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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

I. INTRODUCTION

1. On 7 December 2022, the Commission submitted to the Council and the European Parliament a proposal for a Directive harmonising certain aspects of insolvency law[1]. The proposal for a Directive is one of the initiatives included in the 2020 Capital Markets Union (CMU) action plan. It aims to encourage cross border investment within the single market through a targeted harmonisation of insolvency proceedings.

[1] 15896/22.

2. The draft Directive is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

3. The European Data Protection Supervisor delivered its opinion on the proposed Directive on 6 February 2023[2].

4. The European Economic and Social Committee delivered its opinion on the proposed Directive on 24 March 2023[3].

5. In the European Parliament, the Committee on Legal Affairs (JURI) has the lead responsibility. Emil Radev (EPP) has been appointed rapporteur.

6. This proposal is a key element of the EU's broader efforts to strengthen the CMU. The Euro Summit statement of 22 March 2024 stressed the need for 'the rapid completion of the outstanding legislative work on the 2020 Capital Markets Union action plan'. Additionally, in April 2024, the European Council further underscored the urgency of advancing the legislative work on all identified measures needed to establish integrated European capital markets, expressly referring to this proposal.

7. In the Council, the examination of the proposal is being carried out in the Working Party on Civil Law Matters.

8. The first examination of the proposal started on 7 March 2023 and was carried out during the Swedish, Spanish and Belgian presidencies. During the Belgian Presidency, a first compromise proposal on certain titles of the proposal - Titles I to V and Title VII - was presented.

[2] 6147/23.
[3] 7856/23.

9. At the JHA Council meeting in December 2024 during Hungarian Presidency, a partial general approach was reached on the proposal, which included Titles II, III, V and VIII and the related provisions in Title I.

10. The Polish Presidency continued the work with a commitment to reach an agreement on the remaining parts of the proposal in order to close the discussions on the file at Council level and launch negotiations with the European Parliament.

II. MAIN ELEMENTS OF THE PRESIDENCY COMPROMISE TEXT

11. The work of the Polish Presidency has focused on the titles not included in the partial general approach reached under Hungarian Presidency, namely Title IV (Pre-pack proceedings), Title VI (Winding-up of insolvent microenterprises), Title VII (Creditors' committee), and Title IX (Final provisions) and the related provision in Title I (General provisions). Additionally, in light of the negotiations on these titles, some provisions in Titles III, V and VIII needed to be adapted.

12. The Polish Presidency presented several compromise proposals on the above-mentioned titles at nine Working Party meetings and one JHA Counsellors meeting.

13. The Polish Presidency has sought to clarify the obligations for Member States, ensure that the proposal better reflects the specificities of national insolvency laws and find a balance between the different viewpoints of the Member States.

14. The main elements of the compromise are set out below:

a) Title I (General provisions):

– In Article 1, the scope of application of Title IV and VII has been limited to legal persons; however, Member States can extend the application of these provisions to natural persons who are entrepreneurs.

– The definitions provided in Article 2(1), particularly those for 'best-interest-of-creditors test' and 'pre-pack proceedings' have been refined and further clarified in the recitals. Additionally, definitions for 'preparation phase' and 'liquidation phase' have been introduced to further illustrate the pre-pack mechanism.

– Article 3a clarifies how the minimum-harmonisation nature of the Directive translates into the different provisions in the Directive: in the case of Title VII this allows Member States to introduce measures that provide for greater participation of creditors in insolvency proceedings.

b) Title IV (Pre-pack mechanism):

- The changes introduced in the compromise text aim to preserve the flexibility of the pre-pack mechanism, ensuring the sale of the business as a going concern without creating burdensome procedures.

- While the sale of the business is typically prepared by the monitor, the compromise text clarifies that Member States can provide that the sale takes place following a public auction or upon approval by the creditors.

- In response to concerns about the assignment of contracts, expressed at technical level and during the policy debate at the JHA Council in March 2025, the Presidency sought, on the one hand, to ensure that the interests of the counterparty on which a new contractual relationship is imposed are appropriately taken into account, and on the other hand, to ensure the effectiveness of pre-pack proceedings. As a result, the text provides that Member States may require the consent of the debtor's counterparty, depending on the type of contract, the quality of the parties, or the interests of the business. Additionally, Member States may allow the counterparty to terminate the assigned contract within three months of the assignment.

- Lastly, the compromise text ensures that the creditors' interests of the are adequately safeguarded throughout the pre-pack mechanism.

c) Title VI (Winding-up of insolvent microenterprises):

- After discussing several compromise proposals at technical level, Title VI on the special regime for microenterprises has been removed from the compromise text due to concerns over its practical applicability, and its potential impact on existing national systems. Key issues raised included uncertainty over the definition of a microenterprise, the appointment of an insolvency practitioner, and the role of the court in the proceedings.

d) Title VII (Creditors' committee):

– The main concern raised by Member States was that the committee might cause delays in proceedings or create unnecessary complexity, ultimately outweighing any advantages it might offer creditors. In response, the compromise text gives Member States the possibility of narrowing down the establishment of the creditors' committee to large enterprises. Additionally, the compromise text provides that the creditors' committee may be avoided where its establishment would outweigh its benefits.

– The compromise text also simplifies and increases flexibility in the procedure for setting up the creditors' committee. It further clarifies the rights and duties of the creditors' committee, ensuring it remains effective and relevant in insolvency proceedings.

e) Title IX (Final provisions):

– A new provision has been introduced allowing Member States to temporarily derogate from applying the provisions in Titles II (Avoidance actions), V (Directors' duty) and VII (Creditor's committee) in extraordinary situations which seriously disrupt economic activities at the level of the Member States or their regions. This measure is intended to mitigate the risk of widespread insolvencies, particularly where enforcing these provision could exacerbate the economic situation. However, any derogation must be proportionate and strictly limited in scope and time to what is essential in order to address the extraordinary situation and is subject to oversight by the Commission.

– Due to the complexity of national insolvency regimes and the need for a detailed evaluation of how the Directive interacts with existing national frameworks, the transposition period has been extended to three years. Member States facing specific challenges in implementing the Directive may further extend the transposition period by one year.

– The compromise text also clarifies that workers' collective rights are not affected by the provisions in Titles IV and VII.

15. The Presidency issued a final compromise proposal on 20 May 2025 and submitted it to an informal consultation. Most delegations support the text proposed by the Presidency. The Presidency is of the opinion that the text is ready to be submitted to the Permanent Representatives Committee and the Council so that a general approach can be reached.

III. CONCLUSIONS

16. The Permanent Representatives Committee is therefore invited to:

– confirm agreement on the text of the general approach as set out in the Annex to this note, and

– recommend that the Council reach a general approach on this text to enable the Presidency to conduct interinstitutional negotiations.

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)

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,

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

Whereas:

(1) The objective of this Directive is to contribute to the proper functioning of the internal market and remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures in the area of insolvency.

(2) The wide differences in substantive insolvency laws acknowledged by Regulation (EU) 2015/848 of the European Parliament and of the Council[3] create barriers to the internal market by reducing the attractiveness of cross-border investments, thus impacting the cross-border movement of capital within the Union and to and from third countries.

(3) Insolvency proceedings ensure the orderly winding~~- down~~ **up** or restructuring of companies or entrepreneurs in financial and economic distress. Th**o**~~e~~se proceedings are key in financial investments, as they determine the final recovery value of such investments. Diverging rules among Member States have contributed to increasing legal uncertainty and unpredictability about **the outcome of** insolvency proceedings~~' outcome~~, so raising barriers especially for cross-border investments **with**in the internal market. Large divergences in recovery value and time required to complete insolvency proceedings across the Union have negative repercussions on cost predictability for creditors and investors in cross-border situations in the internal market.

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[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).

(4) The integration of the internal market in the area of insolvency laws pursued by this Directive is a key tool for a more efficient functioning of the capital markets in the European Union, including greater access to corporate financing. Therefore, it is necessary to set out minimum requirements in targeted areas of national insolvency proceedings, which have a significant impact on the efficiency and length of such proceedings, especially on cross-border insolvency proceedings.

