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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 draft proposal on Article 3a

Delegations will find in Annex a draft proposal from the Presidency on Art. 3a(4) in relation to Title VII.

Art. 3a

[1. 3.] (…)

[4. By way of derogation from the provisions of Title VII Member States may choose not to provide for an establishment of creditors' committee where their national law:

a) ensures that creditors in the insolvency proceedings have at least the right to be heard and to have access to relevant and necessary information from the insolvency practitioner or the debtor, through different means of communication, or

b) provides for the possibility to establish in the insolvency proceedings a person or a body, independent from the insolvency practitioner, that represents interests of general body of creditors and has at least comparable rights and powers as provided for creditors' committee in Article 64.]

[47a] It should be noted that in some Member States the protection of creditors rights in the insolvency proceedings is effectively realised by direct access of creditors to the relevant and necessary information provided by insolvency practitioner, the debtor or the court, by means of different forms of communication. Creditors interests are also ensured by providing them with the right to be heard in the insolvency proceedings by the insolvency practitioner and by the court that is supervising the whole proceedings including the insolvency practitioner. In such systems, it is not necessary to establish a separate institution of creditors' committee with limited powers and rights as provided for in Title VII.

The same is true for those Member States whose laws provide for a separate institution in form of a person or a body with the same scope of functions, duties and rights to protect creditors' interests as it is envisaged for creditors' committee in Title VII.

Therefore these Member States, by way of derogation from the provisions of Title VII, should have the choice not to provide for an establishment of creditors' committee.