



2022/0408(COD)

24.4.2025

# AMENDMENTS 161 - 502

**Draft report**  
**Emil Radev**  
(PE771.863v01-00)

on the proposal for a directive of the European Parliament and of the Council  
harmonising certain aspects of insolvency law

Proposal for a directive  
(COM(2022)0702 – C9-0410/2022 – 2022/0408(COD))



**Amendment 161**  
**Daniel Buda**

**Proposal for a directive**  
**Recital 1**

*Text proposed by the Commission*

(1) The objective of this Directive is to contribute to the proper functioning of the internal market and remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures in the area of insolvency.

*Amendment*

(1) The objective of this Directive is to contribute to the proper functioning of the internal market and 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. ***This Directive also aims to harmonise the definition of insolvency at European Union level, to ensure predictability and legal certainty for creditors and investors.***

Or. ro

**Amendment 162**  
**René Repasi**

**Proposal for a directive**  
**Recital 1**

*Text proposed by the Commission*

(1) The objective of this Directive is to contribute to the proper functioning of the internal market and remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures in the area of insolvency.

*Amendment*

(1) The objective of this Directive is to contribute to the proper functioning of the internal market ***and the Capital Markets Union*** and remove obstacles to the exercise of fundamental freedoms, such as the free movement of capital and freedom of establishment, which result from differences between national laws and procedures in the area of insolvency.

Or. en

**Amendment 163**  
**René Repasi**

**Proposal for a directive**  
**Recital 2**

*Text proposed by the Commission*

(2) The wide differences in substantive insolvency laws acknowledged by Regulation (EU) 2015/848 of the European Parliament and of the Council<sup>32</sup> 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.

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<sup>32</sup> 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).

*Amendment*

(2) The wide differences in substantive insolvency laws acknowledged by Regulation (EU) 2015/848 of the European Parliament and of the Council<sup>32</sup> ***and the stark divergence in the quality of domestic insolvency procedures as measured by the World Bank<sup>32a</sup>*** 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. ***It also means that harmonisation of certain aspects of insolvency law may require considerable changes in some Member States.***

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<sup>32</sup> 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).

<sup>32a</sup>

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

Or. en

**Amendment 164**  
**Daniel Buda**

**Proposal for a directive**  
**Recital 2**

*Text proposed by the Commission*

(2) The wide differences in substantive insolvency laws acknowledged by Regulation (EU) 2015/848 of the European Parliament and of the Council<sup>32</sup> create barriers to the internal market by reducing the attractiveness of cross-border investments, thus impacting the cross-

*Amendment*

(2)The wide differences in substantive insolvency laws acknowledged by Regulation (EU) 2015/848 of the European Parliament and of the Council<sup>32</sup> 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.

border movement of capital within the Union and to and from third countries. ***To reduce these barriers, transparency and cross-border access to information about debtors' assets must be strengthened, including by facilitating access to national asset registers.***

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<sup>32</sup> 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).

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<sup>32</sup> 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).

Or. ro

## **Amendment 165**

### **Gheorghe Piperea**

#### **Proposal for a directive**

##### **Recital 3**

###### *Text proposed by the Commission*

(3) Insolvency proceedings ensure the orderly winding down or restructuring of companies or entrepreneurs in financial and economic distress. These proceedings are key in financial investments, as they determine the final recovery value of such investments. Diverging rules among Member States have contributed to increasing legal uncertainty and unpredictability about insolvency proceedings' outcome, so raising barriers especially for cross-border investments in 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.

###### *Amendment*

(3) Insolvency proceedings ensure the orderly winding down or restructuring of companies or entrepreneurs in financial and economic distress. These proceedings are key in financial investments, as they determine the final recovery value of such investments. Diverging rules among Member States have contributed to increasing legal uncertainty and unpredictability about insolvency proceedings' outcome, so raising barriers especially for cross-border investments 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. ***For the purposes of safeguarding the debtor's business, in the interests of the interested parties and, above all, in the interests of preserving jobs, but also in order to clean up the economic and legal environment of a***

*bankrupt debtor, claims arising out of the debtor's continued activity after the opening of insolvency proceedings are exempt from the rigors and sacrifices of insolvency proceedings, but only to the extent that they are paid in full and on time in the period before the bankruptcy. Otherwise, the holders of these claims will be subject to the same rigors and sacrifices.*

Or. en

**Amendment 166**  
**René Repasi**

**Proposal for a directive**  
**Recital 3**

*Text proposed by the Commission*

(3) Insolvency proceedings ensure the orderly winding down or restructuring of companies or entrepreneurs in financial and economic distress. These proceedings are key in financial investments, as they determine the final recovery value of such investments. Diverging rules among Member States have contributed to increasing legal uncertainty and unpredictability about insolvency proceedings' outcome, so raising barriers especially for cross-border investments in 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.

*Amendment*

(3) Insolvency proceedings ensure the orderly winding down or restructuring of companies or entrepreneurs in financial and economic distress. These proceedings are key in financial investments, as they determine the final recovery value of such investments. Diverging rules among Member States have contributed to increasing legal uncertainty and unpredictability about *the firm's value and* insolvency proceedings' outcome, so raising barriers especially for cross-border investments 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.

Or. en

**Amendment 167**  
**René Repasi**

**Proposal for a directive**  
**Recital 4**

*Text proposed by the Commission*

(4) The integration of the internal market in the area of insolvency laws pursued by this Directive is a key tool for a more efficient functioning of the capital markets in the European Union, including greater access to corporate financing. Therefore, it is necessary to set out minimum requirements in targeted areas of national insolvency proceedings, which have a significant impact on the efficiency and length of such proceedings, especially on cross-border insolvency proceedings.

*Amendment*

(4) The integration of the internal market in the area of insolvency laws pursued by this Directive is a key tool for a more efficient functioning of the capital markets in the European Union, including greater access to corporate **debt** 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. ***This includes minimum requirements for employees.***

Or. en

**Amendment 168**  
**René Repasi**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) Harmonisation of insolvency proceedings is associated with lower costs of credit, increased access to credit, improved creditor recovery and more effective protection of workers. At the same time one of the goals when completing the Capital Market Union is to stimulate more equity financing, and figures on how more debt financing through better protection of creditor rights will impact equity financing, are inconclusive. It is therefore key to create a harmonised tax environment that places debt and equity financing on an equal footing in the EU in parallel with this Directive, in line with the goals of the***

**Amendment 169**  
**Arash Saeidi**

**Proposal for a directive**  
**Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) The minimum standards provided for in this Directive are intended to approximate the laws of the Member States in the field of insolvency, taking into account in particular the following objectives: maximising legal certainty as to the value of undertakings; improving the efficiency of insolvency proceedings, in terms of both costs and duration; improving the predictability and fairness of the distribution of value among creditors; preserving the activity and viability of undertakings; prioritising employees, their salaries, compensation and other benefits owed over all other claims; preserving jobs in the event of transfer; giving effect to the right of employees to information and consultation.***

Or. en

**Amendment 170**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) Insolvency proceedings, given their significant impact on stakeholders such as employees, customers, suppliers, financial creditors, public authorities, and***

*local communities, should be opened and closed by a judicial authority. The debtor and the stakeholders have the right to be heard in a timely manner and the entire procedure should be overseen by a specialized insolvency judge to ensure judicial expertise and continuity.*

Or. en

**Amendment 171**  
**Daniel Buda**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

(6) The scope of the legal acts that could be challenged under the avoidance actions rules should be drawn broadly, in order to cover any human behaviour with legal effects. The principle of equal treatment of creditors implies that legal acts should also include omissions, as it makes no significant difference if 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, avoidance rules should not be restricted to legal acts performed by the debtor, but should also include legal acts performed by the 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.

