



2022/0048(COD)

5.2.2025

DRAFT OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council
harmonising certain aspects of insolvency law
(COM(2022)0702 – C9-0410/2022 – 2022/0408(COD))

Rapporteur for opinion: René Repasi

PA_Legam

SHORT JUSTIFICATION

On 28 November 2023 the ECON opinion for the Committee on Legal Affairs (JURI) on the proposal for a directive of the European Parliament and of the Council harmonising certain aspects of insolvency law was voted and adopted. Nevertheless, it has formally lapsed with the start of the new mandate and the Conference of Presidents has confirmed that ECON is still entitled to give an opinion under rule 57. Indeed, it remains important for ECON Committee to have impact on this key piece of legislation. Following internal consultations, it is deemed appropriate by a majority of the negotiation team to re-table the compromise achieved in the previous mandate. This was a carefully crafted compromise which brought together divergent perspectives on insolvency law harmonisation. Consequently, this document is identical to the opinion adopted in ECON and will be brought to a vote without changes. In any case, the ordinary procedure is followed, so formally a deadline for amendments will still be opened.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take the following into account:

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(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.

Amendment

(1) The objective of this Directive is to contribute to the proper functioning of the internal market **and the Capital Markets Union** 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.

Or. en

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The wide differences in substantive

Amendment

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insolvency laws acknowledged by Regulation (EU) 2015/848 of the European Parliament and of the Council³² 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.

³² 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).

insolvency laws acknowledged by Regulation (EU) 2015/848 of the European Parliament and of the Council³² **and the stark divergence in the quality of domestic insolvency procedures as measured by the World Bank^{32a}** create barriers to the internal market by reducing the attractiveness of cross-border investments, thus impacting the **viability of economic operation and the** cross-border movement of capital within the Union and to and from third countries. **It also means that harmonisation of certain aspects of insolvency law may require considerable changes in some Member States.**

³² 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).

^{32a}

<https://subnational.doingbusiness.org/en/data/exploretopics/resolving-insolvency/what-measured>

Or. en

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Insolvency proceedings ensure the orderly winding down or restructuring of companies or entrepreneurs in financial and economic distress. These 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 insolvency proceedings' outcome, so raising barriers especially for cross-border investments in

Amendment

(3) Insolvency proceedings ensure the orderly winding down or restructuring of companies or entrepreneurs in financial and economic distress. These 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 firms value and** insolvency proceedings' outcome, so raising barriers especially for cross-border

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.

investments in the internal market. ***This uncertainty acts as a disincentive which obstructs the freedom of establishment of undertakings and the willingness to entrepreneurship thus harming the proper functioning of the internal market. Small and medium-sized enterprises, in particular, often lack the necessary resources to assess risks related to cross-border activities.*** 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, which acts as a disincentive to investment and makes it more difficult to attract foreign capital into EU territory.***

Or. en

Amendment 4

Proposal for a directive

Recital 4

Text proposed by the Commission

(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.

Amendment

(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, ***diversification of portfolios and investment opportunities, while also preventing the build-up of non-performing loans (NPL)*** . Therefore, it is necessary to set out minimum requirements in targeted areas of national insolvency proceedings, ***as well as creating heightened risks and costs for investors,*** which have a significant impact on the efficiency and length of such proceedings, especially on cross-border insolvency

proceedings.

Or. en

Amendment 5

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4 a) The minimum standards laid down in this Directive aim to harmonise Member State's insolvency law, in particular when it comes to, maximization of legal certainty about a firm's value, improving efficiency of insolvency procedures both in terms of costs and length (especially for microenterprises and SMEs), protecting employees and preserving jobs and improving predictability and fair distribution of value amongst creditors. It should be understood that employees, to whom a company owes a debt the moment they deliver their labour, can be regarded as creditors.

Or. en

Amendment 6

Proposal for a directive Recital 4 b (new)

Text proposed by the Commission

Amendment

(4 b) Harmonisation of insolvency proceedings is associated with lower costs of credit, increased access to credit, improved creditor recovery and more effective protection of workers. At the same time one of the goals when completing the Capital Market Union is to stimulate more equity financing, and

figures on how more debt financing through better protection of creditor rights will impact equity financing, are inconclusive. Therefore, a legal instrument to harmonize the legislative solutions for the debt-equity bias, without prejudice to the legitimate and effective use of debt instruments, is necessary in order to place debt and equity financing on an equal footing in the EU in parallel with this Directive.

