Council of the European Union

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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - General approach - Statement by Czech Republic

Delegations will find attached the statement by the Czech Republic to be included in the minutes of the Permanent Representatives Committee and of the Council.

ANNEX

COREPER II – 28th May 2025

Statement by the Czech Republic

on

Item 7 b): Directive harmonising certain aspects of insolvency law - General approach, ST 9257/25

PUBLIC

While the Czech Republic fully supports the objectives of the Directive harmonising certain aspects of insolvency law to strengthen the Capital Markets Union (CMU), some substantive reservations of the Czech Republic to the text of the proposal remain. We therefore consider it necessary to return to discussions at expert level. We also firmly believe that some of our concerns will be addressed in the trilogues with the EP.

A key shortcoming of the proposal for the Czech Republic is insufficient creditor protection.

For example, creditors are not adequately protected against debtor's dishonesty when using the pre-pack mechanism, which can lead to misuse of this procedure. In particular Article 23b should require honesty of the debtor and it should be possible to terminate the pre-pack proceedings because of the debtor's dishonest intention. Creditors are also not sufficiently protected by Article 26.

In Article 2, when applying the best-interest-of-creditors test, the next-best-alternative scenario should always be considered. In Article 3a and Title VII, the principle of minimum harmonisation should be linked also to the possibility of providing higher level of protection to creditors. Article 19 should allow to restrict the debtor's disposition rights more, in order to enhance the protection of creditors in a pre-pack procedure. In Article 22a, a certain degree of financial distress of the entrepreneur should be required to ensure proper creditor protection. Also, clarification of the monitor’s role and accountability is essential to adequately protect creditors.

The Czech Republic also considers it important to provide that in emergency situations the provisions of Title IV governing pre-pack procedures may be derogated from. The purpose is to ensure that creditors are protected from a rushed sale of the business when the market conditions are disturbed.

We consider the above-mentioned shortcomings to be substantial. With that the Czech Republic abstains from the vote on the adoption of the Directive.

PUBLIC