*Amendment*

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*concerning creditors' committees, ensuring fair representation of all categories of creditors, including cross-border creditors, and increased transparency in the decision-making process.*

Or. ro

**Amendment 172**  
**Arash Saeidi**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

(6) The scope of the legal acts that could be challenged under the avoidance actions rules should be drawn broadly, in order to cover any human behaviour with legal effects. The principle of equal treatment of creditors implies that legal acts should also include omissions, as it makes no significant difference if 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, avoidance rules should not be restricted to legal acts performed by the debtor, but should also include legal acts performed by the 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.

*Amendment*

(6) The scope of the legal acts that could be challenged under the avoidance actions rules should be drawn broadly, in order to cover any human behaviour with legal effects. The principle of equal treatment of creditors implies that legal acts should also include omissions, as it makes no significant difference if creditors suffer a detriment as a consequence of an action or of the passivity of the party concerned. ***Member States should be able to provide that legal acts may also include omissions, as it is of no significant difference 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, avoidance rules should not be restricted to legal acts performed by the debtor, but should also include legal acts performed by the 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.

Or. en

**Amendment 173**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

(8) In the context of avoidance actions, a distinction should be made between legal acts where the claim of the counterparty was due and enforceable and has been satisfied in the owed manner (congruent coverages) and those where performance was not entirely in accordance with the creditor's claim (incongruent coverage). Incongruent coverages include, in particular, premature payments, the satisfaction with unusual means of payments, the subsequent collateralisation of a so far unsecured claim which was not already agreed upon in the original debt agreement, granting an extraordinary termination right or other amendments not provided for in the underlying contract, the waiver of legal defences or objections or the acknowledgement of disputable debts. In the case of congruent coverages, the avoidance ground of preferences can only be invoked if the creditor of the legal act that can be declared void knew, ***or should have known***, at the time of the transaction that the debtor was insolvent.

*Amendment*

(8) In the context of avoidance actions, a distinction should be made between legal acts where the claim of the counterparty was due and enforceable and has been satisfied in the owed manner (congruent coverages) and those where performance was not entirely in accordance with the creditor's claim (incongruent coverage). Incongruent coverages include, in particular, premature payments, the satisfaction with unusual means of payments, the subsequent collateralisation of a so far unsecured claim which was not already agreed upon in the original debt agreement, granting an extraordinary termination right or other amendments not provided for in the underlying contract, the waiver of legal defences or objections or the acknowledgement of disputable debts. In the case of congruent coverages, the avoidance ground of preferences can only be invoked if the creditor of the legal act that can be declared void knew at the time of the transaction that the debtor was insolvent.

Or. nl

**Amendment 174**  
**René Repasi**

**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

(8) In the context of avoidance actions, a distinction should be made between legal acts where the claim of the counterparty was due and enforceable and has been satisfied in the owed manner (congruent coverages) and those where performance was not entirely in accordance with the creditor's claim (incongruent coverage). Incongruent coverages include, in particular, premature payments, the satisfaction with unusual means of payments, the subsequent collateralisation of a so far unsecured claim which was not already agreed upon in the original debt agreement, granting an extraordinary termination right or other amendments not provided for in the underlying contract, the waiver of legal defences or objections or the acknowledgement of disputable debts. In the case of congruent coverages, the avoidance ground of preferences can only be invoked if the creditor of the legal act that can be declared void knew, *or should have known*, at the time of the transaction that the debtor was insolvent.

*Amendment*

(8) In the context of avoidance actions, a distinction should be made between legal acts where the claim of the counterparty was due and enforceable and has been satisfied in the owed manner (congruent coverages) and those where performance was not entirely in accordance with the creditor's claim (incongruent coverage). Incongruent coverages include, in particular, premature payments, the satisfaction with unusual means of payments, the subsequent collateralisation of a so far unsecured claim which was not already agreed upon in the original debt agreement, granting an extraordinary termination right or other amendments not provided for in the underlying contract, the waiver of legal defences or objections or the acknowledgement of disputable debts. In the case of congruent coverages, the avoidance ground of preferences can only be invoked if the creditor of the legal act that can be declared void knew at the time of the transaction that the debtor was insolvent.

Or. en

**Amendment 175**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Recital 9**

*Text proposed by the Commission*

(9) Certain congruent coverages, namely legal acts that are performed directly against fair consideration to the benefit of the insolvency estate, should be exempted from the scope of legal acts that can be declared void. Those legal acts aim at supporting the ordinary daily activity of

*Amendment*

(9) Certain congruent coverages, namely legal acts that are performed directly against fair consideration to the benefit of the insolvency estate, should be exempted from the scope of legal acts that can be declared void. Those legal acts aim at supporting the ordinary daily activity of

the debtor's business. Legal 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 equivalence in value. At the same time, the counter-performance should benefit the estate and not a third party. This exception 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; prompt payment of public fees against consideration (e.g. admittance to public grounds or institutions).

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Or. en

## Amendment 176

René Repasi

### Proposal for a directive

#### Recital 9

##### *Text proposed by the Commission*

(9) Certain congruent coverages, namely legal acts that are performed directly against fair consideration to the benefit of the insolvency estate, should be exempted from the scope of legal acts that can be declared void. Those legal acts aim

##### *Amendment*

(9) Certain congruent coverages, namely legal acts that are performed directly against fair consideration to the benefit of the insolvency estate, ***in particular wages***, should be exempted from the scope of legal acts that can be

at supporting the ordinary daily activity of the debtor's business. Legal 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 equivalence in value. At the same time, the counter-performance should benefit the estate and not a third party. This exception 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; prompt payment of public fees against consideration (e.g. admittance to public grounds or institutions).

declared void. Those legal acts aim at supporting the ordinary daily activity of the debtor's business. Legal 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 equivalence in value. At the same time, the counter-performance should benefit the estate and not a third party. This exception 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; prompt payment of public fees against consideration (e.g. admittance to public grounds or institutions).

Or. en

**Amendment 177**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 10**

*Text proposed by the Commission*

(10) New- or interim financing provided during a restructuring attempt, 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<sup>33</sup>, should be protected in subsequent insolvency proceedings. Consequently, avoidance actions on the ground of preferences should not be

*Amendment*

(10) New- or interim financing provided during a restructuring attempt, 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<sup>33</sup>, 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.

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. ***Insolvency proceedings shall aim not only to maximize the recovery of creditors' claims, but also to preserve viable businesses, with a view to maintaining employment and ensuring economic continuity.***

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<sup>33</sup> 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).

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<sup>33</sup> 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).