Or. en

Amendment 7

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) Exceptionally, when the perfection of a legal act requires registration in a public register, e.g. the land register, the legal act may be deemed to be perfected before the registration takes place.

Or. en

Amendment 8

Proposal for a directive Recital 8

Text proposed by the Commission

Amendment

(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 in the owed manner (congruent coverages) and those where performance was not entirely in accordance with the creditor's claim (incongruent coverage). Incongruent coverages include, in

(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 in the owed manner (congruent coverages) and those where performance was not entirely in accordance with the creditor's claim (incongruent coverage). Incongruent 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 knew, ***or should have*** known, at the time of the transaction that the debtor was insolvent.

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 knew at the time of the transaction that the debtor was insolvent.

Or. en

Amendment 9

Proposal for a directive

Recital 25

Text proposed by the Commission

(25) In order to guarantee that the business is sold at the best market value during the pre-pack proceedings, Member States should either ensure 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.

Amendment

(25) In order to guarantee that the business is sold at the best market value during the pre-pack proceedings, Member States should either ensure high standards of competitiveness, transparency and fairness of the sale process conducted in the preparation phase, ***as well as access to independent valuation where required*** or provide that the court runs a brief public auction after the opening of the liquidation phase of the proceedings.

Or. en

Amendment 10

Proposal for a directive Recital 28

Text proposed by the Commission

(28) 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), 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 the pre-pack proceedings. It should, therefore, be ensured that those 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. Nonetheless, there are situations where the assignment of the executory 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. 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.

Amendment

(28) 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), 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 the pre-pack proceedings. It should, therefore, be ensured that those contracts are assigned to the acquirer of the business of the debtor or part thereof, ***after consultation*** of the counterparty of the debtor to those contracts. Nonetheless, there are situations where the assignment of the executory contracts cannot be ***allowed***, such as when the acquirer is a competitor of the counterparty of the contract ***or when it binds employees to a contract partner they have not chosen***. 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. 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.

Or. en

Amendment 11

Proposal for a directive Recital 35

Text proposed by the Commission

(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.

Amendment

(35) National insolvency rules are not always fit to treat insolvent microenterprises **and SMEs** properly and in a proportionate manner. Taking into account the unique characteristics of microenterprises **and SMEs** 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.

Or. en

Amendment 12

Proposal for a directive Recital 38

Text proposed by the Commission

(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

Amendment

(38) In order to establish cost-effective and expeditious simplified winding-up proceedings for microenterprises **and SMEs**, 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.

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.

Or. en

Amendment 13

Proposal for a directive Recital 39

Text proposed by the Commission

(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.

Amendment

(39) All microenterprises *and SMEs* 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 *their* 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.

Or. en

Amendment 14

Proposal for a directive Recital 40

Text proposed by the Commission

(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

Amendment

deleted

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.

Or. en

Amendment 15

Proposal for a directive Recital 41

Text proposed by the Commission

(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.

Amendment

(41) A microenterprise *or SME* 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.

Or. en

Amendment 16

Proposal for a directive Recital 42

Text proposed by the Commission

(42) Disputed claims should be dealt with in a way that does not unnecessarily complicate the conduct of simplified

Amendment

(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.

winding-up proceedings for microenterprises *and for SMEs*. 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.

Or. en

Amendment 17

Proposal for a directive Recital 50

Text proposed by the Commission

(50) Fair representation of creditors in the creditors' committee is particularly important *in relation* to unsecured creditors 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.

Amendment

(50) Fair representation of creditors in the creditors' committee is particularly important *to employees, for whom the delay of wage payments regularly poses an existential threat, as well as* to unsecured creditors 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, *including the representation of interests of employees through the appointment of a representative in the creditors' committee*, could ensure that in the course of the distribution of the recovered proceeds they receive their parts more expeditiously.

Or. en

Amendment 18

Proposal for a directive Recital 53

Text proposed by the Commission

(53) Members of the creditors' committee retain discretion in the organisation of the work, as long as the working methods are lawful, transparent and effective. Member States should therefore require that the creditors' committee set out the working methods, specifying how meetings should be run, who could attend and vote, and how the impartiality and the confidentiality of the work of the committee is ensured. These working methods should be allowed to also set out a role for employers' representatives or transparency towards other creditors. Creditors should be able to participate and vote electronically or delegate the voting right to a third person, provided this person is duly authorised. This possibility would be particularly beneficial for creditors resident in other Member States.

