Council of the European Union

Brussels, 29 November 2024
(OR. en)

16283/24

Interinstitutional File: 2022/0408(COD)

LIMITE

JUSTCIV 211
ECOFIN 1445
COMPET 1168
JAI 1767
CODEC 2238

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	15896/22 + ADD 1 + ADD 2 + ADD 3 + ADD 4
Subject:	Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law - Partial 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 targeted harmonisation of insolvency proceedings.

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

[1] 15896/22.

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, Bulgaria) was 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.

7. To address these calls, on 22 May 2024 the Belgian Presidency organised a policy debate in Coreper aimed at finding ways to align the progress at technical level with the ambitions at the highest political level. While there was broad support for accelerating work on the insolvency proposal, Member States emphasised the importance of maintaining its quality. Member States welcomed the increase in the number of meetings dedicated to the Directive and underlined that it should be thoroughly analysed and discussed so that the result of the negotiations properly addresses the needs of the CMU. The Belgian Presidency gave an update on their progress at the JHA Council in June 2024.

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

II. MAIN ELEMENTS OF THE PRESIDENCY COMPROMISE TEXT

8. In the Council, the examination of the proposal is being carried out in the Working Party on Civil Law Matters (Insolvency) (hereinafter: Insolvency Working Party).

9. The first examination of the proposal started on 7 March 2023 and was carried out over twelve consecutive meetings of the Insolvency Working Party 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 VII - was presented.

10. In line with the high political priority set for the proposed Directive, the Hungarian Presidency decided to focus its efforts on a set of core titles in order to achieve more tangible progress and secure an agreement on part of the proposal by the end of its semester.

11. The compromise text includes titles II, III, V, VIII as well as related provisions in Title I. Consequently, titles IV, VI, VII and IX along with the provisions in Title I related to those titles are excluded from the partial general approach. Moreover, any reference to those titles is not included in the partial general approach. The provisions covered by the partial general approach can be adapted later if it is deemed necessary in the light of negotiations on titles IV, VI, VII and IX.

12. Building on the progress accomplished during the Belgian Presidency, the Hungarian Presidency presented several compromise proposals on the above-mentioned titles at five Working Party meetings and two JHA Counsellors meetings.

13. With each redraft, the Hungarian Presidency sought to streamline the text, clarify the obligations for Member States, and ensure that the proposal better reflects the specificities of national insolvency laws and other domestic laws related to the Directive. The Presidency also sought to clarify the minimum harmonisation nature of the Directive, and its implications for Member States in terms of the possibility for them to adopt measures that go beyond the protection provided by the Directive.

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

a) Title I (General provisions):

– The compromise proposal includes only the provisions in Title I which are related to Titles II, III, V and VIII. Consequently, the scope of the Directive is defined only in relation to those titles.

– The definitions in Article 2(1), particularly those for 'legal act' and 'party closely related to the debtor' have been finetuned and further clarified in the recitals; additionally, Article 2(2) specifies that the notions of 'insolvency' and 'directors' are left to national law.

– Article 1a on emergency measures forms part of the partial general approach; however, its placement and exact wording are still up for discussion at a later stage.

– Article 3a clarifies how the minimum harmonisation nature of the Directive translates into the different provisions in the Directive: for Titles II and V it means that Member States can introduce measures that provide enhanced protection for creditors, while for Title III it means that Member States can further facilitate access for insolvency practitioners to the information necessary for the tracing of assets.

b) Title II (Avoidance actions):

- At technical level, as well as during a policy debate held at the JHA Council on 20 October 2023, Member States generally pleaded for greater flexibility in the harmonisation of the provisions on avoidance actions.

- As a result, the compromise text of Title II includes many technical and linguistic changes aimed at improving the clarity of the provisions and removing unnecessary details.

c) Title III (Tracing assets belonging to the insolvency estate):

- The main concerns presented by Member States were related to the fact that the text of Title III did not take into account the specificities of Member States in terms of the role of the courts and insolvency practitioners in accessing and searching for information needed to trace assets belonging to the insolvency estate.

- Therefore, the compromise text provides Member States with the flexibility to designate courts or administrative authorities to access and search national bank account registers.

- Additionally, the recitals clarify that Member States are able to provide direct access for insolvency practitioners to the information contained in the existing national registers and databases listed in the Annex to the proposal.

- Other concerns were related to ensuring the protection of the data to be searched, particularly in a cross-border context. The text, among other safeguards, underlines that access to bank account information through the Bank Account Registers Interconnection System (BARIS) should be exercised in compliance with Union and national law, as well as national procedures on the protection of personal data.

d) Title V (Directors' duty):

– Some Member States were particularly concerned that, due to the specificities of their national insolvency laws, introducing a duty for directors to file for insolvency could potentially lead to a wave of premature insolvency proceedings.

– Consequently, in Article 36a the compromise text provides a ground for the suspension of the duty of the directors to request the opening of the insolvency proceedings in cases where directors take measures that are designed to avoid damages for the creditors of the insolvent company and to ensure a level of protection of the general body of creditors that is equivalent to the protection provided by the duty to file for insolvency.

– Additionally, the new text allows directors to fulfil their duty to request the opening of insolvency proceedings by informing the public of the company's insolvency through a notification in a public register.

e) Title VIII (Measures enhancing transparency of national insolvency laws):

– The Presidency has streamlined the text and clarified the links with the transparency obligations set out in Regulation (EU) 2015/848 on insolvency proceedings.