Or. en

## **Amendment 178** **Gheorghe Piperea**

### **Proposal for a directive** **Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11a) A claw-back action is an action for the recovery of certain assets or values of the debtor's business in order to maximize the debtor's assets (claw-back action). The action relates to the suspect period, i.e. the period of 2 to 4 years prior to the opening of insolvency proceedings, when the debtor can be presumed to have, by***

*voluntary legal acts, prejudiced creditors through fraudulent outsourcing of assets, ruinous business deals or unusual transactions such as acts of assignation or gift, especially in relation to significant shareholders or relatives. The debtor's voluntary legal acts should also include pseudo-forced legal acts, which appear to be enforcement but are in fact fictitious or simulated.*

Or. en

**Amendment 179**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 13**

*Text proposed by the Commission*

(13) Improving the possibilities of insolvency practitioners to identify and trace assets belonging to the insolvency estate is essential for the maximisation of the value of that estate. When performing their duties, insolvency practitioners may, already now, access information held in public data registers, partly set up by Union law and interconnected at European level, such as the Business Registers Interconnection System (BRIS), the system of Insolvency Registers Interconnection (IRI) or the Beneficial Ownership Registers Interconnection System (BORIS). *Accessing the information held in public databases, however, is often not satisfactory to identify and trace important assets that are or should be in the perimeter of the insolvency estate. In particular, insolvency practitioners face practical difficulties when they try to access asset registers situated abroad.*

*Amendment*

(13) Improving the possibilities of insolvency practitioners to identify and trace assets belonging to the insolvency estate is essential for the maximisation of the value of that estate. When performing their duties, insolvency practitioners may, already now, access information held in public data registers, partly set up by Union law and interconnected at European level, such as the Business Registers Interconnection System (BRIS), the system of Insolvency Registers Interconnection (IRI) or the Beneficial Ownership Registers Interconnection System (BORIS). Insolvency practitioners *often* face practical difficulties when they try to access asset registers situated *in other Member States, which may, for example, have stricter requirements and accreditation conditions for accessing the profession of insolvency practitioner or stricter requirements relating to access to personal data.*

Or. nl

**Amendment 180**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 14**

*Text proposed by the Commission*

(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.

*Amendment*

(14) It is therefore necessary to lay down provisions to ensure that insolvency practitioners, when performing their duties in insolvency proceedings, can have ***indirect*** access to information held in databases which are not publicly accessible, ***for example via the national courts or under the strict supervision of a delegated judge.***

Or. nl

**Amendment 181**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

(15) Prompt ***direct*** access to centralised bank account registries or data retrieval systems is often indispensable for the maximisation of the value of the insolvency estate. Therefore, rules should be laid down granting ***direct*** access to information held in centralised bank account registries or data retrieval systems to designated Member States' courts that have jurisdiction in insolvency proceedings. 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.

*Amendment*

(15) Prompt access to centralised bank account registries or data retrieval systems is often indispensable for the maximisation of the value of the insolvency estate. Therefore, rules should be laid down granting access to information held in centralised bank account registries or data retrieval systems to designated Member States' courts that have jurisdiction in insolvency proceedings. 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 to the designated courts.

Or. nl

**Amendment 182**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(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 should be granted only to courts with jurisdiction in insolvency proceedings that are designated by the Member States for that purpose. Insolvency practitioners should therefore be allowed to access information held in the bank account registries only indirectly by requesting the designated courts in their Member State to access and run the searches.

*Amendment*

(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 should be granted only to courts with jurisdiction in insolvency proceedings that are designated by the Member States for that purpose. Insolvency practitioners should therefore be allowed to access information held in the bank account registries only indirectly by requesting the designated courts in their Member State to access and run the searches. ***Without prejudice to the protection of confidential information and trade secrets covered by intellectual property rights, debtors shall be required to disclose, in a timely and effective manner, all information and documents relevant to enabling creditors to exercise appropriate and informed oversight of the debtor's affairs prior to and during the insolvency proceedings.***

Or. en

**Amendment 183**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

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insolvency proceedings that are designated by the Member States for that purpose. Insolvency practitioners should therefore be allowed to access information held in the bank account registries only indirectly by requesting the designated courts in their Member State to access and run the searches.

insolvency proceedings that are designated by the Member States for that purpose. Insolvency practitioners should therefore be allowed to access information held in the bank account registries only indirectly by requesting the designated courts **or delegated judges** in their Member State to access and run the searches.

Or. nl

## **Amendment 184** **Ton Diepeveen**

### **Proposal for a directive** **Recital 17**

#### *Text proposed by the Commission*

(17) Directive (EU) YYYY/XX of the European Parliament and of the Council<sup>34</sup> [OP: Directive which replaces Directive 2015/849] provides that the centralised automated mechanisms are interconnected via the 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 having jurisdiction in insolvency matters should be able to **directly access and search** the centralised bank account registries of other Member States through the BAR single access point put in place pursuant to Directive (EU) YYYY/XX [OP: Directive which replaces Directive 2015/849].

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<sup>34</sup> OJ

#### *Amendment*

(17) Directive (EU) YYYY/XX of the European Parliament and of the Council<sup>34</sup> [OP: Directive which replaces Directive 2015/849] provides that the centralised automated mechanisms are interconnected via the 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 having jurisdiction in insolvency matters should be able to access the centralised bank account registries of other Member States through the BAR single access point put in place pursuant to Directive (EU) YYYY/XX [OP: Directive which replaces Directive 2015/849]; **it is important in this context that a court or delegated judge closely monitors that only the information needed to identify and recover the assets is consulted;**

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<sup>34</sup> OJ

**Amendment 185****Jana Toom, Billy Kelleher****Proposal for a directive****Recital 20***Text proposed by the Commission*

(20) To ensure that assets can be efficiently traced in the context of cross-border insolvency proceedings, insolvency practitioners appointed in a Member State should be granted expeditious access to asset registers also when these registers are located in a different Member State. *Therefore*, the access conditions applying to foreign insolvency practitioners should not be more cumbersome than those applying to domestic insolvency practitioners.

*Amendment*

(20) To ensure that assets can be efficiently traced in the context of cross-border insolvency proceedings, insolvency practitioners appointed in a Member State should be granted expeditious access to asset registers also when these registers are located in a different Member State. ***In order to respect the right to the protection of personal data and the right to privacy, such access shall be limited to information that 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.*** The access conditions applying to foreign insolvency practitioners should not be more cumbersome than those applying to domestic insolvency practitioners. ***Therefore, access cannot be denied solely on the basis that the applicant is a foreign insolvency practitioner.***

Or. en

**Amendment 186****Ton Diepeveen****Proposal for a directive****Recital 20***Text proposed by the Commission*

(20) *To ensure that assets can be efficiently traced in the context of cross-border insolvency proceedings, insolvency*

*Amendment*

(20) *Access to the profession of insolvency practitioner differs significantly from one Member State to*

*practitioners appointed in a Member State should be granted expeditious access to asset registers also when these registers are located in a different Member State. Therefore, the access conditions applying to foreign insolvency practitioners should not be more cumbersome than those applying to domestic insolvency practitioners.*

*another. Harmonising the accreditation criteria does not form part of this or other legislative initiatives at European level. Therefore, serious risks arise if insolvency practitioners who have not had any special training, for example relating to the protection of personal data, are given access to databases of Member States where insolvency practitioners have received such special training and Member States with high personal data protection standards.*

Or. nl

**Amendment 187**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 20 a (new)**

*Text proposed by the Commission*

*Amendment*

*(20a) Insolvency proceedings shall be transparent. With the exception of confidential information or trade secrets to which the insolvent debtor has intellectual property rights, all information and documents of importance to creditors must be disclosed promptly and effectively in order to exercise necessary and useful control over the debtor's affairs before and during the insolvency proceedings. The publication of the opening of proceedings in official registers is essential for the equality of creditors and the avoidance of favouritism, helping to protect the interests of all parties involved. Once placed under the protection of the court, the debtor is under the effect of judicial panopticum, not being allowed to hide information or misinform creditors.*

Or. en

## Amendment 188

Ton Diepeveen

### Proposal for a directive

#### Recital 20 a (new)

*Text proposed by the Commission*

*Amendment*

**(20a) The national data protection authorities must closely monitor the access to national databases that is granted to insolvency practitioners from other Member States.**

Or. nl

## Amendment 189

Arash Saeidi

### Proposal for a directive

#### Recital 21

*Text proposed by the Commission*

*Amendment*

(21) In the context of insolvent liquidation, national insolvency laws should allow for the realisation of the assets of the business to occur through the sale of the business or part thereof as a going concern. Sale as a going concern should mean, in this context, the transfer of the business, in whole or in part, to an acquirer in a way that the business (or part thereof) may continue to operate as an economically productive unit. Sale as a going concern should be understood as opposed to a sale of the assets of the business piece by piece (piecemeal liquidation).