Amendment

(53) Members of the creditors' committee retain discretion in the organisation of the work, as long as the working methods are lawful, transparent and effective. Member States should therefore require that the creditors' committee set out the working methods, specifying how meetings should be run, who could attend and vote, and how the impartiality and the confidentiality of the work of the committee is ensured. These working methods should be allowed to also set out a role for employers' **and employees'** representatives or transparency towards other creditors. Creditors should be able to participate and vote electronically or delegate the voting right to a third person, provided this person is duly authorised. This possibility would be particularly beneficial for creditors resident in other Member States.

Or. en

Amendment 19

Proposal for a directive Article 1 – paragraph 1 – point e

Text proposed by the Commission

(e) simplified winding-up proceedings for microenterprises;

Amendment

(e) simplified winding-up proceedings for microenterprises **and SMEs**;

Or. en

Amendment 20

Proposal for a directive

Article 2 – paragraph 1 – point q

Text proposed by the Commission

(q) ‘party closely related to the debtor’ means persons, including legal persons, **with** preferential access to non-public information on the affairs of the debtor.

Amendment

(q) ‘party closely related to the debtor’ means persons, including legal persons, **provided they have** preferential access to non-public information on the affairs of the debtor.

Or. en

Amendment 21

Proposal for a directive

Article 2 – paragraph 1 – point q a (new)

Text proposed by the Commission

Amendment

(q a) ‘contract for the lease of goods’ means a contract under which one party, the lessor, undertakes to provide the other party, the lessee, with a temporary right of use of goods in exchange for rent without the parties having agreed that ownership will be transferred after a period with right of use. The rent may be in the form of money or other value.

Or. en

Amendment 22

Proposal for a directive

Article 2 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

Where the debtor is a natural person:

Amendment 23

Proposal for a directive

Article 2 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

Where the debtor is a legal entity:

Or. en

Amendment 24

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may adopt or maintain rules according to which exceptionally a legal act which in order to be perfected must be registered in a public register is deemed to be perfected before the registration takes place.

Or. en

Amendment 25

Proposal for a directive

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive is without prejudice to workers' rights to be informed and consulted in accordance with Union and national law on insolvency plans or elements of insolvency plans which may impact on terms and conditions of employment, structure of the undertaking,

probable development and production and sales, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings or important parts thereof, and collective redundancies.

Or. en

Amendment 26

Proposal for a directive

Article 6 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) that creditor knew, *or should have known*, that the debtor was unable to pay its mature debts or that a request for the opening of insolvency proceedings has been submitted.

Amendment

(b) that creditor knew that the debtor was unable to pay its mature debts or that a request for the opening of insolvency proceedings has been submitted.

Or. en

Amendment 27

Proposal for a directive

Article 6 – paragraph 3 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(c a) where relevant, in line with national law, legal acts that serve as satisfaction or collateralisation of claims of social security authorities.

Or. en

Amendment 28

Proposal for a directive

Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Member States shall ensure that where payments on bills of exchange or cheques are concerned as referred to in the first subparagraph, point (b), 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 unable to pay its mature debts or that a request for the opening of insolvency proceedings has been submitted at the moment of endorsing the bill or having it endorsed. This knowledge is presumed if the last endorser or the third party was a party closely related to the debtor.

Amendment

Member States shall ensure that where payments on bills of exchange or cheques are concerned as referred to in the first subparagraph, point (b), 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 that the debtor was unable to pay its mature debts or that a request for the opening of insolvency proceedings has been submitted at the moment of endorsing the bill or having it endorsed. This knowledge is presumed if the last endorser or the third party was a party closely related to the debtor.

Or. en

Amendment 29

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

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 where both of the following conditions are met:

Amendment

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 ***by court order where it is deemed just and equitable to do so*** where both of the following conditions are met:

Or. en

Amendment 30

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(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.

Amendment

(b) the other party to the legal act knew of the debtor's intent to cause a detriment to the general body of creditors.

Or. en

Amendment 31

Proposal for a directive

Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the rights laid down in Article 9 are enforceable against an heir or another universal successor of the party which benefitted from the legal act that has been declared void.

