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WORKING DOCUMENT

From: To:	Presidency Delegations
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Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - Presidency note

Delegations will find in Annex a Presidency note in view of the Working Party on Civil Law Matters (Insolvency) on 2-3 September 2025.

Presidency note

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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 (doc. 15896/22). After thorough discussions during the Swedish, Spanish, Belgian, Hungarian and Polish Presidencies, a General Approach was reached at the JHA Council on 12 June 2025. On 24 June 2025 the JURI Committee adopted its report on the proposal which was confirmed by the European Parliament on 9 July 2025.

A kick-off trilogue already took place on 9 July 2025, during which the co-legislators presented their negotiating positions. Additionally, the 4-column document with the initial positions of the co-legislators (doc. 11436/25) was agreed upon and a broad mandate was given to the technical level.

In order to prepare for the upcoming negotiations with the European Parliament, the Presidency will organise a Working Party meeting on 2-3 September 2025 which will be devoted to informing delegations on the plans for negotiations and to analysing the EP report. The Presidency will defend the Council General Approach in its entirety to the greatest extent possible. However, to facilitate negotiations, the Presidency would like to invite Member States to indicate their red lines in relation to the EP report and provide supporting arguments for their position, as well as highlight points where they could show flexibility.

During the Working Party meeting in September, we would kindly ask delegations to focus their interventions on the changes of the European Parliament to the Commission proposal. For this purpose, we have highlighted below the main changes and new elements in the EP report.

1) Title I (General provisions)

- In *Article 2*, the EP adjusted the definitions of 'court' and in *Article 3* 'party closely related to the debtor'.
- It also included an *Article 3b* on protection of workers.
- Similarly to the Council, the EP detailed how the minimum harmonisation nature of the Directive translates into the different provisions in the Directive. Most importantly, the new Article 3b allows Member States to introduce or maintain provisions on pre-pack proceedings that offer a greater protection of workers or their representatives. (The provisions related to micro-enterprises will be addressed lower, in relation to Title VI).

2) Title II (Avoidance actions)

- The Council and EP agree on the terminology regarding the consequences of avoidance actions (*void, voidable and unenforceable)*. However, the EP has maintained the mandatory provision in *Article 6(3)* regarding legal acts that cannot be void, voidable or unenforceable, whereas the provision is optional in the General Approach.
- The EP has made an addition to *Article 7(1)* regarding payment of a third-party debt in a three person relationship.
- In *Article 8(1)(a),* the EP has reduced the look-back period for legal acts by which the debtor has intentionally caused a detriment to the general body of creditors to three years, while in the general approach it is reduced to two years.
- In *Article 9 and 10,* the EP preserved the wording of the Commission proposal in relation to the obligation for the party which benefitted from the legal act to compensate the insolvency estate, while the Council clarified that the obligation is to return the benefits obtained in kind or in their monetary equivalent.

3) Title III (Tracing assets belonging to the insolvency estate)

- Similarly to the Council position, the EP report allows Member States to designate courts or administrative authorities to access and search national bank account registers.
- Additionally, the EP made similar technical changes to those introduced by the Council to improve the understanding of the text, particularly in *Article 14* on access to and searches of bank account information by designated courts and administrative authorities.
- The deadline for the notification to the Commission of the designated courts or administrative authorities and of the lists of national registers and databases in *Articles 13(2) and 18(2a) respectively* is shorter in the EP mandate than in the General Approach.

4) Title IV (Pre-pack proceedings)

- The EP has, to a great extent, kept the wording of the Commission proposal, i.a. in maintaining the notion of "pre-pack proceedings".
- However, similarly to the Council, the EP has introduced a wide exception to the automatic assignment of executory contracts in *Article 27*, namely it introduced the possibility for Member States to require the consent of the debtor's counterparty or counterparties insofar as is necessary, depending on the type of contract, the legal status of the parties, or the interests of the business.

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- Regarding the changes made by the EP that differ from those made by the Council, *Article 19* of the EP report clarified that pre-pack proceedings should be available for situations in which the debtor is likely to become insolvent in accordance with national law.
- The EP introduced a new *Article 19a* on the rights of workers, which sets an obligation on Member States to ensure that in the context of pre-pack proceedings the impact on employees is taken into account as much as possible, with a view to preserving employment.
- In *Article 22(1)*, the EP added that the monitors shall be, among others, independent of the creditors.
- It also provided in *Article 22(2), second subparagraph* that beyond the elements included in article 22 (2), first subparagraph the monitor should maintain the confidentiality of all information obtained in connection with the preparation phase.
- In *Article 24(3a),* it provides that the services of an independent valuation practitioner should be made possible in the course of the preparation phase as a means of gauging a fair market price.
- Moreover, the EP report provides in *Article 32* that, as a rule, if parties related to the debtor do not disclose their relations they will not be able to acquire the debtors' business free of debts and liabilities.
- *Article 34(1)* mentions that the insolvency practitioner should provide the court with a report on a favourable best-interest-of-creditors test prior to the authorisation of the sale.

5) <u>Title V (Directors' duty)</u>

- In *Article 36*, the EP introduced very similar exceptions to those introduced by the Council in Article 36a (2) and (3) to the duty of directors to request the opening of insolvency proceedings. However, in the EP report those exceptions apply only to directors who are natural persons and are personally liable for all of the company's debt.
- The changes made by the Council in *Article 37* to the directors' civil liability are similarly reflected in the EP report.

6) <u>Title VI (Special regime for micro-enterprises)</u>

- The EP deleted Title VI. However, in *Article 3a(3)* it introduced an obligation on Member States to ensure that microenterprises have access to insolvency proceedings when they lack assets or these are insufficient to cover the costs of proceedings. In *Article 3a(4)* it states that Member States can establish or maintain simplified winding-up proceedings for micro-enterprises.

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– Lastly, in *Article 69a*, the EP report includes an obligation on the Commission to support the exchange of best practices between Member States in regards to insolvent micro-enterprises.

7) <u>Title VII (Creditors' committee)</u>

– The EP has to a great extent kept the wording of the Commission proposal.
– In *Article 59(3),* the EP introduced the possibility for workers or workers' representatives to be part of the creditors' committee.
– In *Article* 61 it deleted the minimum and maximum set for the number of members of the committee.
– Moreover, in *Article 64(2a)* it added a provision regarding confidentiality obligations of i.a. the members of the creditor committee.
– In *Article 66, second subparagraph,* it added a provision regarding expenses for liability insurance.

8) <u>Title VIII (Transparency obligations)</u>

– The EP has not introduced any substantial changes to the Commission proposal.

9) <u>Title IX (Final provisions)</u>

– Besides the inclusion of *Article 69a* on micro-enterprises, in *Article 70(1),* the EP report increases the frequency of the report by the Commission on the impact of the proposal and provides that it may be accompanied by a legislative proposal.
– Moreover, the transposition period in *Article* 71 has been limited to twelve months.
– The EP has not added a provision similar to Article 68a on emergency measures in the general approach.

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