(5) In order to protect the value of the insolvency estate for creditors, national insolvency laws should include effective rules ~~that enable the annulment of~~ **on avoidance actions of** legal acts**, including legal transactions,** that are detrimental to creditors and have been perfected prior to the opening of insolvency proceedings ~~(avoidance actions)~~. **The determination of whether a legal act is detrimental to the general body of creditors is to be carried out against the background of national insolvency rules, in particular on the definition of the insolvency estate and the participating creditors. This is especially relevant where certain rights do not form part of the insolvency estate under national law but pertains to the debtor's personal sphere, for example the right to enter into or end a marriage or adopt a child. The acceptance or rejection of an inheritance should not be subject to the avoidance rules under this Directive. As this Directive lays down minimum rules, Member States should be able to maintain or adopt provisions that are more favourable to the general body of creditors. In particular, Member States should be able to provide for longer look-back periods, extend the list of persons considered as parties closely related to the debtor, or expand the range of legal acts that can be the subject of avoidance actions. Member States should also be able to provide for presumptions or requirements that alleviate the burden of proof in favour of the party claiming that the legal act is, voidable or unenforceable.**

(5a) Given that avoidance actions aim ~~at~~ **to** reverse~~ing~~ the detrimental effects **of a legal act** ~~for~~ **on** the **insolvency** estate ~~of the legal act~~, it is appropriate to ~~refer to the completion of the cause for this~~ **consider that the** detriment ~~as the relevant~~ **is caused upon** ~~point in time, namely to~~ the perfection of the legal act ~~rather than to~~ **and not upon** the execution of the performance. ~~For instance, in the case of electronic money transfer, the relevant point in time should not be when the debtor instructs the financial institution to transfer the money to a creditor (performance of the legal act) but rather when the creditor's account is credited (perfection of the legal act).~~ **A legal act should be considered perfected when it unfolds its legal effects in accordance with national law. Where, pursuant to national law, the legal effects of a legal act are conditional upon an entry of the legal act in a public register, since the the time of the registration in a public register is beyond the control of the debtor or of the parties to the legal act concerned, it is advisable to consider the legal act to be perfected as soon as all the other requirements for its effectiveness have been met.** ~~Avoidance actions rules should also allow for the compensation of the insolvency estate for the detriment caused to creditors by such legal acts.~~

(6) The ~~scope of the~~ legal acts that could be challenged under the avoidance actions rules should be ~~drawn broadly, in order~~ **interpreted broadly** to cover any ~~human~~ **deliberate** behaviour with legal effects~~.~~ **that is of detriment to the general body of creditors, irrespective of whether the legal effects or the detriment is intended by the person performing the behaviour, including if there is no fraudulent purpose, notwithstanding the provisions of other areas of law. Acts where the person performing the behaviour does not act consciously or in any other way in line with their free will are not considered as legal acts.** ~~The principle of equal treatment of creditors implies~~**Member States should be able to provide** that legal acts ~~should~~**may** also include omissions, as it ~~makes~~ **is of** no significant difference ~~if~~ **whether** creditors suffer a detriment as a consequence of an action or of the passivity of the party concerned. ~~For instance, it makes no difference whether a debtor actively waives a claim against his or her obligor or whether he or she remains passive and accepts the claim to become time-barred. Further examples of omissions that may be subject to avoidance actions include the omission to challenge a disadvantageous judgement or other decisions of courts or public authorities or the omission to register an intellectual property right. For the same reason~~ **Similarly**, avoidance rules should not be restricted to legal acts performed by the debtor, but should also include legal acts performed by the **debtor's** counterparty or by a third party. ~~On the other hand, only legal acts should be subject to avoidance rules which are detrimental to the general body of creditors.~~

(7) To protect the legitimate expectations of the debtor's counterparty, any interference with the validity or enforceability of a legal act should be proportionate to the circumstances under which that act is perfected. Such circumstances ~~should~~**may** include the debtor's intent, the knowledge of the counterparty or the time ~~span~~**that elapsed** between the perfection of the legal act and the commencement of the insolvency proceedings. Therefore, it is necessary to distinguish between a variety of specific avoidance grounds that are based on common and typical fact patterns and that should complement the general prerequisites for avoidance actions. Any interference should also respect the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.

(7a) **In the case of due payments made by the debtor, specific circumstances may justify their voidness, voidability or unenforceability, such as the creditor's special knowledge of the debtor's situation. Generally, the avoidance action should cover a certain minimum period prior to the date of the submission of the request for the opening of insolvency proceedings, or in those Member States where the insolvency proceedings can also be opened by the resolution of the members of the debtor, prior to the date of the resolution to commence insolvency proceedings. On principle, the voidness, voidability or unenforceability of a legal act should not depend on the time that the court takes to examine a request to open insolvency proceedings or for a resolution to be passed, pursuant to national law.**

(8) In the context of avoidance actions, a distinction should be made between legal acts where the claim of the counterparty was due and enforceable and has been satisfied **or secured** in the owed manner (**"**congruent coverage~~s~~**"**) and those where **the** performance was not entirely in accordance with the creditor's claim (**"**incongruent coverage**"**). **In the context of congruent and incongruent coverages satisfaction and collateralisation of the claim of the counterparty should be interpreted broadly, also including acts such as creating a right to set-off or granting creditors a privileged status. Examples of i**~~I~~ncongruent coverages include, in particular, premature payments, the satisfaction with unusual means of payments, the subsequent collateralisation of a so far unsecured claim which was not already agreed upon in the original debt agreement, granting an extraordinary termination right or other amendments not provided for in the underlying contract, the waiver of legal defences**,** ~~or~~ objections or the acknowledgement of disputable debts. In the case of congruent coverages, the avoidance ground of preferences can only be invoked if the creditor of the legal act that ~~can be declared void~~ **is void, voidable or unenforceable** knew~~, or should have known,~~ at the time of the transaction that the debtor was insolvent.

(9) Certain congruent coverages, namely legal acts that are performed directly against fair consideration to the benefit of the ~~insolvency estate~~**debtor's assets**, should be exempted from the scope of legal acts that ~~can be declared void~~ **are void, voidable or unenforceable**. Those legal acts aim at supporting the ordinary daily activity of the debtor's business. **Such** ~~L~~**l**egal acts ~~falling under this exception~~ should have a contractual basis, and require the direct exchange of the mutual performances~~, but not necessarily a simultaneous exchange of performances, as, in some cases, unavoidable delays may result from practical circumstances~~. However, this exemption should not cover the granting of credit. Furthermore, performance and counter-performance in those legal acts should ~~have an~~**be** equivalen**t**~~e~~ in value. At the same time, the counter-performance should benefit the ~~estate~~ **debtor** and not a third party. This ex~~e~~**m**ption should cover, in particular, prompt payment of commodities, wages, or service fees~~, in particular for legal or economic advisors~~; cash or card payment of goods necessary for the debtor's daily activity; delivery of goods, products, or services against payment by return; creation of a security right against disbursement of the loan **or during the continuation of a loan, if this is necessary against the background of national rules to maintain an equivalence in value between performance and counter-performance**; prompt payment of public fees against consideration ~~(e.g.~~**such as** admittance to public grounds or institutions~~)~~. **The payment of wages to the debtor's employees may, in accordance with national law, be deemed to be performed directly if it is made within three months of the performance of the services by the employee to be remunerated.**

(10) New **financing** or interim financing provided during a restructuring attempt, **in accordance with the requirements of national law,** including in the course of a preventive insolvency procedure under Title II of Directive (EU) 2019/1023 of the European Parliament and of the Council[4], should be protected in subsequent insolvency proceedings. ~~Consequently, avoidance actions on the ground of preferences should not be permitted against payments to or collateralisation in favour of the providers of such new or interim financing, if those payments or collateralisations are performed in accordance with the claims of the providers. Such payments or collateralisation should be considered, therefore, as legal acts performed directly against fair consideration to the benefit of the insolvency estate.~~

(10a) As an instrument of minimum harmonisation, this Directive does not interfere with the national laws on the validity of legal acts subject to avoidance rules. It is, therefore, for Member States to decide if they consider the detrimental legal act *ipso iure* void, render it ineffective or unenforceable, or require the annulment of that legal act by the court.

[4] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (OJ L 172, 26.6.2019, p. 18).

(11) The main consequence of **voidness, voidability or unenforceability** in avoidance proceedings is the obligation for the party benefitting from the legal act that ~~has been~~**is** ~~declared~~ void**, voidable or unenforceable** to **return the benefits caused by such legal act to** ~~compensate~~ the insolvency estate ~~for the detriment caused by such legal act~~. ~~Compensation~~ **This** should include emoluments, where relevant, and interest, in accordance with the applicable ~~general~~ civil law **and** ~~. The compensation implies the payment of a sum equivalent to the value of the performance received if it cannot be returned *in natura* to the insolvency estate~~ **could be deemed fulfilled by the return of the consideration in kind or by the payment of its monetary equivalent, in accordance with national law. It should be possible to bring the avoidance actions against individual successors of the debtor if they acquired the asset while knowing the circumstances on which the avoidance actions are based.**

(12) Parties who are closely related to the debtor, such as relatives in case the debtor is a natural person or actors fulfilling decisive roles in relation to a debtor that is a legal entity, usually enjoy an information advantage with regard to the financial situation of the debtor. In order to prevent abusive behaviours, additional safeguards should be established. Consequently, in the context of avoidance actions, legal presumptions about the knowledge of the circumstances on which the conditions for avoidance were based should be introduced when the other party involved in the legal act that **is**~~can be declared~~ void**, voidable or unenforceable** is a party closely related to the debtor. Th**o**~~e~~se presumptions should be rebuttable and should aim at reversing the burden of proof to the benefit of the insolvency estate.

(13) Improving the ~~possibil~~**means** ~~ities~~ **available to**~~of~~ insolvency practitioners **in order** to identify and trace assets belonging to the insolvency estate**, as well as assets subject to avoidance actions,** is essential ~~for the maximisation~~**to maximise** ~~of~~ the value of that estate. When performing their duties, insolvency practitioners ~~may~~**can**~~, already now,~~ access information held in public data registers, ~~partly~~ **some of which have been established under**~~set up by~~ Union law and **are** interconnected at European level, such as the Business Registers Interconnection System (BRIS)~~,~~ **or** the system of Insolvency Registers Interconnection (IRI) ~~or the Beneficial Ownership Registers Interconnection System (BORIS)~~. **Having access only to** ~~Accessing the~~ information held in public databases, however, is often not ~~satisfactory~~ **sufficient in order** to identify and trace ~~important~~ assets that are**,** or should ~~be~~ **form,** ~~in~~ **part of** ~~the perimeter of~~ the insolvency estate. In particular, insolvency practitioners face practical difficulties when they try to access asset registers ~~situated abroad~~**located in Member States other than that in which they have been appointed**.