(21) In the context of insolvent liquidation, national insolvency laws should allow for the realisation of the assets of the business to occur through the sale of the business or part thereof as a going concern. Sale as a going concern should mean, in this context, the transfer of the business, in whole or in part, to an acquirer in a way that the business (or part thereof) may continue to operate as an economically productive unit **while maintaining jobs as much as possible**. Sale as a going concern should be understood as opposed to a sale of the assets of the business piece by piece (piecemeal liquidation).

Or. en

## Amendment 190

Gheorghe Piperea

**Proposal for a directive**  
**Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21a) Apart from insolvency prevention proceedings, which can be of an administrative or contractual nature (i.e. negotiated directly by the debtor with the main creditors or through an insolvency practitioner), insolvency proceedings are proceedings with judicial character. Given the significant impact on stakeholders (employees, customers, suppliers, financial creditors, the State, local communities), who are indirect shareholders in the debtor's business, the opening and closing of insolvency proceedings must be within the jurisdiction of the court and the debtor and the stakeholders must be able to be heard by a judge in due time. Once insolvency proceedings have been opened and until they are closed, the entire course of the proceedings must be the responsibility of a specialized magistrate, such as the juge syndic in Romanian law or the juge - commissaire in French law.***

Or. en

**Amendment 191**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 21 b (new)**

*Text proposed by the Commission*

*Amendment*

***(21b) Claims arising out of the debtor's continued activity after the opening of insolvency proceedings are exempt from the rigors and sacrifices of insolvency proceedings, but only to the extent that they are paid in full and on time in the period before the bankruptcy. Otherwise, the holders of these claims will be subject***

*to the same rigors and sacrifices.*

Or. en

**Amendment 192**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 21 c (new)**

*Text proposed by the Commission*

*Amendment*

***(21c) An excusable bankruptcy, qualified as such by the court, is the valid reason for which the discharge of debts can take place and for which the debtor can be offered a fresh new start, of course in the absence of fraud.***

Or. en

**Amendment 193**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 21 d (new)**

*Text proposed by the Commission*

*Amendment*

***(21d) Prevention, reorganization and divestiture are ways of ensuring the survival of the undertaking, but they are not ends in themselves. The aim must be to cover the debtor's liabilities, including by realising creditors' claims and holding the guilty parties liable. The pre-sale procedure of the debtor's business, previously negotiated by the debtor with the main creditors through the insolvency practitioner and confirmed by the judge after the opening of the insolvency proceedings (pre-pack) should be subject to the same purpose.***

Or. en

**Amendment 194**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 21 e (new)**

*Text proposed by the Commission*

*Amendment*

***(21e) In the event of fraudulent bankruptcy, as established as such by the court, disqualifications from the right to continue to do business and set up businesses will be ordered for periods long enough to act as a deterrent but short enough not to exclude the persons sanctioned indefinitely from society and to allow them to be reintegrated into society.***

Or. en

**Amendment 195**  
**Billy Kelleher**

**Proposal for a directive**  
**Recital 22**

*Text proposed by the Commission*

*Amendment*

(22) It is generally assumed that more value can be recovered in liquidation by selling the business (or part thereof) as a going concern rather than by piecemeal liquidation. In order to promote going-concern sales in liquidation, national insolvency regimes should include a pre-pack proceeding, where the debtor in financial distress, with the help of a “monitor”, seeks possible interested acquirers and prepares the sale of the business as a going concern before the formal opening of insolvency proceedings, so that the assets can be quickly realised shortly after the opening of the formal insolvency proceedings. The pre-pack proceedings should consist of two phases, namely a preparation phase and a

(22) It is generally assumed that more value can be recovered in liquidation by selling the business (or part thereof) as a going concern rather than by piecemeal liquidation. In order to promote going-concern sales in liquidation, national insolvency regimes should include a pre-pack proceeding, where the debtor in financial distress, with the help of a “monitor”, seeks possible interested acquirers and prepares the sale of the business as a going concern before the formal opening of insolvency proceedings, so that the assets can be quickly realised shortly after the opening of the formal insolvency proceedings. The pre-pack proceedings should consist of two phases, namely a preparation phase and a

liquidation phase.

liquidation phase. *These phases should respect the principles of judicial proceedings applicable in each Member State and ensure the rights of creditors are protected.*

Or. en

**Amendment 196**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Recital 22**

*Text proposed by the Commission*

(22) It is generally assumed that more value can be recovered in liquidation by selling the business (or part thereof) as a going concern rather than by piecemeal liquidation. In order to promote going-concern sales in liquidation, national insolvency regimes should include a pre-pack proceeding, where the debtor in financial distress, with the help of a “monitor”, seeks possible interested acquirers and prepares the sale of the business as a going concern before the formal opening of insolvency proceedings, so that the assets can be quickly realised shortly after the opening of the formal insolvency proceedings. The pre-pack proceedings should consist of two phases, namely a preparation phase and a liquidation phase.

*Amendment*

(22) It is generally assumed that more value can be recovered in liquidation by selling the business (or part thereof) as a going concern rather than by piecemeal liquidation. In order to promote going-concern sales in liquidation, national insolvency regimes should include a pre-pack proceeding, where the debtor in financial distress, with the help of a “monitor”, seeks possible interested acquirers and prepares the sale of the business as a going concern before the formal opening of insolvency proceedings, so that the assets can be quickly realised shortly after the opening of the formal insolvency proceedings. The pre-pack proceedings should consist of two phases, namely a preparation phase and a liquidation phase. *In order to guarantee the preparation of a fair sale process, the monitor should be independent from the debtor and creditors.*

Or. en

**Amendment 197**  
**Arash Saeidi**

**Proposal for a directive**  
**Recital 24**

(24) The pre-pack proceedings should ensure that the monitor ***appointed in the preparation phase might propose*** the best bid obtained during the ***sale process for authorisation by the court only if it declares that, in its view***, piecemeal liquidation would ***not*** recover manifestly more value for creditors than the market price obtained ***for*** the business (or part thereof) as a going concern. The going-concern value is, as a rule, higher than the piecemeal liquidation value because it is based on the assumption that the business continues its activity with the minimum of disruption, has the confidence of financial creditors, shareholders and clients and continues to generate revenues. Therefore, the monitor's declaration should not require a valuation being made in every case. The monitor ***should only reasonably conclude*** that the sale price is not significantly lower than the proceeds ***that could be recovered through*** a piecemeal liquidation. However, an increased scrutiny should be required from the monitor or the insolvency practitioner in cases where the only existing offer is made by a party who is closely related to the debtor. In such situations, the monitor or the insolvency practitioner should reject the offer if it does not satisfy the best-interest-of-creditors test.