Amendment

1. Member States shall ensure that the rights laid down in Article 9 are enforceable against an heir or another universal successor of the party which benefitted from the legal act that has been declared void, ***unless the acquisition was in good faith.***

Or. en

Amendment 32

Proposal for a directive

Article 11 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the successor knew the circumstances on which the avoidance action is based.

Or. en

Amendment 33

Proposal for a directive

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that pre-pack proceedings are composed of the following two consecutive phases

Amendment

1. ***Member States may introduce pre-pack proceedings in situations, where the debtor is in a situation of likelihood of insolvency or is insolvent in accordance with national law.*** Member States shall ensure that pre-pack proceedings are composed of the following two consecutive phases

Or. en

Amendment 34

Proposal for a directive

Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. This Directive shall not prevent Member States from adopting or maintaining provisions relating to pre-pack proceedings where such provisions provide a greater protection of workers or their representatives than those set out in this Title.

Or. en

Amendment 35

Proposal for a directive

Article 22 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall provide that, upon request of the debtor, the court appoints a monitor.

Amendment

Member States shall provide that, upon request of the debtor, the court appoints a monitor ***where it is appropriate to do so.***

Amendment 36

Proposal for a directive

Article 22 – paragraph 2 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(a a) carries out its tasks in consultation with creditors, where reasonable;

Or. en

Amendment 37

Proposal for a directive

Article 22 – paragraph 2 – subparagraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(a b) may have recourse to an independent valuation where appropriate in order to satisfy requirements related to achieving market value;

Or. en

Amendment 38

Proposal for a directive

Article 22 – paragraph 2 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) ensures participation of a committee of creditors;

Or. en

Amendment 39

Proposal for a directive Article 23 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall include the obtaining of the services of an independent valuation practitioner as a means of gauging a fair market price;

Or. en

Amendment 40

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that the sale process carried out during the preparation phase is competitive, transparent, fair and meets market standards.

1. Member States shall ensure that the sale process carried out during the preparation phase is competitive, transparent, fair and meets market ***and social standards, and aims to achieve fair value for the purchase.***

Or. en

Amendment 41

Proposal for a directive Article 24 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the sale process only produces one binding offer, that offer shall be deemed to reflect the business market price.

2. Where the sale process only produces one binding offer, that offer shall be deemed to reflect the business market price, ***unless it can be demonstrated otherwise.***

Or. en

Amendment 42

Proposal for a directive Article 27 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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. The assignment shall not require the consent of the debtor's counterparty or counterparties.

Or. en

Amendment 43

Proposal for a directive Article 27 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. This Article is without prejudice to the rights and obligations foreseen under Directive 2001/23/EC and the right of an employee to object to the transfer of her or his employment contract under national law.

Or. en

Amendment 44

Proposal for a directive Article 30 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that the criteria to select the best bid in the pre-pack

Member States shall ensure that the criteria to select the best bid in the pre-pack

proceedings are the same as the criteria used to select between competing offers in winding-up proceedings.

proceedings *include the safeguarding of employment as well* are the same as the criteria used to select between competing offers in winding-up proceedings.

Or. en

Amendment 45

Proposal for a directive

Article 32 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) other parties to the sale process receive adequate information on the existence of parties closely related to the debtor and their relation to the latter;

Amendment

(b) other parties to the sale process, *including creditors*, receive adequate information on the existence of parties closely related to the debtor and their relation to the latter;

Or. en

Amendment 46

Proposal for a directive

Article 32 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States may provide that where it is proved that the disclosure duty referred to in the first subparagraph, point (a), *was* breached, the court revokes the benefits referred to in Article 28.

Amendment

Member States may provide that where it is proved that the disclosure duty referred to in the first subparagraph, point (a) *and the duty to inform referred to in point (b), were* breached, the court revokes the benefits referred to in Article 28.

Or. en

Amendment 47

Proposal for a directive Article 36 – paragraph 1

Text proposed by the Commission

Member States shall ensure that, where a legal entity *becomes* insolvent, its directors are obliged to submit a request for the opening of insolvency proceedings with the court *no later than 3 months* after the directors became aware or can reasonably be expected to have been aware that the legal entity is insolvent.