(14) It is therefore necessary to lay down provisions to ensure that insolvency practitioners, when performing their duties in insolvency proceedings, can have, either directly or indirectly, access to information held in databases which are not publicly accessible.

(15) ~~Prompt~~ **Immediate** direct access to ~~centralised~~ bank account regist**ers**~~ries~~ **and**~~or~~ **electronic** data retrieval systems is often indispensable ~~for the maximisation~~**to maximise** ~~of~~ the value of the insolvency estate. Therefore, rules should be laid down ~~granting~~ **providing for** direct access to information held in **the** ~~centralised~~ bank account regist**ers**~~ries~~ ~~or~~ **and electronic** data retrieval systems ~~to~~ **for the** designated ~~Member States'~~ courts **or authorities** ~~that have jurisdiction in insolvency proceedings~~ **of the Member States**. **For the purposes of tracing and identifying assets belonging to the insolvency estate, as well as assets subject to avoidance actions, it may be necessary that access be granted not only to the bank account information of the debtor but also to the bank account information of third parties where there are reasonable grounds to consider that they are beneficiaries of void, voidable or unenforceable legal acts.** Where a Member State provides access to bank account information through a central electronic data retrieval system, that Member State should ensure that the authority operating the retrieval system reports search results in an immediate and unfiltered way to the designated courts **or authorities**.

(16) In order to respect the right to the protection of personal data and the right to privacy, direct and immediate access to bank account ~~registries~~ **registers** should be granted ~~only~~ to courts ~~with jurisdiction in insolvency proceedings~~ **or to administrative authorities** that are designated by the Member States for that purpose. Insolvency practitioners should therefore be allowed to access information held in the bank account regist**ers**~~ries only~~ indirectly by requesting the designated courts **or authorities** in their Member State to access **the registers** and ~~run~~ **perform** the searches. **Member States should be able to designate different courts or authorities for the purposes of accessing national bank account registers or electronic data retreival systems domestically or cross-border through the bank account registers interconnection system (BARIS). Member States should be also able to provide that the conditions for access and search of bank account information should be verified by courts or authorities other than the designated courts or authorities under this Directive. Access to information should be granted only on a case-by-case basis, where relevant to specific insolvency proceedings for the purpose of identifying and tracing assets belonging to the insolvency estate, as well as assets subject to avoidance actions**. **However, Member States may, in line with the minimum harmonisation nature of this Directive, adopt or maintain national rules that provide for direct access and search for insolvency practitioners in their national bank account registers and electronic data retrieval systems, with or without judicial authorisation. Where~~n~~ such direct access and search is granted to insolvency practitioners, Member States should not designate courts or authorities for the purpose of access and search in their national bank account registers or electronic data retreival systems.**

(17) Directive (EU) ~~YYYY~~**2024/1640**~~XX~~ of the European Parliament and of the Council[5] ~~[OP: Directive which replaces Directive 2015/849]~~ provides that the centralised automated mechanisms**, such as central registers or central electronic data retrieval systems,** are interconnected via ~~the~~ **BARIS**~~bank account registers (BAR) single access point~~, to be developed and operated by the Commission. Considering the growing importance of insolvency cases with cross-border implications and the importance of relevant financial information for the purposes of maximising the value of the insolvency estate in insolvency proceedings, the designated ~~national~~ courts **or authorities** ~~having jurisdiction in insolvency matters~~ should be able to ~~directly~~ access and search the ~~centralised~~ bank account ~~registries~~ **registers and electronic data retrieval systems** of other Member States **directly,** through ~~the~~ BAR**IS** ~~single access point put in place pursuant to Directive (EU) YYYY/XX [OP: Directive which replaces Directive 2015/849]~~. **Access by courts or authorities designated under this Directive to bank account information across borders through the BARIS is based on the mutual trust among Member States derived from their respect of fundamental rights and of the principles recognised by Article 6 of the Treaty on European Union (TEU) and by the Charter of Fundamental Rights of the European Union ('the Charter'), as well as the fundamental rights and principles provided for in international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions, in their respective fields of application. The power to access and search bank account information through the BARIS in this Directive should be exercised in compliance with Union and national rules, as well as national procedural safeguards on the protection of personal data.**

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(18) Any personal data obtained under this Directive should ~~only~~ be processed **only** in accordance with the applicable data protection rules by designated courts **or authorities** and insolvency practitioners **and** where it is necessary and proportionate for the purposes of identifying and tracing assets belonging to the insolvency estate ~~of the debtor~~ in on-going insolvency proceedings.

(19) Directive (EU) ~~2015~~ **2024/1640** ~~849 of the European Parliament and the Council~~[6] ~~ensures~~ that persons ~~who are able to demonstrate~~**with** ~~a~~ legitimate interest are granted access to beneficial ownership information ~~on trusts and other types of legal arrangements~~, in accordance with data protection rules. ~~Those persons are granted access to information on the name, month and year of birth and the country of residence and nationality of the beneficial owner, as well as the nature and extent of beneficial interest held. It is essential that insolvency practitioners can quickly and easily access that set of information for performing their tasks to trace.~~ **For the purpose of tracing** assets in the context of ongoing insolvency proceedings**,** ~~. It is therefore necessary to clarify that in such a case access by~~ insolvency practitioners **should be granted access in a timely manner to specific categories of beneficial ownership information held in the interconnected central beneficial ownership registers.** ~~constitutes a legitimate interest. At the same time, the scope of data directly accessible by the insolvency practitioners should not be broader than the scope of data accessible by other parties having a legitimate interest~~.

~~[6] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141 5.6.2015, p. 73)~~

(20) To ensure that assets can be ~~efficiently~~ traced **efficiently** in the context of cross-border insolvency proceedings, insolvency practitioners ~~appointed in a Member State~~ should be granted expeditious access to **national** ~~asset~~ registers **and databases,** ~~also~~ **even if** ~~when~~ th~~o~~ese registers are located in a ~~different~~ Member State **other than that in which the insolvency practitioner was appointed. Access should be provided without the involvement of any intermediary court or authority, allowing insolvency practitoners to communicate directly with the entities operating or maintaing the national registers or databases concerned. In line with the minimum harmonization nature of this Directive, Member States should be able to provide for insolvency practitioners direct search in the datasets contained by such registers or databases. T**~~t~~he access conditions applying to foreign insolvency practitioners should not be more cumbersome than those applying to domestic insolvency practitioners**, thus Member States cannot apply different conditions solely on the basis that the applicant is a foreign insolvency practitioner**. **Procedural aspects of receiving and granting the requests submitted by domestic or foreign insolvency practitioners, such as language of the procedure or the verification of conditions of access, should be governed by the law of the Member State where the registers and databases are held.**

(20a) In order to establish an effective and consistent system for the enforcement of debts against the assets of debtors, it is essential to prevent debtors from concealing their assets, including through the acquisition of financial instruments, such as securities. The differences between national settlement systems, as well as the varying types and characteristics of financial instruments, can give rise to difficulties accessing records and in identifying the ultimate beneficial owner of a financial instrument. Therefore, irrespective of the kind of existing register, database or other source of information a Member State uses, it is necessary for Member States to have in place the framework to facilitate the tracing and identification of the the owners of financial instruments by making those national registers and databases accessible upon request under this Directive.

(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).

(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 **formal** opening of the ~~formal~~ insolvency proceedings. **This Directive should lay down minimum standards for a pre-pack mechanism while allowing for 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 be confidential 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 the debtor may continue its business activity after the termination of the liquidation phase with the remaining part of the economic activity. The liquidation phase should be carried out by means of insolvency proceedings other than preventive restructuring procedures. In Member States where Regulation (EU) 2015/848 of the European Parliament and of the Council[7] 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.**

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[7] **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 employees' rights under Union and national law, including the involvement of employees' representatives. 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 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 interests of creditors, 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 serve employment preservation. Consequently, when it takes place in 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[8].

(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. 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.

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8 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).

(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.~~

(24) The pre-pack ~~proceedings~~ **mechanism** should ensure that **the best bid received during the** ~~the monitor appointed in the preparation phase might propose~~ **preparation phase is either submitted to the court or competent authority for authorisation, or to the creditors for approval** ~~the best bid obtained during the sale process for authorisation by the court only if it declares that, in its view,~~**. The monitor 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 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 declaration should not require a valuation being made in every case.~~ **No undue burden is to be put on the monitor and the process and, in particular, a full-fledged valuation should not be required in the preparatory phase of the process, unless the prospective buyer is a party closely related to the debtor.** ~~The monitor should only reasonably conclude that the sale price is not significantly lower than the proceeds that could be recovered through a piecemeal liquidation.~~ **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 monitor or the insolvency practitioner should reject the 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.**

(24a) Where it becomes evident in the course of the preparation phase that the objectives of the pre-pack cannot be achieved, Member States should be able to allow for the termination of the pre-prack proceedings. Such situations can occur where the debtor fails to cooperate with the monitor or to conduct the preparation phase with due diligence, or where there is no reasonable prospect of selling the business as a going concern. The latter could be the case, for example, where the books and records of the debtor are incomplete or deficient to a degree that makes it impossible to ascertain its business and financial situation. Furthermore, whenever it is required that the sale process conducted during the preparation phase is competitive, transparent, fair, and meets market standard, acts of the debtor that are not compliant with those requirements can be viewed as a failure to proceed with due diligence. Nevertheless, Member States may provide that, even if the debtor fails to cooperate with the monitor or to conduct the preparation phase with due diligence, where the continuation of the preparatory phase is in the general interest of the creditors, the court or competent authority may limit the debtors's rights to administer its bussines in accordance with applicable insolvency law, with a view to finalising the pre-pack mechanism.