15. The Presidency issued a final compromise proposal on 27 November 2024 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 to reach a partial general approach.

III. CONCLUSIONS

16. The Permanent Representatives Committee is therefore invited to:

- confirm agreement on the text of the partial general approach as set out in the Annex to this note, and
- recommend that the Council reach a partial general approach on this text.

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[4],

Having regard to the opinion of the Committee of the Regions[5],

Acting in accordance with the ordinary legislative procedure,

[4] OJ C [...], [...], p. [...]
[5] 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[6] 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.

(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.

---

6 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).

(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~~**tee** in value. At the same time, the counter-performance should benefit the ~~estate~~ **debtor** and not a third party. This ex~~e~~**em**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[7], 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.

[7] 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[2]~~ 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 register~~sries 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[8] [~~*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.**

[8] OJ

(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~~[9] ~~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~~.

~~[9] 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**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.

[…]

(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.

[…]

(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).

HAVE ADOPTED THIS DIRECTIVE:

Title I
GENERAL PROVISIONS

Article 1

Subject matter and scope

1. **[…]**

2. Titles II and III[11] **apply to collective proceedings which are based on national laws relating to insolvency.**

By derogation from the first subparagraph, Title II and Title III do not apply to preventive restructuring procedures under national law and Title II does not apply to interim proceedings.

3.~~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;

---

11 *Subject to change depending on the outcome of negotiations on Title IV, VI and VII*

(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~~.

4. […]

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 1a[12]

Emergency measures

[1. Member States may derogate from the rules laid down in Title II and Titles IV to VII in cases of extraordinary circumstances stemming from natural disasters, catastrophic events or adverse climatic events or from a significant or sudden change in the socioeconomic conditions of the Member States, including a systemic crisis as defined in Article 2(1), point (30), of Directive 2014/59/EU.

2. The extent and duration of any derogations pursuant to paragraph 1 shall be limited to what is essential to contain, resolve or prevent the significant disruption to economic activities.

3. Where a Member State provides for a derogation pursuant to paragraph 1, the Member State shall notify the Commission. The notification shall specify:

(a) the provisions of this Directive from which the measures derogate;

(b) the nature and extent of the extraordinary circumstances which form tht basis for the derogation;

(c) the duration of the derogation; and

(d) the reasons for which the derogation is considered to be essential to contain, resolve or prevent significant disruption to economic activities.

---

12 *Placement of the Article is not definitive, it could be moved in the Title IX. The precise wording of the Article, especially in relation to the conditions of derogation and to the control mechanism, is subject to further discussion, also taking into account their potential application to Titles IV, VI and VII.*

4. The Commission shall, within two months of the notifications as referred to in paragraph 3, approve or reject the national measures involved after having verified whether or not they are seen as essential to containing, resolving or preventing significant disruption to economic activities. In the absence of a decision by the Commission within this period the national provisions referred to in paragraph 3 shall be deemed to have been approved.]

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;

(**3**~~c~~) **[…]**

(**4**~~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];

(**5**~~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~~;

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

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

(**8**~~g~~) **[…]**

[…]

[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: …).**

(~~q~~ **16**) '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 o**f the debtor**, and the spouses or partners of th~~e~~**eo**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) […]

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) **[…]**

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 […][14].

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.

14 *Subject to change depending on the outcome of negotiations on Title IV, VI and VII; any reference to those Titles will not be part of the partial agreement on Titles II, III, V and VIII.*

Title II

AVOIDANCE ACTIONS[15]

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.~~

[15] *A provision in Title IX on Final provisions would clarify that Title II will apply to legal acts perfected after the transposition deadline of the Directive.*

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. ~~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.

2. 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*~~ ***30 months from the date of entry into force of this Directive***[16]], 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***.

---

16 *The deadline for the notification should be 6 months after the transposition deadline. In case the two-year transposition deadline currently set in Article 71 (1) changes, this 30-month deadline should be modified accordingly.*

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**[17]~~XX [*OP: the new Anti-Money Laundering Directive*]~~ **where the following conditions are met:**~~,~~

[17] **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~~e**r**s **and electronic data retrieval system**s 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 to and ~~for~~ searches of bank account information by designated courts and authorities

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…[30 months from the date of entry into force of this Directive][18]**, and shall notify any changes thereto.**

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

---

18 *The deadline for the notification should be 6 months after the transposition deadline. In case the two-year transposition deadline currently set in Article 71 (1) changes, this 30-month deadline should be modified accordingly.*

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 V

DIRECTORS' DUTY ~~TO REQUEST THE OPENING OF INSOLVENCY PROCEEDINGS AND CIVIL LIABILITY~~

Article 36

Duties~~y 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**~~can~~ 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

1a. 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. […][19].

2a. 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).

[19] *Since Title IV is still under negotiation, the Presidency suggests that the reference to pre-pack proceedings under Title IV should only be finalized after the final text of Title IV is known. This element of this Article will not be part of the envisaged Partial General Approach.*

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 damage~~s 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 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 **…** [***30***[20]~~*6*~~ *months* ~~*after the deadline for transposition*~~***from the entry into force*** *of this Directive*];

[20] *The deadline for the notification should be 6 months after the transposition deadline. In case the two-year transposition deadline currently set in Article 71 (1) changes, this 30-month deadline should be modified accordingly.*

~~(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[21].

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.

[21] 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).

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;

(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[22] in a manner consistent with Article 86 of that Regulation.

[...]

---

22 **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).**

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.~~