(24) The pre-pack proceedings should ensure that the monitor ***submits for authorisation to the court or competent authority*** the best bid obtained during the ***preparation phase. It should be possible to require the monitor to assess and state whether the*** piecemeal liquidation would recover manifestly more value for creditors than the market price obtained ***through the sale of*** the business or part thereof as a going concern. The going-concern value is, as a rule, higher than the piecemeal liquidation value because it is based on the assumption that the business continues its activity with the minimum of disruption, has the confidence of financial creditors, shareholders and clients and continues to generate revenues. Therefore, the monitor's declaration should not require a valuation being made in every case. ***Any conclusion by*** the monitor that the ***going-concern*** sale price is not significantly lower than the proceeds ***of*** a piecemeal liquidation ***should be duly justified. National law may require the monitor to take into account elements other than price, including the public interest or ensuring the viability of a business.*** However, an increased scrutiny should be required from the monitor or the insolvency practitioner in cases where the only existing offer is made by a party who is closely related to the debtor. In such situations, the monitor or the insolvency practitioner should reject the offer if it does not satisfy the best-interest-of-creditors test.

Or. en

**Amendment 198**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Recital 24**

*Text proposed by the Commission*

(24) The pre-pack proceedings should ensure that the monitor appointed in the preparation phase might propose the best bid obtained during the sale process for authorisation by the court only if it declares that, in its view, piecemeal liquidation would not recover manifestly more value for creditors than the market price obtained for the business (or part thereof) as a going concern. The going-concern value is, as a rule, higher than the piecemeal liquidation value because it is based on the assumption that the business continues its activity with the minimum of disruption, has the confidence of financial creditors, shareholders and clients and continues to generate revenues. Therefore, the monitor's declaration should not require a valuation being made in every case. The monitor should only reasonably conclude that the sale price is not significantly lower than the proceeds that could be recovered through a piecemeal liquidation. However, an increased scrutiny should be required from the monitor or the insolvency practitioner in cases where the only existing offer is made by a party who is closely related to the debtor. In such situations, the monitor or the insolvency practitioner should reject the offer if it does not satisfy the best-interest-of-creditors test.

*Amendment*

(24) The pre-pack proceedings should ensure that the monitor appointed in the preparation phase might propose the best bid obtained during the sale process for authorisation by the court only if it declares that, in its view, piecemeal liquidation would not recover manifestly more value for creditors than the market price obtained for the business (or part thereof) as a going concern. The going-concern value is, as a rule, higher than the piecemeal liquidation value because it is based on the assumption that the business continues its activity with the minimum of disruption, has the confidence of financial creditors, shareholders and clients and continues to generate revenues. Therefore, the monitor's declaration should not require a valuation being made in every case. The monitor should only reasonably conclude that the sale price is not significantly lower than the proceeds that could be recovered through a piecemeal liquidation. However, an increased scrutiny should be required from the monitor or the insolvency practitioner in cases where the only existing offer is made by a party who is closely related to the debtor. In such situations, ***a valuation should be required*** and the monitor or the insolvency practitioner should reject the offer if it does not satisfy the best-interest-of-creditors test.

Or. en

**Amendment 199**

**René Repasi**

**Proposal for a directive**

**Recital 24**

*Text proposed by the Commission*

(24) The pre-pack proceedings should

*Amendment*

(24) The pre-pack proceedings should

ensure that the monitor appointed in the preparation phase might propose the best bid obtained during the sale process for authorisation by the court only if it declares that, in its view, piecemeal liquidation would not recover manifestly more value for creditors than the market price obtained for the business (or part thereof) as a going concern. The going-concern value is, as a rule, higher than the piecemeal liquidation value because it is based on the assumption that the business continues its activity with the minimum of disruption, has the confidence of financial creditors, shareholders and clients and continues to generate revenues. Therefore, the monitor's declaration should not require a valuation being made in every case. The monitor should only reasonably conclude that the sale price is not significantly lower than the proceeds that could be recovered through a piecemeal liquidation. However, an increased scrutiny should be required from the monitor or the insolvency practitioner in cases where the only existing offer is made by a party who is closely related to the debtor. In such situations, the monitor or the insolvency practitioner should reject the offer if it does not satisfy the *best-interest-of-creditors test*.

ensure that the monitor appointed in the preparation phase might propose the best bid obtained during the sale process for authorisation by the court only if it declares that, in its view, piecemeal liquidation would not recover manifestly more value for creditors than the market price obtained for the business (or part thereof) as a going concern. The going-concern value is, as a rule, higher than the piecemeal liquidation value because it is based on the assumption that the business continues its activity with the minimum of disruption, has the confidence of financial creditors, shareholders and clients and continues to generate revenues. Therefore, the monitor's declaration should not require a valuation being made in every case. The monitor should only reasonably conclude that the sale price is not significantly lower than the proceeds that could be recovered through a piecemeal liquidation. However, an increased scrutiny should be required from the monitor or the insolvency practitioner in cases where the only existing offer is made by a party who is closely related to the debtor. In such situations, the monitor or the insolvency practitioner should reject the offer if it does not satisfy the *objectives of insolvency law*.

Or. en

**Amendment 200**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Recital 25**

*Text proposed by the Commission*

(25) In order to guarantee that the business is sold at the best market value during the pre-pack proceedings, Member States should *either* ensure high standards of competitiveness, transparency and fairness of the sale process conducted in

*Amendment*

(25) In order to guarantee that the business is sold at the best market value during the pre-pack proceedings, Member States should ensure high standards of competitiveness, transparency and fairness of the sale process conducted in the

the preparation phase, *or provide that* the court *runs* a brief public auction after the opening of the liquidation phase of the proceedings.

preparation phase. *It should be possible for* the court *to run* a brief public auction after the opening of the liquidation phase of the proceedings *if there are credible suspicions of abuse in the preparatory phase.*

Or. en

**Amendment 201**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

**(25a) All creditors who have claims against the insolvent debtor must participate in the insolvency proceedings in order to be circumscribed by the concept of 'realization of claims against the debtor', which is the purpose of the insolvency proceedings. Exempted from this obligation are employees and holders of claims resulting from the continuation of the proceedings - they will have their claims paid in accordance with the documents from which they arise. If not, these creditors will also be entered in the claims tables, but only at their request.**

Or. en

**Amendment 202**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Recital 26**

*Text proposed by the Commission*

*Amendment*

**(26) If a Member State opts to require high standards** in the preparation phase, the monitor (subsequently to be appointed as insolvency practitioner in the liquidation

**(26)** In the preparation phase, the monitor (subsequently to be appointed as insolvency practitioner in the liquidation phase) should be responsible for ensuring

phase) should be responsible for ensuring that the sale process is competitive, transparent, fair and meets market standards. Complying with market standards in this context should require that the process is compatible with the standard rules and practice on mergers and acquisitions in the Member State concerned, which includes an invitation to potentially interested parties to participate in the sale process, disclosing the same information to potential buyers, enabling the exercise of due diligence by interested acquirers, and obtaining the offers from the interested parties through a structured process.

that the sale process is competitive, transparent, fair and meets market standards. Complying with market standards in this context should require that the process is compatible with the standard rules and practice on mergers and acquisitions in the Member State concerned, which includes an invitation to potentially interested parties to participate in the sale process, disclosing the same information to potential buyers, enabling the exercise of due diligence by interested acquirers, and obtaining the offers from the interested parties through a structured process.