(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 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 does not meet market standards can decide to proceed with a public auction, or piecemeal liquidation of debtor's assets in insolvency proceeding commenced within the 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.

(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, or, where and to the extent that Member States so decide, the debtor-in-possession, 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 to 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. 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 prevent a business from depreciating its value mearly because it is subject to insolvency proceedings, 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 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 relating to licenses of intellectual and industrial property rights, as they are usually key components of the operations of the 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.**

(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.

(28aa) The provisions of this Directive on the automatic assignment of contracts to the aquirer are without prejudice to the right of the counterparty to terminate the contract in accordance with its applicable terms, or the right of the counterparty to resort to the measures granted by the applicable contract law that aim at ensuring a compliant performance of the obligation of the debtor for cases of non or faulty performance, such as the counterparty's right to require a deposit or security interests or the right of retention of performance before or after the assignment.

(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, obligations arising from executory contracts or employment relations, for example any occupational benefit entitlements, which are transferred to the buyer remain with the acquirer. Additionally, Member States should be able to introduce or maintain rules providing that the conduct of the debtor is taken into account in the assessment of the acquirer's liability for damages, if that conduct is imputable to the acquirer under the applicable insolvency law. Such rules may apply to damages covered by environmental law or damages connected to the ownership or control of certain assets.

(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 State 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 object 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 allowed to make a bid and, where their bid is successful, to 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 a quick and efficient pre-pack mechanism and allows other bidders to prepare their bids.

(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~~ **mechanism should**, instead of invoking their option, ~~should~~ be invited to participate in the bidding. **Nevertheless, Member States should be able to enforce statutory pre-emption rights.**

(30) Member States should allow secured creditors to participate in the bidding process in the pre-pack ~~proceedings~~ **mechanism** 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.

(32) Directors oversee the management of the affairs of a ~~legal entity~~**company** and have the best overview of its financial situation. Directors are therefore among the first to realise whether a ~~legal entity~~**company** is approaching ~~or surpassing the brink of~~ insolvency **or is insolvent**. A late filing for insolvency by directors may lead to lower recovery values for creditors**.** Member States should therefore introduce an obligation on directors to submit a request for the opening of insolvency proceedings within a specified ~~time~~ period. **In the context of this duty Member States may define insolvency in a way that differs from the trigger for the opening of insolvency proceedings. Where a Member State has more than one insolvency threshold, it is for that Member State to determine which of those thresholds triggers the duty to submit a request for the opening of the insolvency proceedings.** ~~Member States should also define to whom the directors' duties should apply taking into account that the notion of "director" should be interpreted broadly, to cover all persons who are in charge of making or do in fact make or ought to make key decisions with respect to the management of a legal entity~~. **For the purposes of this Directive, Member States should also provide for the persons to whom the duties of directors apply, taking into account the variety of responsibilities that certain persons or bodies may have with respect to decisions relating to the management of the company.**

(32a) Member States should set a deadline for the duty to submit a request for the opening of insolvency proceedings that is no longer than three months of the directors having become aware, or being reasonably expected to have become aware that the company is insolvent. If the company regains its solvency before that deadline, Member States should be able to provide that a new period starts if the company becomes insolvent again thereafter.

(32c) It is essential that when a company becomes insolvent, the protection of the general body of creditors is the primary responsibility of the directors. As such protection may be achieved in different ways, Member States should be able to provide that the duty to submit a request for the opening of insolvency proceedings can be discharged by informing the public of the company's insolvency through a notification in a public register in order to ensure that the creditors are able to apply for insolvency proceedings. Furthermore, Member States should also be able to suspend the duty of directors to submit a request for the opening of insolvency proceedings, if they take measures with a view to protecting the interests of the general body of creditors of the insolvent company, provided that such measures ensure a level of protection to the general body of creditors which is equivalent to that provided by the duty to submit a request for the opening of insolvency proceedings. Those measures can include, for example initiating measures by the company's owners to restore solvency.

(33) To ensure that directors do not act **against the interests of creditors**~~in their self-interest~~ by delaying the submission of a request for the opening of insolvency proceedings, despite signs of insolvency, Member States should lay down provisions making directors civilly liable for a breach of the duty to submit such a request. In that case**,** directors should compensate creditors for ~~the~~ **any** damage~~s~~ resulting from the deterioration in the recovery value of the ~~legal entity~~**company** compared to the situation where the request would have been submitted on time. **Unless this Directive provides for specific rules, all other aspects of civil liability, such as the calculation of damages or the burden of proof, should be governed by national law.** Member States should **also** be able to adopt or maintain national rules on civil liability of directors related to the filing for insolvency that are stricter than those laid down by this Directive.

(33a) Where Member States allow directors to take measures to protect the interests of the general body of creditors, other than complying with the duty to submit a request for the opening of insolvency proceedings, they should also lay down provisions that ensure that directors are liable for any damage caused to the creditors resulting from the deterioration in the recovery value of the company compared to the situation where a request for the opening of insolvency proceedings would have been submitted. In such a case, creditors should be put in a position as they would be, if the request to open insolvency proceedings would have been submitted by the directors within the deadline set by the Member States. It should be possible for Member States to provide that directors be relieved of such liability, if and to the extent that those directors are able to demonstrate, on the basis of objective circumstances and of information ascertainable at the time of the respective measures, that the measures taken gave rise to ~~the~~ a reasonable expectation that damage to creditors would thereby be avoided and that a level of protection of the general body of creditors equivalent to the protection provided by the duty to file for insolvency proceedings, would thereby be ensured. In such situations, national law on the discharge of the burden of proof should apply.

~~(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.~~

~~(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.

(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.

(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"[9], 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*.

[9] 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~~ **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' committee on their own motion or upon request of one or more creditors, the insolvency practitioner or the debtor.** ~~In this case, however, Member States should provide that creditors agree to its continuation and composition at the general meeting. If creditors disagree with the composition, they may also establish a new creditors' committee.~~

(48) The cost of setting up and operating a creditors' committee ~~should~~ **ought to** be commensurate ~~to~~**with** the ~~value~~ **benefits** it generates. **Therefore, Member State should be able to provide that t**~~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**.

Member States should be able to provide for the establishment of the creditors committee only for large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU. For smaller enterprises an adequate realization of creditors interests in insolvency proceedings may already be provided by national law in other ways.

(48a) The provisions on the establishment of the creditors' committee should apply to debtors that are legal persons. Member States may extend the application of those provisions to natural persons who are entrepreneurs.

(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**n**g~~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 should be able to provide that persons or entities 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**, including by following and being regularly informed of the activities of the insolvency practitioner, without requiring the insolvency practitioner to be subordinate to the committee**. 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'committee members to provide adequate protection of creditors'interests.** Member States should clarify when and how the composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw. ~~They~~ **Member States** should also clarify the conditions for the removal of members ~~that~~**who** ~~acted relentlessly against~~ **committed a violation of serious gravity of duties with respect to the** creditors' interest.

(53) ~~Members of the creditors' committee retain discretion in the organisation of the work, as long as~~ **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~~ 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, 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 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~~**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.

(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.**

(58) To ensure an enhanced transparency of the key features of **all types of** national insolvency proceedings and help especially cross-border creditors to estimate what would happen if their investments got involved in insolvency proceedings, investors and potential investors should be granted easy access to that information in a pre-defined, comparable and user-friendly format. A standardised key information factsheet should be prepared and made available to the public by Member States. Th**at**~~is~~ document would be ~~key~~ **important** for potential investors to make a "glance-through" assessment of the insolvency proceedings rules in a given Member State. It should contain sufficient explanations to allow the reader to understand the information therein without having to resort to other documents. The key information factsheet should**,** in particular**,** include practical information on the **conditions that trigger the opening of** insolvency ~~trigger~~ **proceedings** as well as on the steps to take to request the opening of insolvency proceedings or to lodge a claim. **Since Member States are already required to provide information on their national rules on insolvency procedures under Regulation (EU) 2015/848, it is important to ensure that information provided under this Directive is consistent with information provided under that Regulation. To that end, the Member States should be able to provide the information required by this Directive through the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC[10].**

10 **Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).**

(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 should 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 should 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 should be 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.

(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).

(62) Regulation (EU) 2016/679 of the European Parliament and of the Council[11] 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[12] 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*],

HAVE ADOPTED THIS DIRECTIVE:

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11 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).

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

Title I
GENERAL PROVISIONS

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) **the** pre-pack ~~proceedings~~**mechanism**;

(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.

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

Title II, III and VII do not apply to preventive restructuring procedures and Title II does not apply to interim proceedings.

2 This Directive does not apply ~~to~~ **where** ~~proceedings referred to in paragraph 1 of this Article that concern~~ debtors **are** ~~that are~~:

(a) insurance undertakings or reinsurance undertakings as defined in Article 13**,** points (1) and (4), of Directive 2009/138/EC of the European Parliament and of the Council;

(b) credit institutions as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council;

(c) investment firms or collective investment undertakings as defined in Article 4(1), points (2) and (7), of Regulation (EU) No 575/2013;

(d) central counterparties as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council;

(e) central securities depositories as defined in Article 2(1), point (1)**,** of Regulation (EU) No 909/2014 of the European Parliament and of the Council;

(f) other financial institutions and entities listed in Article 1(1), first subparagraph**,** of Directive 2014/59/EU of the European Parliament and of the Council;

(g) public bodies under national law;

(h) natural persons~~,~~ **who are not entrepreneurs** ~~except for entrepreneurs and, with regard to debt discharge procedures, those founders, owners or members of unlimited liability microenterprise debtors who are personally liable for the debts of the debtor~~.