Amendment

Member States shall ensure that, where a legal entity *is likely to become* insolvent, its directors are obliged to *take steps to avoid insolvency, and where insolvency can not be avoided, take all possible measures to avoid bankruptcy. In doing so, the director shall have regard to:*

- (a) the interests of the creditors, and*
- (b) the need to avoid deliberate or grossly negligent conduct that threatens the viability of the business of the company.*

*Notwithstanding the first subparagraph, Member States shall ensure that directors of an insolvent legal entity submit a request for the opening of insolvency proceedings with the court *without undue delay* after the directors became aware or can reasonably be expected to have been aware that the legal entity is insolvent.*

Or. en

Amendment 48

Proposal for a directive Article 37 – paragraph 2

Text proposed by the Commission

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.

Amendment

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

Or. en

Amendment 49

Proposal for a directive Article 38 – Titre

Text proposed by the Commission

Rules on winding-up of microenterprises

Amendment

Rules on winding-up of microenterprises
and SMEs

Or. en

Amendment 50

Proposal for a directive Article 38 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall ensure that microenterprises **and SME**, when insolvent, have access to simplified winding-up proceedings that comply with the provisions laid down in this Title.

Or. en

Amendment 51

Proposal for a directive Article 38 – paragraph 2

Text proposed by the Commission

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

Amendment

2. A microenterprise **or SME** 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 **or SME** 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.

or SME concerned.

Or. en

Amendment 52

Proposal for a directive

Article 39 – paragraph 1 – introductory part

Text proposed by the Commission

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:*

Amendment

Member States shall ensure that in simplified winding-up proceedings *the debtor, a creditor or a group of creditors may request that* an insolvency practitioner *is not* appointed *provided that the microenterprise or SME has an up-to-date current balance sheet. The request needs to demonstrate that the microenterprise or SME has submitted its most recent required annual statement to the relevant state authorities.*

Or. en

Amendment 53

Proposal for a directive

Article 39 – paragraph 1 – point a

Text proposed by the Commission

(a) the debtor, a creditor or a group of creditors requests such an appointment;

Amendment

deleted

Or. en

Amendment 54

Proposal for a directive Article 39 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(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.

deleted

Or. en

Amendment 55

Proposal for a directive Article 39 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The lack of funding by the insolvency estate or by the party that requested the appointment shall not constitute a reason for requesting that an insolvency practitioner is not appointed.

Or. en

Amendment 56

Proposal for a directive Article 41 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that insolvent microenterprises can submit a request for the opening of simplified winding-up proceedings to a competent authority.

1. Member States shall ensure that insolvent microenterprises **and SME** can submit a request for the opening of simplified winding-up proceedings to a competent authority.

Or. en

Amendment 57

Proposal for a directive Article 41 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States shall ensure that any creditor of an insolvent microenterprise **or SME** can submit a request for the opening of simplified winding-up proceedings against the microenterprise **or SME** to a competent authority. The microenterprise **or SME** concerned shall be given the opportunity to respond to the request, by contesting or consenting to it.

Or. en

Amendment 58

Proposal for a directive Article 41 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that microenterprises can submit a request for the opening of simplified winding-up proceedings using a standard form.

Amendment

3. Member States shall ensure that microenterprises **and SMEs** can submit a request for the opening of simplified winding-up proceedings using a standard form.

Or. en

Amendment 59

Proposal for a directive Article 41 – paragraph 4 – point a

Text proposed by the Commission

(a) if the microenterprise is a legal person, the debtor's name, registration number, registered office or, if different, postal address;

Amendment

(a) if the microenterprise **or SME** is a legal person, the debtor's name, registration number, registered office or, if different, postal address;

Amendment 60

Proposal for a directive

Article 41 – paragraph 4 – point b

Text proposed by the Commission

(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;

Amendment

(b) if the microenterprise **or SME** 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;

Or. en

Amendment 61

Proposal for a directive

Article 41 – paragraph 4 – point c

Text proposed by the Commission

(c) a list of the assets of the microenterprise;

Amendment

(c) a list of the assets of the microenterprise **or SME**;

Or. en

Amendment 62

Proposal for a directive

Article 41 – paragraph 4 – point d

Text proposed by the Commission

(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,

Amendment

(d) name, address or other contact details of creditors of the microenterprise **or SME**, as known to the microenterprise **or SME** at the time of the submission of the request,

Or. en

Amendment 63

Proposal for a directive Article 41 – paragraph 4 – point e

Text proposed by the Commission

(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;

Amendment

(e) the list of the claims against the microenterprise **or SME** 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;

Or. en

Amendment 64

Proposal for a directive Article 41 – paragraph 4 – point e a (new)

Text proposed by the Commission

Amendment

(e a) a list with all commercial transactions in the period of six months preceding the request for the opening of simplified winding-up proceedings;

Or. en

Amendment 65

Proposal for a directive Article 41 – paragraph 4 – point f

Text proposed by the Commission

(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.

