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*New Proposal for directive on certain aspects insolvency law - 2022/0408
(COD), work in progress: which is the vision?*

Insolvency and human rights, Rome, 15-16 May 2025

Title II. Avoidance actions (Arts. 4-12): streamlined by the Council of the EU

REGULATION (EU) 2015/848 of 20 May 2015

Article 16

Detrimental acts

Point (m) of Article 7(2) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

- (a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and
- (b) the law of that Member State does not allow any means of challenging that act in the relevant case.

Acts benefitting a creditor or a group of creditors by satisfaction, collateralisation or in any other way (“preferences”)

Acts against no or a manifestly inadequate consideration

Acts intentionally detrimental to creditors

Voidable is perfected

- 3 months

- 1 year

- 4 years

prior to the submission of the request for the opening of insolvency proceedings or after the submission of such request

Title III. Tracing assets belonging to the insolvency estate (Arts. 13-18)

Practitioners/administrators of foreign insolvency procedures must have quick access to the same information available for national procedures

- under supervision by a national court

Includes access to centralized bank account registers and beneficial ownership registries across the EU

Privacy concerns: new provisions introduced in the text agreed by the Council of the EU:

Art. 14, par. 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.*

Par. 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.*

Title IV. Pre-pack proceedings (Arts. 19-35): Eliminated by the Council of the EU (but still high on the EC priorities)

Introduces a common EU framework for pre-pack sales

Divided into two phases:

- o **Preparation phase** (appointment of monitor, marketing of assets)
- o **Liquidation phase** (court approval and sale)

Title V. Directors' duty to request the opening of insolvency proceedings and civil liability (Arts. 36-37): re-focused by the Council of the EU

- Directors must file within 3 months of being aware that the company is insolvent
- or take equivalent steps protecting creditors within the same timeframe
 - they are liable if they fail to do so

Title VI. Winding-up of insolvent microenterprises (Arts. 38-57):
Eliminated by the Council of the EU

Potentially the most significant reform

Encourages second chance entrepreneurship

“Modular approach”

Based on work by Uncitral and World Bank

Title VII. Creditors' committee (Arts. 58-67): Eliminated by the Council of the EU

Goal: achieve greater involvement by creditors in insolvency procedures

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| Title VIII. Measures enhancing transparency of national insolvency laws (Art. 68) |
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Member States should make available a a key information factsheet on certain elements of national law on insolvency proceedings (**the “key information factsheet”**)

Written in plain, non-technical language

Chapter 4

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

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1 – Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. **No one shall be deprived of his possessions except in the public interest** and subject to the conditions provided for by law and by the general principles of international law.

European Charter of human rights

Article 17 - Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. **No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.** The use of property may be regulated by law in so far as is necessary for the general interest.

Germany

Insolvenzverfahren

§ 163: “*Sale of the business at a price below its value*” “Upon request of the debtor or of a part of the creditors [see § 75], the judge, after a hearing of the trustee, may require that the scheduled sale of the business, or a part thereof, be conditioned upon a creditors’ vote, if it is shown that the sale to a different buyer could be more advantageous for the insolvency estate”

France

Procédure de liquidation judiciaire

Article L642-1 (par. 1)

The purpose of the sale of the business is to ensure the continuation of activities that can be operated independently, to preserve all or part of the jobs associated with those activities, and to settle liabilities.

Article L642-5 (par. 1)

The court accepts the offer that provides the best conditions for ensuring the long-term employment of the workforce attached to the transferred business, the payment of creditors, and that offers the best guarantees of performance.

Italy:

Liquidazione giudiziale (*firms with fewer than 200 employees*)

Art. 214 Insolvency Code: The business must be sold to the highest bidder (literally: A piecemeal sale may be permitted only if it is more advantageous for creditors).

Amministrazione straordinaria delle grandi imprese (*firms 200 employees or more*)

Art. 63 Legislative Decree 270/1999

1. The valuation of a business [to be sold as going concern] takes into account the goodwill, *although negative*, at the time of valuation and during the two following years.

2. The buyer is obligated to continue operations *and maintain the agreed-upon number of employees at the time of sale*.