3. Titles IV and VII apply to debtors that are legal persons.

4. Member States may decide to apply Title VII only to debtors that are large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU.

5. Member States may exclude from the scope of this Directive debtors that are financial entities, other than those referred to in paragraph 3, providing financial services that are subject to special arrangements under which the national supervisory or resolution authorities have wide-ranging powers of intervention comparable to those in relation to the financial entities referred to in paragraph 3. Member States shall communicate those special arrangements to the Commission.

Article 2

Definitions

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

(**1**~~a~~) 'insolvency practitioner' means a**ny person or body whose functions comprise one or more of those referred to in Article 2, point (5), of Regulation (EU) 2015/848 and in Article 2(1), point (12), of** ~~practitioner appointed by a judicial or administrative authority in procedures concerning restructuring, insolvency and discharge of debt as referred to in Article 26~~ Directive (EU) 2019/1023;

(**2**~~b~~) 'court' means ~~the~~ **a** judicial body of a Member State;

~~(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;~~

(3~~d~~) '~~centralised~~ bank account regist**ers**~~ries~~ **and electronic data retrieval systems**' means ~~the~~ centralised automated mechanisms, **such as central registers or central electronic data retrieval systems,**~~ such as central registries or central electronic data retrieval systems,~~ put in place in accordance with **Article 16(1) of Directive (EU) 2024/1640 of the European Parliament and of the Council**~~Article 32a(1) of Directive (EU) 2015/849~~[13];

(4~~e~~) '**central** beneficial ownership register**s**' means national central registers ~~on~~ **holding the** beneficial ownership information **and the systems of interconnection of those registers** referred to in **Article 10 of Directive (EU) 2024/1640 of the European Parliament and of the Council**~~Articles 30 and 31 of Directive (EU) 2015/849~~;

(5) 'bank account information' means the information as listed in Article 16(3) of Directive (EU) 2024/1640 of the European Parliament and of the Council;

(6~~f~~) 'legal act' means**, for the purposes of Title II,** any **deliberate** human behaviour~~,~~ ~~including an omi ssion,~~ producing a legal effect;

(~~g~~**7**) '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;

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[13] **Directive (EU) /1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive(EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (OJ L…, ELI: …).**

(**8**~~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**;

(**9**~~i~~) ‘interim financing’ means any new financial assistance, provided by an existing or a new creditor, that includes, as a minimum, financial assistance during **the** pre-pack ~~proceedings~~**mechanism**, 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’ means a microenterprise 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 against those individuals who are founders, owners or members of an unlimited liability microenterprise and are personally liable for the debts of the microenterprise is precluded; or ii) outstanding dischargeable debts as such are cancelled, as part of simplified winding-up proceedings;~~

~~(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~~**10**) '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;

(**11**~~p~~) 'pre-pack ~~proceedings'~~ **mechanism'** means ~~expedited liquidation proceedings~~**a mechanism, comprising a preparation phase and a liquidation phase,** that allow**s** 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~~;

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

(13)`'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~~**14**) 'party closely related to the debtor' means: ~~persons, including legal persons, with preferential access to non-public information on the affairs of the debtor.~~

~~Where the debtor is a natural person, closely related parties shall include in particular:~~

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

(~~i~~**1**) the spouse or partner of the debtor;

(**ii**~~2~~) ascendants, descendants, and siblings of the debtor, or of the spouse or partner **of the debtor**, and the spouses or partners of th~~e~~**o**se persons;

(**iii**~~3~~) persons living in the household of the debtor;

(**iv**~~4~~) persons **with access to non-public information on the affairs of the debtor,** who ~~are working~~ **have the possibility:**

(a) **to control the debtor's operations, including where they work** for the debtor under a contract of employment **or are in an employment relationship with the debtor**~~with access to non-public information on the affairs of the debtor,~~ or

(b) **to benefit from the debtor's financial position, as**~~otherwise performing tasks through which they have access to non-public information on the affairs of the debtor, including~~ **external** advisers, accountants **or auditors**~~notaries~~**;**

(**v**~~5~~) legal entities in which the debtor or one of the persons referred to in points (i) to (iv) ~~of this subparagraph~~ is a member of the administrative, management or supervisory bodies**,** or **that** performs duties which provide for access to non-public information on the affairs of the debtor**;**~~.~~

Where the debtor is a legal entity closely related parties shall include in particular:

(**v**i) any member of the administrative, management or supervisory bodies of the debtor;

(**v**ii) equity holders with a controlling interest in the debtor;

(**v**iii) persons ~~which~~**who** perform functions similar to those performed by persons under point (**v**i);

(**ix** ~~iv~~)persons ~~which~~**who** are closely related in accordance with ~~the second subparagraph~~ **points (i) to (iv)** to the persons **referred to**~~listed~~ in points (**v**i), (**v**ii), and (**v**iii) of this subparagraph**;**~~.~~

(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. For the purposes of this Directive, the concepts of "insolvency" and "directors" shall be understood in accordance with national law.

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) for the purposes of Title II, the day when the legal act subject to an avoidance action was perfected or **during a period falling** three months prior to the perfection of the legal act;

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

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. Member States may adopt or maintain laws which facilitate access by insolvency practitioners to bank account information held in their national bank account registers and electronic data retrieval systems, beneficial ownership information and national registers and databases, to a greater extent than the rules provided for in Title III.

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.

Title II
AVOIDANCE ACTIONS

Chapter 1
General provisions ~~regarding avoidance actions~~

Article 4

General prerequisites for avoidance actions

Member States shall ensure that legal acts which have been perfected prior to the opening of insolvency proceedings to the detriment of the general body of creditors ~~can be declared void~~**are void, voidable or unenforceable** under the conditions laid down in Chapter 2 ~~of this Title~~.

~~*Article 5*~~

~~Relationship to national provisions~~

~~This Directive shall not prevent Member States from adopting or maintaining provisions relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors in the context of insolvency proceedings w6here such provisions provide a greater protection of the general body of creditors than those set out in Chapter 2 of this Title.~~

Chapter 2

Specific conditions ~~for avoidance actions~~

Article 6

Preferences

1. Member States shall ensure that **detrimental** legal acts benefitting a creditor or a group of creditors by satisfaction~~,~~ **or** collateralisation~~, or in any other way can be declared void,~~ **are void, voidable or unenforceable** if they were perfected:

   (a) within three months prior to the ~~submission~~ **submission** of the request ~~for the~~ **that led to the** opening of **the** insolvency proceedings, **or, in the absence of a formal request, of the date of the resolution to commence insolvency proceedings,** ~~under~~ **provided** ~~the condition~~ that the debtor was **generally** unable to pay its ~~mature~~ debts **as they fall due in accordance with national law**; or

   (b) after the submission of the request **or the date of the resolution referred to in point (a)** ~~for the opening of insolvency proceedings~~ **and before the opening of insolvency proceedings**.

   ~~Where several persons have submitted a request for the opening of insolvency proceedings against the same debtor, the point in time when the first admissible request is submitted shall be considered the beginning of the three-month period referred to in the first subparagraph, point (a).~~

2. If a due claim of a creditor was satisfied or secured ~~in the~~ **as** owed ~~manner~~, Member States shall ensure that ~~the~~ **a detrimental** legal act ~~can be declared void~~ **is void, voidable or unenforceable** ~~only if~~**at least where**:

   (a) the conditions laid down in paragraph 1 are met; and

(b) that creditor knew~~, or should have known,~~ that the debtor was **generally** unable to pay its ~~mature~~ debts **as they fall due in accordance with national law,** ~~or~~ that a request for the opening of insolvency proceedings ~~has~~**had** been submitted **or that in the absence of a formal request a resolution to commence insolvency proceedings had been made.**

For the purposes of ~~The creditor's knowledge referred to in~~ the first subparagraph, point (b), **such knowledge** shall be presumed if the creditor was a party closely related to the debtor. **That presumption shall be rebuttable.**

3. By way of derogation from paragraphs 1 and 2, Member States ~~shall~~ **may** ~~ensure~~ **provide** that the following **detrimental** legal acts ~~cannot be declared void~~**are not void, voidable or unenforceable pursuant to this Directive**:

(a) legal acts performed directly against fair consideration to the benefit of the ~~insolvency estate~~ **debtor's assets**;

(b) payments on bills of exchange or cheques where the law that governs bills of exchange or cheques bars the recipient's claims arising from the bill or cheque against other bill or cheque debtors such as endorsers, the drawer, or **the** drawee if ~~it~~**the drawee** refuses the debtor's payment;

(c) legal acts that are not subject to avoidance actions in accordance with Directive 98/26/EC and Directive 2002/47/EC**;**~~.~~

(d) the entering into netting arrangements, including close-out netting, in financial markets, energy markets or other commodity markets as well as legal acts supporting the operation of such arrangements.

For the purposes of ~~Member States shall ensure that where payments on bills of exchange or cheques are concerned as referred to in~~ the first subparagraph, point (b), **Member States shall ensure that** the amount paid on the bill or cheque ~~shall~~ be restituted by the last endorser or, if the latter endorsed the bill on account of a third party, by such party**,** if the last endorser or the third party knew ~~or should have known~~ that the debtor was **generally** unable to pay its mature debts or that a request for the opening of insolvency proceedings ~~has~~ **had** been submitted at the moment of endorsing the bill or having it endorsed. ~~This~~**Such** knowledge ~~is~~ **shall be** presumed if the last endorser or the third party was a party closely related to the debtor.