Amendment

(f) if security in rem or a reservation of title **exists** in respect of a certain claim and, if so, what assets are covered by the security interest.

Or. en

Amendment 66

Proposal for a directive Article 41 – paragraph 6

Text proposed by the Commission

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.

Amendment

6. Member States shall ensure that when the request for opening simplified winding-up proceedings is submitted by a creditor, and the microenterprise **or SME** expressed its consent to the opening of the proceedings, the microenterprise **or SME** is required to submit the information listed in paragraph 4 together with the response referred to in paragraph 2 of this Article, where available.

Or. en

Amendment 67

Proposal for a directive Article 41 – paragraph 7

Text proposed by the Commission

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.

Amendment

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 **or SME** contesting or not responding to the request the microenterprise **or SME** 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.

Or. en

Amendment 68

Proposal for a directive Article 42 – paragraph 2 – point a

Text proposed by the Commission

(a) the debtor is not a microenterprise;

Amendment

7(a) the debtor is not a microenterprise
or a SME;

Or. en

Amendment 69

Proposal for a directive Article 42 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Member States shall ensure that the microenterprise, *SME* or any creditor of the microenterprise *or SME* 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.

Or. en

Amendment 70

Proposal for a directive Article 44 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Paragraph 1 shall not apply to employees' claims. By way of derogation from the first subparagraph, Member States may apply paragraph 1 to employees' claims if, and to the extent that, Member States ensure that the payment of such claims is guaranteed in

preventive restructuring frameworks at a similar level of protection.

Or. en

Amendment 71

Proposal for a directive Article 48 – paragraph 2

Text proposed by the Commission

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.

Amendment

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. ***This paragraph is without prejudice to assets that are temporarily in possession of the debtor in execution of a contract for the lease of goods.***

Or. en

Amendment 72

Proposal for a directive Article 49 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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, ***or where appointed, the insolvency practitioner:***

Or. en

Amendment 73

Proposal for a directive Article 49 – paragraph 3

Text proposed by the Commission

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.

Amendment

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, **or where appointed, the insolvency practitioner** 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.

Or. en

Amendment 74

Proposal for a directive Article 58 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that a creditors' committee is established only if the general meeting of creditors so decides.

Amendment

1. Member States shall ensure that a creditors' committee is established only if the general meeting of creditors so decides **and in accordance with national law.**

Or. en

Amendment 75

Proposal for a directive Article 59 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the

Amendment

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.

members of the creditors' committee are appointed either at the general meeting of creditors or by decision of the court, **without undue delay** from the date of the opening of the proceedings as referred to in Article 24(2), point (a) of Regulation (EU) 2015/848.

Or. en

Amendment 76

Proposal for a directive Article 59 – paragraph 3

Text proposed by the Commission

3. Member States **shall** ensure that the appointed members of the creditors' committee fairly reflect the different interests of creditors or groups thereof.

Amendment

3. Member States **may** ensure that the appointed members of the creditors' committee fairly reflect the different interests of creditors or groups thereof.

Or. en

Amendment 77

Proposal for a directive Article 61 – paragraph 1

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 78

Proposal for a directive

Article 64 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Member States shall ensure that the creditors' committee's function is to ensure that in the conduct of the insolvency proceedings the ***workers' and*** creditors' interests are protected and individual creditors ***as well as including employees or their representatives*** are involved.

Or. en

Amendment 79

Proposal for a directive

Article 69 a (new)

Text proposed by the Commission

Amendment

Article 69a

Data reporting

Or. en

Amendment 80

Proposal for a directive

Article 69 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The Commission, in consultation with the European Banking Authority, shall offer support to Member States to enhance and harmonise data reporting in order to allow for a regular assessment of the effectiveness of national insolvency proceedings.

Amendment 81

Proposal for a directive

Article 69 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Two years after entry into force and thereafter, the Commission shall, in cooperation with the European Banking Authority, draw up an annual report regular on insolvency cases under the relevant insolvency regulation so that the effectiveness of the system established can be assessed.