Or. en

### **Amendment 203**

**Jana Toom, Billy Kelleher**

#### **Proposal for a directive**

##### **Recital 27**

###### *Text proposed by the Commission*

(27) If **a Member State opts to provide that** the court **runs** a public auction after the opening of the liquidation phase, the offer selected by the monitor during the preparation phase should be used as an initial bid ('stalking horse bid') during the auction. The debtor should be able to offer incentives to the 'stalking horse bidder' by agreeing, in particular, to expense reimbursements or break-up fees in the case a better offer is selected through the public auction. Member States should, nevertheless, ensure that such incentives given by the debtors to the 'stalking horse bidders' during the preparation phase are commensurate and do not deter other potentially interested bidders from participating in the public auction in the liquidation phase.

###### *Amendment*

(27) If the court **decides to run** a public auction after the opening of the liquidation phase, the offer selected by the monitor during the preparation phase should be used as an initial bid ('stalking horse bid') during the auction. The debtor should be able to offer incentives to the 'stalking horse bidder' by agreeing, in particular, to expense reimbursements or break-up fees in the case a better offer is selected through the public auction. Member States should, nevertheless, ensure that such incentives given by the debtors to the 'stalking horse bidders' during the preparation phase are commensurate and do not deter other potentially interested bidders from participating in the public auction in the liquidation phase.

**Amendment 204****Ton Diepeveen****Proposal for a directive****Recital 28***Text proposed by the Commission**Amendment*

**(28) *The opening of insolvency proceedings should not result in the early termination of contracts under which the parties still have obligations to perform (executory contracts), which are necessary for the continuation of business operations. Such termination would unduly jeopardise the value of the business, or part thereof, to be sold in the pre-pack proceedings. It should, therefore, be ensured that those contracts are assigned to the acquirer of the business of the debtor or part thereof, even without the consent of the counterparty of the debtor to those contracts. Nonetheless, there are situations where the assignment of the executory contracts cannot be reasonably expected, such as when the acquirer is a competitor of the counterparty of the contract. Similarly, the court may come to the conclusion in an individual assessment of an executory contract that its termination would serve the interests of the business of the debtor better than its assignment, such as when the assignment of the contract would result in a disproportionate burden for the business. The court should not be allowed, however, to terminate executory contracts relating to licenses of intellectual and industrial property rights, as they are usually key components of the operations of the business being sold.***

*deleted*

## Justification

*This is an enforced contract takeover and is in breach of freedom of contract.*

### Amendment 205

René Repasi

#### Proposal for a directive

##### Recital 28

###### *Text proposed by the Commission*

(28) The opening of insolvency proceedings should not result in the early termination of contracts under which the parties still have obligations to perform (executory contracts), which are necessary for the continuation of business operations. Such termination would unduly jeopardise the value of the business, or part thereof, to be sold in the pre-pack proceedings. It should, therefore, be ensured that those contracts are assigned to the acquirer of the business of the debtor or part thereof, ***even without the consent*** of the counterparty of the debtor to those contracts. Nonetheless, there are situations where the assignment of the executory contracts cannot be ***reasonably expected***, such as when the acquirer is a competitor of the counterparty of the contract. Similarly, the ***court*** may come to the conclusion in an individual assessment of an executory contract that its termination would serve the interests of the business of the debtor better than its assignment, such as when the assignment of the contract would result in a disproportionate burden for the business. The ***court*** should not be allowed, however, to terminate executory contracts relating to licenses of intellectual and industrial property rights, as they are usually key components of the operations of the business being sold.

###### *Amendment*

(28) The opening of insolvency proceedings should not result in the early termination of contracts under which the parties still have obligations to perform (executory contracts), which are necessary for the continuation of business operations. Such termination would unduly jeopardise the value of the business, or part thereof, to be sold in the pre-pack proceedings. It should, therefore, be ensured that those contracts are assigned to the acquirer of the business of the debtor or part thereof, ***after consultation*** of the counterparty of the debtor to those contracts. Nonetheless, there are situations where the assignment of the executory contracts cannot be ***allowed***, such as when the acquirer is a competitor of the counterparty of the contract ***or when it binds employees to a contract partner they have not chosen***. Similarly, the ***insolvency practitioner*** may come to the conclusion in an individual assessment of an executory contract that its termination would serve the interests of the business of the debtor better than its assignment, such as when the assignment of the contract would result in a disproportionate burden for the business. The ***insolvency practitioner*** should not be allowed, however, to terminate executory contracts relating to licenses of intellectual and industrial property rights, as they are usually key components of the operations of the business being sold.

Or. en

**Amendment 206**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Recital 28**

*Text proposed by the Commission*

(28) The opening of insolvency proceedings should not result in the early termination of contracts under which the parties still have obligations to perform (executory contracts), which are necessary for the continuation of business operations. Such termination would unduly jeopardise the value of the business, or part thereof, to be sold in the pre-pack proceedings. It should, therefore, be ensured that those contracts are assigned to the acquirer of the business of the debtor or part thereof, even without the consent of the counterparty of the debtor to those contracts. Nonetheless, there are situations where the assignment of the executory contracts cannot be reasonably expected, such as when the acquirer is a competitor of the counterparty of the contract. Similarly, the court may come to the conclusion in an individual assessment of an executory contract that its termination would serve the interests of the business of the debtor better than its assignment, such as when the assignment of the contract would result in a disproportionate burden for the business. The court should not be allowed, however, to terminate executory contracts relating to licenses of intellectual and industrial property rights, as they are usually key components of the operations of the business being sold.

*Amendment*

(28) The opening of insolvency proceedings should not result in the early termination of contracts under which the parties still have obligations to perform (executory contracts), which are necessary for the continuation of business operations. Such termination would unduly jeopardise the value of the business, or part thereof, to be sold in the pre-pack proceedings. It should, therefore, be ensured that those contracts are assigned to the acquirer of the business of the debtor or part thereof, even without the consent of the counterparty of the debtor to those contracts. Nonetheless, there are situations where the assignment of the executory contracts cannot be reasonably expected, such as when the acquirer is a competitor of the counterparty of the contract. Similarly, the court may come to the conclusion in an individual assessment of an executory contract that its termination would serve the interests of the business of the debtor better than its assignment, such as when the assignment of the contract would result in a disproportionate burden for the business. The court should not be allowed, however, to terminate executory contracts relating to **employees or** licenses of intellectual and industrial property rights, as they are usually key components of the operations of the business being sold.

Or. en

**Amendment 207**  
**Arash Saeidi**

**Proposal for a directive**  
**Recital 29**

*Text proposed by the Commission*

(29) The possibility to enforce pre-emption rights in the course of the sale process would distort competition in the pre-pack proceedings. Potential bidders might abstain from bidding because of rights that would discard their offers at the holder's discretion, irrespective of the time and resources invested and the economic value of the offer. In order to ensure that the winning offer reflects the best available price on the market, pre-emption rights should not be conceded to bidders, nor should such rights be enforced in the course of the bidding process. Holders of pre-emption rights that were granted prior to the commencement of the pre-pack proceedings, instead of invoking their option, should be invited to participate in the bidding.

*Amendment*

(29) The possibility to enforce pre-emption rights in the course of the sale process would distort competition in the pre-pack proceedings. ***This consideration cannot prevent a Member State from reserving a right of pre-emption for an undertaking participating in an essential strategic interest.*** Potential bidders might abstain from bidding because of rights that would discard their offers at the holder's discretion, irrespective of the time and resources invested and the economic value of the offer. In order to ensure that the winning offer reflects the best available price on the market, pre-emption rights should not be conceded to bidders, nor should such rights be enforced in the course of the bidding process. Holders of pre-emption rights that were granted prior to the commencement of the pre-pack proceedings, instead of invoking their option, should be invited to participate in the bidding.