Article 7

Legal acts against no **consideration** or **against** ~~a~~ manifestly inadequate consideration

1. Member States shall ensure that legal acts of the debtor against no **consideration** or **against** a manifestly inadequate consideration ~~can be~~**are** ~~declared~~ void, **voidable or unenforceable** where they were perfected within ~~a time period of~~ one year prior to the ~~submission~~ **submission** of the request ~~for~~ **that led to** the opening of insolvency proceedings**, or in the absence of such a formal request, the date of the resolution to commence insolvency proceedings,** or after the submission of such request **and before the opening of the insolvency proceedings**.

   Member States may provide that the fact that the enrichment resulting from the legal act that has been declared void is no longer the property of the party which benefited from that legal act can be invoked if that party was not aware of the circumstances on which the avoidance action is based.

2. Paragraph 1 shall not apply to gifts and donations of symbolic value.

~~3. Where several persons have submitted a request for the opening of insolvency proceedings against the same debtor, the point in time when the first admissible request is submitted shall be considered the beginning of the one-year period referred to in paragraph 1.~~

Article 8

Legal acts intentionally detrimental to creditors

~~1.~~ Member States shall ensure that legal acts by which the debtor has intentionally caused a detriment to the general body of creditors ~~can be declared void~~**are void, voidable or unenforceable** where both of the following conditions are met:

(a) those acts were perfected either within ~~a time~~ ~~period of four~~ **two** years prior to the ~~submission~~ **submission** of the request **that led to**~~for~~ the opening of **the** insolvency proceedings **or, in the absence of such a formal request, of the date of the resolution to commence insolvency proceedings,** or after the submission of such request **and before the opening of the insolvency proceedings**;

(b) the other party to the legal act knew ~~or should have known~~ of the debtor's intent to cause ~~a~~ detriment to the general body of creditors

For the purposes of ~~The knowledge referred to in~~ the first subparagraph, point (b), **such knowledge** shall be presumed if the other party to the legal act was a party closely related to the debtor**. That presumption shall be rebuttable.**

~~2. Where several persons have submitted a request for the opening of insolvency proceedings against the same debtor, the point in time when the first admissible request is submitted shall be considered the beginning of the four-year period referred to in paragraph 1, first subparagraph, point (a).~~

Chapter 3

Consequences of avoidance actions

Article 9

General consequences

1. Member State shall ensure that the claims, rights or obligations resulting from legal acts ~~that have been declared void~~ **which are void, were voided or deemed unenforceable** pursuant to Chapter 2 ~~of this Title may not~~ **cannot** be invoked to obtain satisfaction from the insolvency estate concerned.

2. Member States shall ensure that the party which benefitted from the legal act that ~~has been declared void is obliged to compensate in full the insolvency estate concerned for the detriment caused to creditors by that legal act~~ **is void, was voided or deemed unenforceable is obliged to return the benefits obtained in kind, or in their monetary equivalent.**

   ~~The fact that the enrichment resulting from the legal act that has been declared void is not available anymore in the property of the party which benefited from that legal act ('lapse of enrichment') can only be invoked if that party was neither aware, nor should have been aware, of the circumstances on which the avoidance action is based.~~

~~3. Member States shall ensure that the limitation period for all claims resulting from the legal act that can be declared void against the other party three years from the date of the opening of insolvency proceedings.~~

4. Member States shall ensure that a claim ~~to obtain full compensation~~ **for the return of benefits obtained in kind or in their monetary equivalent** pursuant to paragraph 2~~, first subparagraph, may~~ **can** be assigned to a creditor or a third party **under the rules governing the management of the insolvency debtor´s estate**.

5. Member States shall ensure that the party that has been obliged to ~~compensate~~ **return** ~~the insolvency estate~~ **benefits obtained in kind or in their monetary equivalent** pursuant to paragraph 2~~, first subparagraph,~~ cannot ~~set-off this~~**offset that** obligation with its claims **that it would otherwise have to pursue in the insolvency proceedings**~~against the insolvency estate~~.

6. This Article is without prejudice to actions **governed by**~~based on general~~ civil and commercial law for compensation of damages suffered by creditors as a result of a legal act that ~~can be declared void~~**are void, voidable or unenforceable**.

Article 10

Consequences for the party ~~which~~ **that** benefitted from the legal act that ~~has been declared void~~ **is void, voidable or unenforceable**

~~1.~~ Member States shall ensure that if**,** and to the extent that**,** the party ~~which~~ **that** benefitted from the legal act that ~~has been declared void~~ **is void, voidable or unenforceable returns the benefits obtained in kind or in their monetary equivalent in accordance with Article 9,** ~~compensates the insolvency estate for the detriment caused by that legal act,~~ any claim of that party which was satisfied with that legal act revives **in accordance with national law**.

~~2. Member States shall ensure that any counter-performance of the party which benefitted from the legal act that has been declared void performed after or in an instant exchange for the performance of the debtor under that legal act shall be refunded from the insolvency estate to the extent that the counter-performance is still available in the estate in a form that can be distinguished from the rest of the insolvency estate or the insolvency estate is still enriched by its value.~~

~~In all cases not covered by the first subparagraph, the party which benefitted from the legal act that has been declared void may file claims for the compensation of the counter-performance. For the purposes of the ranking of claims in insolvency proceedings, this claim shall be deemed to have arisen before the opening of insolvency proceedings~~

Article 11

Liability of third parties

1. Member States shall ensure that ~~the rights laid down in~~ Article**s** 9 **and 10** are ~~enforceable against an~~ **applicable to any** heir or another universal successor of the party ~~which~~ **that** benefitted from the legal act that **is** ~~has been declared~~ void**, voidable or unenforceable**. **The extent of the liability of the heirs shall be governed by national law.**

2. Member States shall ensure that ~~the rights laid down in~~ Article 9 ~~are~~ **is** ~~also enforceable against~~ **applicable to** any individual successor of the other party to the legal act that **is** ~~has been declared~~ void**, voidable or unenforceable** if ~~one of the following conditions is fulfilled:~~

~~(a) the successor acquired the asset against no or a manifestly inadequate consideration;~~

~~(b)~~ the successor knew~~, or should have known,~~ the circumstances on which the avoidance action is based.

~~The knowledge referred to in the first subparagraph, point (b), shall be presumed if the individual successor is a party closely related to the party which benefitted from the legal act that has been declared void.~~

Article 12

Relation to other instruments

1. ~~The provisions of this~~**This** Title ~~shall~~ **does** not affect **Directives 98/26/EC, 2002/47/EC** ~~Articles 17 and 18 of Directive~~ **and** (EU) 2019/1023.

Where, during preventive restructuring proceedings under Directive (EU) 2019/1023, the debtor becomes unable to pay its debts as they fall due and the benefit of a stay is kept in place in accordance with Article 7(3) of that Directive, Member States may provide that, with respect to legal acts performed during the stay, a party's knowledge that the debtor was generally unable to pay its debts as they fall due in accordance with national law does not give rise to avoidance actions under Article 6 (2) of this Directive.

Title III

TRACING ASSETS BELONGING TO THE INSOLVENCY ESTATE

Chapter 1

Access ~~to bank account information~~ by designated courts and authorities to bank account information

Article 13

Designated courts and authorities

1. Each Member State shall designate~~,~~ ~~among its~~ courts **or administrative authorities** ~~that are competent to hear cases related to procedures in restructuring, insolvency or discharge of debt, the~~ **as** ~~courts empowered~~ **authorised** to access and search its national ~~centralised~~ bank account **registers and electronic data retrieval systems** ~~registry established pursuant to Article 32a of Directive (EU) 2015/849~~ ('designated courts **or authorities**').

2. Each Member State shall notify the Commission of its designated courts **or authorities** by **…** [~~*6 months from transposition*~~ ***42 months from the date of entry into force of this Directive***], 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 14

Access to and searches of bank account information by designated courts and authorities

1. Member States shall ensure that~~, upon request of the insolvency practitioner appointed in ongoing insolvency proceedings~~ the designated courts **or authorities** have the power to access and search, directly and immediately, bank account information ~~listed in Article 32a(3) of Directive (EU) 2015/849~~ **where the following conditions are met:**

   (a) the insolvency practitioner appointed in ongoing insolvency proceedings, including interim proceedings, requests bank account information; and

   (b) ~~where~~ **the bank account information is** necessary for the purposes of identifying and tracing assets belonging to the insolvency estate in ~~that~~ **those** proceedings, ~~including~~ **as well as** ~~those~~ **assets** subject to avoidance actions.

2. **In facilitating cross-border access,** Member States shall ensure that~~, upon request of the insolvency practitioner appointed in ongoing insolvency proceedings~~ the designated courts **or authorities** have the power to access and search, directly and immediately, bank account information in other Member States available through the bank account registers **interconnection system** (BAR**IS**) ~~single access point~~ **referred** to **in** Article ~~XX~~ **16(6)** of Directive (EU) **2024/1640 of the European Parliament and of the Council**[14]~~XX [*OP: the new Anti-Money Laundering Directive*]~~ **where the following conditions are met:**~~,~~

[14] **Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 (OJ L, 2024/1640, 19.6.2024, ELI: http://data.europa.eu/eli/dir/2024/1640/oj).**

(a) **the insolvency practitioner appointed in ongoing insolvency proceedings, including interim proceedings, requests bank account information in other Member States; and**

(b) ~~where~~ **the bank account information is** necessary for the purposes of identifying and tracing assets belonging to the insolvency estate of the debtor in ~~that~~ **those** proceedings, ~~including~~ **as well as** ~~those~~ **assets** subject to avoidance actions.

