **violation of** ~~**essential**~~ **serious gravity 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~~ vot**inge procedure** and the necessary quorum;

(c) conflict of interests;

(d) confidentiality of information**;**~~.~~

(e) ~~**access to information on the activities of the creditors' committee**~~**record keeping of the decisions taken by 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~~ **provide** that the members of the creditors' committee ~~are given the possibility to~~**may** participate and vote either in person or via electronic means. **Member States may provide that the members of the creditors' committee are given the possibility to** ~~**participate and**~~ **vote** ~~**through other means of communication**~~**in writing.**

5. Member States ~~shall ensure~~**may provide** that members of the creditors' committee ~~may~~ **can** 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).~~

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Article 64

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

1. ~~Member States shall ensure that the creditors' committee's function is to ensure that in the conduct of the insolvency proceedings the creditors' interests are protected and individual creditors are involved.~~

   ~~To that end~~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 examine the activities of the insolvency practitioners or, where the debtor remains in possession, of the debtor, including**:

   (a) the right to ~~hear~~ **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.~~

1a. 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. 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**~~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).

2. Where Member States entrust the creditors' committee with the power to approve certain decisions or transactions, Member States may provide that the members of the creditors' committee are held liable in the same manner as an insolvency pratictioner.

[Article 66a

Member States may decide not to provide for a creditors' committee in insolvency proceedings as laid down in Articles 58 to 66, 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, selected by the creditors, 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.]

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~~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.~~

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Title VIII

MEASURES ENHANCING TRANSPARENCY OF NATIONAL INSOLVENCY LAWS

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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***[15]~~6~~ *months ~~after the deadline for transposition~~**from the entry into force** of this Directive*];

[15] *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

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Article 68a

Emergency measures

1. **Member States may derogate from applying national provisions transposing Title II, V and VII in the event of extraordinary situations which seriously disrupt 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 derogation referred to in paragraph 1 and its duration shall be proportionate and limited to what is essential for containing, mitigating, resolving or preventing the serious disruption referred to in that paragraph.**

3. **The derogation referred to in paragraph 1 shall be notified to the Commission within a month from its entry into force.**

   When notifying the Commission in accordance with the first subparagraph, the ~~Commission~~ Member States 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 disruption to economic activities as referred to in paragraph 1. The Commission shall inform the other Member States thereof without undue delay.

4. The derogation referred to in paragraph 1 may have a maximum duration of one year.

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

Article 68b

Member States shall ensure that collective workers' rights under Union and national labour law are not affected by Titles IV and VII of this Directive.

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

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Article 70

Review

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

Article 71

Transposition[16]

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **…** [***3*** ~~***2***~~ *years from* ***the*** *entry into force* ***of this Directive***] ~~at the latest~~. They shall forthwith communicate to the Commission the text of those provisions.

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

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

[16] *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."*

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.

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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	*For the Council*
The President	*The President*
[...]	*[...]*

PUBLIC