Or. en

**Amendment 208**  
**Mario Mantovani**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

(30) Member States should allow secured creditors to participate in the bidding process in the pre-pack proceedings by offering the amount of their secured claims as consideration for the purchase of the assets over which they hold a security (credit bidding). ***Credit bidding should not, however, be used in a way that provides secured creditors with an undue***

*Amendment*

(30) Member States should allow secured creditors to participate in the bidding process in the pre-pack proceedings by offering the amount of their secured claims as consideration for the purchase of the assets over which they hold a security (credit bidding), ***up to 20 % of the amount of the credit secured against***

*advantage in the bidding process, such as when the amount of their secured claim against the debtor's assets is above the market value of the business.*

*the debtor's assets.*

Or. it

#### *Justification*

*The proposed directive allows the bidder to offset the price offered against its secured claims against the debtor, prohibiting this practice when it results in an unfair advantage in the bidding process. The provision allows for offsetting provided that the value of such credits is significantly lower than the market value of the company. It seems preferable to specify the compensable value of any secured claims of the bidder at 20 %*

### **Amendment 209** **Arash Saeidi**

#### **Proposal for a directive** **Recital 30**

##### *Text proposed by the Commission*

(30) Member States should allow secured creditors to participate in the bidding process in the pre-pack proceedings by offering the amount of their secured claims as consideration for the purchase of the assets over which they hold a security (credit bidding). Credit bidding should not, however, be used in a way that provides secured creditors with an undue advantage in the bidding process, such as when the amount of their secured claim against the debtor's assets is above the market value of the business.

##### *Amendment*

(30) Member States should allow secured creditors to participate in the bidding process in the pre-pack proceedings by offering the amount of their secured claims as consideration for the purchase of the assets over which they hold a security (credit bidding). **Member States should not prohibit this possibility for employees, as creditors.** Credit bidding should not, however, be used in a way that provides secured creditors with an undue advantage in the bidding process, such as when the amount of their secured claim against the debtor's assets is above the market value of the business.

Or. en

### **Amendment 210** **Ton Diepeveen**

#### **Proposal for a directive** **Recital 32**

*Text proposed by the Commission*

*Amendment*

**(32) Directors oversee the management of the affairs of a legal entity and have the best overview of its financial situation. Directors are therefore among the first to realise whether a legal entity is approaching or surpassing the brink of insolvency. 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 period. 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.**

**deleted**

Or. nl

*Justification*

*Countries such as the Netherlands and Sweden do not have a duty to request the opening of insolvency proceedings and have the highest asset recovery ratios in the whole of the European Union. There is no causal connection at all between a duty to request the opening of insolvency proceedings and the asset recovery ratio. Furthermore, during the stakeholder consultation the experts were not asked to give their views on the introduction of such a duty.*

## **Amendment 211**

**Daniel Buda**

### **Proposal for a directive**

#### **Recital 32**

*Text proposed by the Commission*

*Amendment*

(32) Directors oversee the management of the affairs of a legal entity and have the best overview of its financial situation. Directors are therefore among the first to realise whether a legal entity is approaching or surpassing the brink of

(32) Directors oversee the management of the affairs of a legal entity and have the best overview of its financial situation. Directors are therefore among the first to realise whether a legal entity is approaching or surpassing the brink of

insolvency. 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. 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.

insolvency. 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, ***taking account of the complexity of the business and the available resources, with specific provisions for microenterprises and SMEs to avoid overburdening.*** 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.

Or. ro

## **Amendment 212** **Ton Diepeveen**

### **Proposal for a directive** **Recital 33**

*Text proposed by the Commission*

(33) ***To ensure that directors do not act 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 damages resulting from the deterioration in the recovery value of the legal entity compared to the situation where the request would have been submitted on time. Member States should 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.***

*Amendment*

(33) Member States ***where there is no duty to request the opening of insolvency proceedings can take other, equivalent measures, such as*** making directors ***personally*** liable.

**Amendment 213****Billy Kelleher****Proposal for a directive****Recital 33***Text proposed by the Commission*

(33) To ensure that directors do not act 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 damages resulting from the deterioration in the recovery value of the legal entity compared to the situation where the request would have been submitted on time. Member States should 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.

*Amendment*

(33) To ensure that directors do not act 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 damages resulting from the deterioration in the recovery value of the legal entity compared to the situation where the request would have been submitted on time. Member States should 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. ***However, in some cases the signs of insolvency can be circumstantial and temporary and skilled directors should be given the opportunity to explore restructuring measures that may reasonably lead to the same outcome for creditors. Therefore, Member States should be permitted to provide for a derogation from the obligation to commence insolvency procedures whilst ensuring the rights of the creditors are equally as protected.***

**Amendment 214****Ton Diepeveen****Proposal for a directive**

## Recital 34

*Text proposed by the Commission*

*Amendment*

**(34) *Microenterprises often take the form of sole proprietorships or small partnerships whose founders, owners or members do not enjoy limited liability protection and thus are exposed to unlimited liability for business debts. Where microenterprises operate as limited liability entities, limited liability protection is usually illusory for microenterprises owners because they are often expected to secure microenterprises business debts using their personal assets as collateral. Moreover, since microenterprises heavily depend on payments from their clients they often face cash-flow problems and higher default risks that follow from the loss of a significant business partner or from late payments by their clients. In addition, microenterprises also face scarcity of working capital, higher interest rates and larger collateral requirements, which make raising finance, especially in situations of financial distress, difficult, if not impossible. As a consequence, they may be prone to insolvency more often than larger enterprises.*** **deleted**

Or. nl

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

## Amendment 215

**Billy Kelleher**

**Proposal for a directive**

**Recital 34**

*Text proposed by the Commission*

*Amendment*

**(34) *Microenterprises often take the*** **deleted**

*form of sole proprietorships or small partnerships whose founders, owners or members do not enjoy limited liability protection and thus are exposed to unlimited liability for business debts. Where microenterprises operate as limited liability entities, limited liability protection is usually illusory for microenterprises owners because they are often expected to secure microenterprises business debts using their personal assets as collateral. Moreover, since microenterprises heavily depend on payments from their clients they often face cash-flow problems and higher default risks that follow from the loss of a significant business partner or from late payments by their clients. In addition, microenterprises also face scarcity of working capital, higher interest rates and larger collateral requirements, which make raising finance, especially in situations of financial distress, difficult, if not impossible. As a consequence, they may be prone to insolvency more often than larger enterprises.*

Or. en

**Amendment 216**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

***(34a) In the context of all insolvency and restructuring procedures, including pre-pack arrangements, involving both small and medium-sized enterprises (SMEs) and enterprises of all sizes, such procedures shall be permitted only where accompanied by safeguards ensuring the protection of employees and small stakeholders. The procedure shall include measures to uphold the rights and interests of employees, consumers, clientele, and SME creditors or***

*contractual partners of the debtor.*

Or. en

**Amendment 217**

**Ton Diepeveen**

**Proposal for a directive**

**Recital 35**

*Text proposed by the Commission*

*Amendment*

**(35) National insolvency rules are not always fit to treat insolvent microenterprises properly and in a proportionate manner. Taking into account the unique characteristics of microenterprises and their specific needs in financial distress, in particular the need for faster, simpler, and affordable procedures should be acknowledged, separate insolvency proceedings should be developed at national level in accordance with the provisions of this Directive. Although the provisions of this Directive concerning simplified winding-up proceedings only apply to microenterprises, it should be possible for Member States to extend their application also to small and medium-sized enterprises that are not microenterprises.** *deleted*