3. ~~The additional I~~**I**nformation **additional to that referred to in paragraphs 1 and 2** that Member States ~~consider~~ **deem** essential and include in the ~~centralised~~ bank account **registers and electronic data retrieval systems** ~~registries~~ pursuant to Article ~~32a(4) of Directive (EU) 2015/849~~**16(5) of Directive (EU) 2024/1640** shall not be accessible and searchable by designated courts or ~~designated~~ **authorities**.

3a. Member States shall ensure that the designated courts or authorities referred to in Article 13 or other competent courts or authorities verify whether the conditions referred to in paragraphs 1 and 2 are met. If those conditions are met, Member States shall ensure that the designated courts or authorities transmit the relevant bank account information obtained as a result of the access and search pursuant to paragraphs 1 and 2 to the insolvency practitioner who requested it.

3b. Access and searches pursuant to this Article shall be without prejudice to national procedural safeguards and Union and national rules on the protection of personal data. Member States shall ensure that bank account information obtained pursuant to paragraphs 1 and 2 is processed, including by insolvency practitioners, only for the purposes for which it was obtained.

3c. Member States shall ensure that insolvency practitioners, when processing bank account information obtained pursuant to paragraphs 1 and 2, have in place relevant internal procedures for appropriate management of confidential information.

4. For the purpose**s** of paragraphs 1 and 2, access **to** and searches **of bank account information** shall be considered to be direct and immediate, inter alia, where the national authorities operating the ~~central~~ bank account regist~~ri~~er**s and electronic data retrieval systems** transmit the bank account information expeditiously by an automated mechanism to the designated courts **or authorities**, provided that no intermediary institution is able to interfere with the requested data or the information to be provided.

Article 15

Conditions for access <u>to</u> and ~~for~~ searches <u>of bank account information</u> by designated courts <u>and authorities</u>

1. **Member States shall ensure that a**~~A~~ccess to and searches of bank account information in accordance with Article 14 shall be performed only on a case-by-case basis by the staff of each designated court **or authority** that has~~ve~~ been specifically appointed and authorised to perform those tasks.

2. Member States shall ensure that:

   (a) the staff **referred to in paragraph 1**~~of the designated courts~~ maintain high professional standards of confidentiality and data protection, and ~~that they~~ are of high integrity and ~~are~~ appropriately skilled;

   (b) technical and organisational measures are in place to ensure the security of the data to high technological standards for the purposes of the exercise by designated courts **and authorities** of the power to access and search bank account information**,** in accordance with Article 14.

Article 16

Monitoring access to and searches of bank account information by designated courts and authorities

1. Member States shall provide that the authorities operating the ~~centralised~~ bank account ~~registries~~ **registers and electronic data retrieval systems** ensure that logs are kept for each time a designated court **or authority** accesses and searches bank account information. The logs shall include, in particular, the following:

   (a) the case reference number;

   (b) the date and time of the query or search;

   (c) the type of data used to launch the query or search;

   (d) the unique identifier of the results;

   (e) the name of the designated court **or authority accessing or searching the register or electronic data retrieval system**~~consulting the registry~~;

   (f) the unique user identifier of the staff member of the designated court **or authority** who made the query ~~or performed the search~~ and, where applicable, of the judge **or official** who ordered the query or search and, ~~as far as possible,~~**where available,** ~~the unique user identifier~~ of the ~~recipient of the results of the query or search~~**requesting insolvency practitioner**.

2. The authorities operating the ~~centralised~~ bank account **registers and electronic data retrieval systems** ~~registries~~ shall check the logs referred to in paragraph 1 regularly.

3. The logs referred to in paragraph 1 shall be used only ~~for the~~ **to monitor**~~monitoring of~~ compliance with this Directive and **with** ~~obligations stemming from the~~ applicable Union ~~legal~~ **law**~~instruments~~ on data protection. ~~The monitoring shall include verifying the admissibility of a request and the lawfulness of personal data processing, and whether the integrity and confidentiality of personal data is ensured~~. The logs shall be protected by appropriate measures against unauthorised access and shall be erased five years after their creation, unless they are required for monitoring procedures that are ongoing.

Chapter 2

Access by insolvency practitioners to beneficial ownership information

Article 17

Access by insolvency practitioners to beneficial ownership information

~~1.~~ Member States shall ensure that ~~insolvency practitioners~~, ~~when~~ **for the purposes of** identifying and tracing assets relevant for the insolvency proceedings for which they are appointed, **insolvency practitioners** have timely access to the **following** information ~~referred to in Article 30(5), second subparagraph, and in Article 31(4), second subparagraph, of Directive (EU) 2015/849 which is held in the beneficial ownership registers set up in the Member States and is accessible through the system of interconnection of beneficial ownership registers set up in accordance with Article 30(10) and Article 31(9) of Directive (EU) 2015/849.~~**on the beneficial owners of legal entities and of legal arrangements held in interconnected central beneficial ownership registers, and that such access is provided without alerting the entity, the arrangement or the beneficial owner concerned:**

(a) the name of the beneficial owner;

(b) the month and year of birth of the beneficial owner;

(c) the country of residence and nationality or nationalities of the beneficial owner;

(d) for beneficial owners of legal entities, the nature and extent of the beneficial interest held;

(e) for beneficial owners of express trusts or similar legal arrangements, the nature of their beneficial ownership.

~~2. Access to the information by the insolvency practitioners in accordance with paragraph 1 of this Article shall constitute a legitimate interest, whenever it is necessary for identifying and tracing assets belonging to the insolvency estate of the debtor in ongoing insolvency proceedings and is limited to the following information:~~

~~(a) the name, the month, the year of birth, the country of residence and the nationality of the legal owner;~~

~~(b) the nature and the extent of the beneficial interest held.~~

Chapter 3

Access by insolvency practitioners to national ~~asset~~ registers and databases

Article 18

Access by insolvency practitioners to national ~~asset~~ registers and databases

1. Member States shall ensure that insolvency practitioners, regardless of the Member State **in which** ~~where~~ they have been appointed, have direct and expeditious access to ~~the~~ **information necessary for the purposes of identifying and tracing assets belonging to the insolvency estate, as well as assets subject to avoidance actions, that are held in existing** national ~~asset~~ registers **and databases** listed in the Annex ~~located in their territory~~, ~~where available~~**, in accordance with conditions provided for by national law**.

2. With respect to access to the national ~~asset~~ registers **and databases** listed in the Annex, ~~every~~ **a** Member State shall ensure that the insolvency practitioners appointed in another Member State are not subject to access conditions that are ~~*de jure* or *de facto*~~ less favourable than ~~the conditions~~ **those** ~~granted~~ **applicable** to the insolvency practitioners appointed in that Member State.

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], and shall notify any changes thereto.

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

Chapter 4

Access to courts by insolvency practitioners

Article 18a

Access to courts by insolvency practitioners

With respect to the right to initiate proceedings or appear before courts or authorities in order to claim assets on behalf of the insolvency estate, Member States shall ensure that insolvency practitioners appointed in another Member State are not subject to conditions that are less favourable than those applicable to the insolvency practitioners appointed in that Member State.

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 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 nature, scope and form of creditors participation, 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, including the rules laid down in this Title~~.

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 proceeding**s 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[15] and national rules implementing it.**

For the purposes of Article 5(1) of Council Directive 2001/23/EC[16], **when it takes place in 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.

~~*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.~~

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15 **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).**

16 ~~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).~~

Chapter 2

Preparation Phase

Article 22

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

1. **Member States shall ensure that the preparation phase starts when a monitor is appointed. The procedure for the appointment of the monitor shall be set 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.~~

2. **Member States shall ensure that the monitor is independent from the debtor and any party closely related to the debtor. Member States may provide for additional requirements regarding the monitor's independence from equity holders or creditors.**

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 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.

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. Where such a public auction is conducted, Member States 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.~~

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 preparation 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.

~~*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**~~**Liquidation phase**

The liquidation phase starts when a decision on the opening of the insolvency proceedings referred to in Article 20(1) is taken, 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.~~

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 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 the requirements under Article 22a (1) and(2) 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.

Where, under national law, the sale of the debtor's business or part thereof requires the consent of the creditors, Member States may provide that the decision referred to in the first subparagraph can be taken by the creditors without the involvement of the court or competent authority.

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;~~

~~(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.

3. Member States may 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.

Article 28

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

1. Without prejudice to Article 27 and Article 34 (3) and (4), as well as to the obligations arising from 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. 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 law.

Article 29

~~Specific 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~~rovisions ~~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.

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**(1)**.

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;~~

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

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

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

(c) 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.

2. Subject to the ranking priorities of claims arising during insolvency proceedings, Member States may provide that:

a) security interests over the sale proceeds can be granted to providers of interim financing in order to secure reimbursement; and

b) interim financing is eligible to be set-off against the price to be disbursed under the adjudicated offer, when provided by interested bidders.

3. Member States may provide that paragraph 1 and 1a only apply to interim financing which has been subject to *ex ante* control.

