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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- Proposal from Italy and
France on Title VI

Delegations will find in Annex a proposal from the Italian and French delegations on Title VI of the above mentioned directive.

TITLE VI

OPTIONAL

Article 2

Definitions

- (j) For the purpose of Title VI “microenterprise” means a entrepreneur that, in each of the financial years, relevant according the national law and prior to the date of filing of the application for the opening of judicial liquidation or from the start of the activity if of shorter duration, jointly meets the following requirements:
- 1) a number of employees not exceeding 4;
 - 2) assets of a total annual amount not exceeding € 300,000;
 - 3) revenues, in whatever way they may be, for a total annual amount not exceeding € 200,000. The aforementioned values may be updated every three years by decision of the European Commission, within the limits of the Annex to Commission Recommendation 2003/361/EC.
- (j) To determine the eligibility of the microenterprise to simplified winding-up proceedings, Member States may take into account an amount of debts, even if not expired, ascertainable at the time of the decision on the application to open the procedure.

Title VI
WINDING-UP OF INSOLVENT MICROENTERPRISES

Article 38

Rules on winding-up of microenterprises

1. Member States may provide that microenterprise, when insolvent under the national law, have access to simplified winding-up proceedings that comply with the provisions laid down in this Title.
2. The opening and conduct of simplified winding-up proceedings may not be denied on the ground that the assets of the debtor are not sufficient to cover the costs of the simplified winding-up proceedings.
3. Member States may determine whether and in which circumstances an insolvency practitioner is to be appointed in simplified winding-up proceedings. Member States shall ensure that insolvency practitioners are appropriately remunerated, whenever they are appointed in the situations set out in Article 38(2).
4. Member States shall ensure that in simplified winding-up proceedings, all communications between the court or the competent authority, the insolvency practitioner, and the parties to such proceedings, can be performed by electronic means, in accordance with Article 28 of Directive (EU) 2019/1023.

Article 39

Opening of simplified winding-up proceedings

1. Member States shall ensure that an insolvent microenterprise or any creditor of the microenterprise can submit a request for the opening of simplified winding-up proceedings to a court or a competent authority.
2. Member States shall ensure that microenterprises can submit a request for the opening of simplified winding-up proceedings without the representation by a lawyer or another legal professional.
3. Member States shall ensure that the court or the competent authority takes a decision promptly on the request for the opening of simplified winding-up proceedings.

Article 40

Stay of individual enforcement actions

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

Article 41

Lodgement and admission of claims

1. Member States shall ensure that the insolvency practitioner, or in its absence, the debtor, prepares a list of creditors and claims.
2. Member States shall ensure that the insolvency practitioner, or in its absence, the court or the competent authority informs all known creditors of the list, indicating the time period for communicating any objection or concern as regards the list. The claims against the debtor indicated in the list are considered as lodged without any further action from the creditors concerned.
3. Member States shall ensure that any creditor may lodge claims not contained in the list referred to in paragraph 1 or make statements of objection or raise concern on claims included in the list, within a short time, according to national law from the receipt of the notice referred to in the paragraph 2 or from the publication of the opening of simplified winding-up proceedings in the insolvency register referred to in Article 24 of Regulation (EU) 2015/848 whichever is the latest.
4. 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 list referred to in paragraph 1 is deemed to be undisputed and shall be definitively admitted as stated therein.
5. Member States shall ensure that the disputed claims are dealt with promptly by the court or the competent authority.

Article 42

Decision on the procedure to be used

1. Member States shall ensure that once the insolvency estate has been established, the insolvency practitioner, or in its absence the debtor, proceeds with the realisation of the assets and the distribution of the proceeds.
2. Notwithstanding paragraph 1 of this Article, Member States shall ensure that the court or the competent authority can take a decision on the closure of the simplified winding-up proceedings without any realisation of the assets, after assessing its consistency and the lodgement of claims, 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 court or 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 insolvency practitioner proceeds with the realisation of the debtor's assets as referred to in paragraph 1, it also specifies the means of realisation of the assets.

Article 43

Decision on the closure of the simplified winding-up proceedings

1. Member States shall ensure that the court or the competent authority takes a decision on the closure of the simplified winding-up proceedings within six months after the opening of the simplified winding-up proceedings. The deadline may be extended, by a maximum of six months in case additional time is needed for the sale of the debtor's business or assets, or for the distribution of proceeds. In the absence of such an extension or when the extended deadline expires, the procedure must be converted into an ordinary winding-up procedure.

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 equity holders of an unlimited liability microenterprise debtor who are personally liable for the debts of the debtor, subject to the exceptions provided in Title III of Directive (EU) 2019/1023.
3. In case the debtor is a legal person, Member States may provide that the decision on the closure of the simplified winding-up proceedings triggers the relevant measures under national law leading to the dissolution of the legal personality of the debtor.

Article 44

Access to discharge

Member States shall ensure that as a result of simplified winding-up proceedings entrepreneur debtors, have access to at least one procedure that can lead to a full discharge of debt in accordance with Title III of Directive (EU) 2019/1023. Member States shall also ensure that those equity holders of an unlimited liability microenterprise debtor who are personally liable for the debts of the microenterprise shall have access to the same procedures concerning discharge of debt.