Article 33a

Pre-emption rights and credit bidding

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 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 shall ensure that creditors as well as holders of equity of the debtor's business have the right to be heard by the court 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.~~

~~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 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.~~

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

Article 36

Dutiesy ~~to request the opening of insolvency proceedings~~of directors

1. Member States shall ensure that, where a ~~legal entity~~**company** becomes insolvent~~,~~ **in accordance with national law,** its directors ~~are obliged~~ **have the duty** to submit a request for the opening of insolvency proceedings**, with the exception of preventive restructuring proceedings. In Member States where Regulation (EU) 2015/848 applies, the duty to submit a request for the opening of insolvency proceedings refers to proceedings set out in Annex A to that Regulation, with the exception of preventive restructuring proceedings.**

2. **The request as referred to in paragraph 1 shall be submitted to** ~~with~~ the court **or the authority competent for the insolvency proceedings** ~~no later than~~ **within** 3 months **of**~~after~~ the directors **having** bec**o**~~a~~me aware or **being**~~an~~ reasonably ~~be~~ expected to have be**come**~~en~~ aware that the ~~legal entity~~**company** is insolvent **in accordance with national law**.

Article 36a

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

1. Member States may provide that the duty referred to in Article 36(1) does not apply to directors who are natural persons and are personally liable for all of the company's debt.

2. Member States may provide that the duty referred to in Article 36(1) can be discharged by way of informing the public of the company's insolvency through a notification in a public register, at the latest within the deadline referred to in Article 36 (2), in order to ensure that the creditors are able to request the opening of insolvency proceedings.

3. Member States may provide that the duty referred to in Article 36(1) is suspended if the directors take measures that are designed to avoid damage for the creditors of the insolvent company and ensure a level of protection of the general body of creditors that is equivalent to the protection provided by the duty referred to in Article 36(1).

Article 37

~~Directors'~~ Ceivil liability of directors

1. Member States shall ensure that the **directors of an** insolvent ~~legal entity's~~**company** ~~directors~~ are liable**, in accordance with national law,** for damages ~~incurred by~~**caused to** creditors as a result of their failure to comply with **the duty referred to in** ~~the obligation laid down in~~ Article 36.

2. ~~Paragraph 1 shall be without prejudice to national rules on civil liability for the breach of the duty of directors to submit a request for the opening of insolvency proceedings as set out in Article 36 that are stricter towards directors.~~

If Member States have exercised the option in Article 36a(3), they shall ensure that the directors who take measures referred to in Article 36a(3) are liable, in accordance with national law, for any damage caused to creditors that would not otherwise have been caused had the opening of insolvency proceedings been requested in accordance with Article 36.

Member States may provide that such liability is excluded where and to the extent that the directors can demonstrate, on the basis of objective circumstances, that the measures taken could reasonably be expected to avoid damage to creditors, ensuring a level of protection of the general body of creditors which is equivalent to the protection provided by the duty referred to in Article 36(1).

Article 37a

Relation to other instruments

1. **The provisions of this Title shall not affect national laws transposing Article 7 of Directive (EU) 2019/1023.**

~~Title VI~~

~~WINDING-UP OF INSOLVENT MICROENTERPRISES~~

~~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.

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)~~

~~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.

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;~~

~~(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.~~

~~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.

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.

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.

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[17]

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.

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;

[17] 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).

(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[18],

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

(j) data protection safeguards.

[18] 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

~~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.~~

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.

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.

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.

Title VII

CREDITORS'' COMMITTEE

Chapter 1

Establishment and members of the creditors' committee

Article 58

Establishment of the creditors'' committee

1. Member States shall ensure that a creditors' committee is established **after the opening of 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**.

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

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

Member States shall ensure that these circumstances 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 and entities other than creditors, in accordance with national law, are eligible for the appointment to the creditors' committee.**

4. Member States shall ensure that ~~creditors whose claims have only been provisionally admitted and~~ cross-border creditors are ~~also~~ eligible for the appointment to the creditors' committee.

~~5. Member States shall ensure that any interested party may challenge before the court the appointment of one or more members of the creditors' committee on the ground that the appointment was not done in accordance with applicable law.~~

~~*Article 60*~~

~~**Duty of creditors as members of the creditors' committee**~~

~~1. By way of derogation from the previous subparagraph, Member States may maintain national provisions that allow to set up more than one creditors' committee representing different groups of creditors in the same insolvency proceedings. In this case, the members of the creditors' committee represent solely the interests of the creditors who appointed them.~~

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

~~*Article 61*~~

~~**Number of members**~~

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

Article 62

Removal of a member and replacement

1. Member States shall lay down rules specifying ~~both~~ the grounds **and procedures** for **the** removal and replacement of members of the creditors' committee ~~and the related procedures~~. Those rules shall also **provide**~~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 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) 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 vote in writing.**

5. Member States shall ensure 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).~~

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 in its activities represents 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 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 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.~~

Title VIII

MEASURES ENHANCING TRANSPARENCY OF NATIONAL INSOLVENCY LAWS

Article 68

Key information factsheet

1. **Without prejudice to paragraph 10,** Member States shall provide **the Commission**, ~~within the framework of~~**through** the European e-Justice Portal, a key information factsheet on certain elements of national law on insolvency proceedings **(the "key information factsheet")**.

2. The content of the key information factsheet ~~referred to in paragraph (1)~~ shall be **concise,** accurate, clear and ~~not misleading~~**non-technical** and **shall** set out the ~~facts~~ **information** in a ~~balanced and fair~~ **factual** manner. ~~It shall be consistent with other information on insolvency or bankruptcy law provided within the framework of the European e-Justice Portal in accordance with Article 86 of Regulation (EU) 2015/848.~~

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

   ~~(b) have a maximum length of five sides of A4-sized paper when printed, using characters of readable size;~~

   ~~(c) be written in a clear, non-technical and comprehensible language.~~

4. The key information factsheet shall ~~contain~~ **include** the following sections in the following order:

(a) the conditions for the opening of insolvency proceedings;

(b) the rules governing the lodging, verification and admission of claims;

(c) the rules governing the ranking of creditors' claims and the distribution of proceeds from the realisation of assets ensuing from the insolvency proceedings;

(d) the average reported length of insolvency proceedings, as referred to in Article 29(1), point (b) of Directive (EU) 2019/1023[19].

5. The section referred to in paragraph ~~(4)~~, point (a), shall **include**~~contain~~:

(a) the list of persons that can request the opening of insolvency proceedings;

(b) the list of conditions that trigger the opening of insolvency proceedings;

(c) **how and** where ~~and how~~ **to submit** ~~the~~ **a** request for the opening of insolvency proceedings ~~can be submitted~~;

(d) how and when the debtor is notified of the **decision whether to** open~~ing of~~ insolvency proceedings.

6. The section referred to in paragraph ~~(4)~~, point (b), shall ~~contain~~**include**:

(a) the list of persons that can lodge a claim;

(b) the list of conditions ~~to~~ **for** lodg**inge** a claim;

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[19] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ L 172, 26.6.2019, p. 18).

(c) the time limit ~~to lodge~~**for lodging** a claim;

(d) ~~where to find~~ **how to obtain** the form ~~to lodge~~**for lodging** a claim, ~~when~~ **if** applicable;

(e) how and where to lodge a claim;

(f) how the claim is verified and validated.

~~7. The section referred to in paragraph (4), point (c), shall contain:~~

~~(a) a brief description of how rights and claims of creditors are ranked;~~

~~(b) a brief description of how proceeds are distributed.~~

8. Member States shall update the information referred to in paragraph 4 within **1**~~a~~ month ~~after~~ **of** the entry into force of ~~the~~**any** relevant amendments to national law. The key information factsheet shall contain the following statement:

'This key information factsheet is accurate as at **…** [the date of submission of the information to the Commission or the date of the update]'.

8a. The Commission shall ~~arrange for~~**ensure** that **the** key information factsheet ~~to be~~**is available to the public in**~~translated into~~ English, French and German **and the original language, if different,** ~~or, if the key information factsheet is drawn up in one of those languages, into the other two of them, and make it accessible to the public~~ on the European e-Justice Portal under the insolvency/bankruptcy section for each Member State.

9. The Commission shall be empowered to modify the format of the key information factsheet ~~or to extend or reduce the scope of the technical information provided therein~~ by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 69(2).

10. Member States where Regulation (EU) 2015/848 is applicable shall provide the key information factsheet referred to in paragraph 1 of this Article through the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC[20] in a manner consistent with Article 86 of that Regulation.

[20] Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

Title IX
FINAL PROVISIONS

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 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 previous derogation period. That extension shall take effect unless the Commission objects, at the latest one month before the expiration of that previous derogation period, on the basis that the extension does not comply with the requirements referred to in paragraph 1 and 2.

Article 68b

Collective workers' rights

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

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

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.

1a. 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 makes 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.

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*
[...]	*[...]*

ANNEX

National ~~asset~~ registers and databases referred to in Article 18

1. Cadastral registers;

2. Land registers;

3. Movable property registers including registers of vehicles, ships and aircrafts**, where property rights are registered in such registers**~~ and registers of weapons~~;

4. Register of donations;

5. Mortgage registers;

6. **Registers or databases containing information on the ownership of securities, such as central securities depositories, as defined in Article 2 of Regulation (EU) No 909/2014** ~~Other security registers, including securities depository registers and book-entry registers~~;

7. Registers of pledges including lease agreements and sale-purchase agreements with retention of title;

8. Registers containing property seizure acts;

~~9. Probate registers;~~

10. Registers of intellectual property rights, including patent and trademark registers~~;~~**.**

~~11. Registers of internet domains;~~

~~12. Register of General Terms and Conditions.~~