Or. nl

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

**Amendment 218**

**Billy Kelleher**

**Proposal for a directive**

**Recital 35**

**(35) National insolvency rules are not always fit to treat insolvent microenterprises properly and in a proportionate manner. Taking into account the unique characteristics of microenterprises and their specific needs in financial distress, in particular the need for faster, simpler, and affordable procedures should be acknowledged, separate insolvency proceedings should be developed at national level in accordance with the provisions of this Directive. Although the provisions of this Directive concerning simplified winding-up proceedings only apply to microenterprises, it should be possible for Member States to extend their application also to small and medium-sized enterprises that are not microenterprises.**

**deleted**

Or. en

#### **Amendment 219**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

#### **Proposal for a directive**

#### **Recital 35**

*Text proposed by the Commission*

*Amendment*

(35) National insolvency rules are not always fit to treat insolvent microenterprises **properly** and in a proportionate manner. Taking into account the unique characteristics of microenterprises and their specific needs in financial distress, **in particular the** need for **faster, simpler, and affordable procedures** should be acknowledged, **separate insolvency proceedings should be developed at national level in accordance with the provisions of this Directive. Although the provisions of this Directive concerning simplified winding-up proceedings only apply to**

(35) National insolvency rules are not always fit to treat insolvent **SMEs and** microenterprises **in particular** and in a **proper and** proportionate manner. Taking into account the unique characteristics of microenterprises and their specific needs in financial distress, **their** need for **additional support measures in case of insolvency** should be acknowledged. **The Commission is therefore invited to provide appropriate guidance to Member States on the basis of national best practices and exchanges with SME representatives.**

*microenterprises, it should be possible for Member States to extend their application also to small and medium-sized enterprises that are not microenterprises.*

Or. en

**Amendment 220**  
**Daniel Buda**

**Proposal for a directive**  
**Recital 35**

*Text proposed by the Commission*

(35) National insolvency rules are not always fit to treat insolvent microenterprises properly and in a proportionate manner. Taking into account the unique characteristics of microenterprises and their specific needs in financial distress, in particular the need for faster, simpler, and affordable procedures should be acknowledged, separate insolvency proceedings should be developed at national level in accordance with the provisions of this Directive. Although the provisions of this Directive concerning simplified winding-up proceedings only apply to microenterprises, it should be possible for Member States to extend their application also to small and medium-sized enterprises that are not microenterprises.

*Amendment*

(35) National insolvency rules are not always fit to treat insolvent microenterprises properly and in a proportionate manner. Taking into account the unique characteristics of microenterprises and their specific needs in financial distress, in particular the need for faster, simpler, and affordable procedures should be acknowledged, separate insolvency proceedings should be developed at national level in accordance with the provisions of this Directive. ***Member States should encourage alternative preventive restructuring mechanisms, such as mediation and conciliation, before insolvency proceedings are resorted to.*** Although the provisions of this Directive concerning simplified winding-up proceedings only apply to microenterprises, it should be possible for Member States to extend their application also to small and medium-sized enterprises that are not microenterprises.

Or. ro

**Amendment 221**  
**Gheorghe Piperea**

**Proposal for a directive**

**Recital 35 a (new)**

*Text proposed by the Commission*

*Amendment*

***(35a) Member States shall ensure that micro, small and medium-sized enterprises (MSMEs) which have no reasonable prospect of rescue are subject to simplified liquidation procedures. The design and implementation of such procedures shall be left to the discretion of Member States, in accordance with the principle of subsidiarity.***

Or. en

**Amendment 222**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 36**

*Text proposed by the Commission*

*Amendment*

***(36) It is appropriate to ensure that the conduct and oversight of simplified winding-up proceedings may be entrusted by Member States to a competent authority which is either a court or an administrative body. The choice would depend, among other things, on the administrative and legal systems of the Member States as well as the capacities of courts and the need to ensure cost-efficiency and speed of proceedings.***

***deleted***

Or. en

**Amendment 223**

**Billy Kelleher**

**Proposal for a directive**

**Recital 36**

*Text proposed by the Commission*

*Amendment*

**(36) It is appropriate to ensure that the conduct and oversight of simplified winding-up proceedings may be entrusted by Member States to a competent authority which is either a court or an administrative body. The choice would depend, among other things, on the administrative and legal systems of the Member States as well as the capacities of courts and the need to ensure cost-efficiency and speed of proceedings.**

*deleted*

Or. en

**Amendment 224  
Ton Diepeveen**

**Proposal for a directive  
Recital 37**

*Text proposed by the Commission*

*Amendment*

**(37) The cessation of payments test and the balance sheet test are the two usual triggers among Member States for opening of standard insolvency proceedings. The balance sheet test may however be unfeasible for microenterprise debtors, particularly where the debtor is an individual entrepreneur, because of a possible lack of proper record and of a clear distinction between personal assets and liabilities and business assets and liabilities. Therefore, the inability to pay debts as they mature should be the criterion for the opening of simplified winding-up proceedings. Member States should also define the specific conditions under which this criterion is met, as long as these conditions are clear, simple and easily ascertainable by the microenterprise concerned.**

*deleted*

Or. nl

## *Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

### **Amendment 225**

**Billy Kelleher**

#### **Proposal for a directive**

##### **Recital 37**

*Text proposed by the Commission*

*Amendment*

*(37) The cessation of payments test and the balance sheet test are the two usual triggers among Member States for opening of standard insolvency proceedings. The balance sheet test may however be unfeasible for microenterprise debtors, particularly where the debtor is an individual entrepreneur, because of a possible lack of proper record and of a clear distinction between personal assets and liabilities and business assets and liabilities. Therefore, the inability to pay debts as they mature should be the criterion for the opening of simplified winding-up proceedings. Member States should also define the specific conditions under which this criterion is met, as long as these conditions are clear, simple and easily ascertainable by the microenterprise concerned.*

*deleted*

Or. en

### **Amendment 226**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

#### **Proposal for a directive**

##### **Recital 37**

*Text proposed by the Commission*

*Amendment*

**(37) *The cessation of payments test and the balance sheet test are the two usual triggers among Member States for opening of standard insolvency proceedings. The balance sheet test may however be unfeasible for microenterprise debtors, particularly where the debtor is an individual entrepreneur, because of a possible lack of proper record and of a clear distinction between personal assets and liabilities and business assets and liabilities. Therefore, the inability to pay debts as they mature should be the criterion for the opening of simplified winding-up proceedings. Member States should also define the specific conditions under which this criterion is met, as long as these conditions are clear, simple and easily ascertainable by the microenterprise concerned.***

*deleted*

Or. en

**Amendment 227  
Ton Diepeveen**

**Proposal for a directive  
Recital 38**

*Text proposed by the Commission*

*Amendment*

**(38) *In order to establish cost-effective and expeditious simplified winding-up proceedings for microenterprises, short deadlines should be introduced. Similarly, formalities for all procedural steps, including for the opening of the proceedings, the lodgement and the admission of claims, the establishment of the insolvency estate and the realisation of the assets should be minimised. A standard form should be used for submitting a request to open simplified winding-up proceedings and electronic means should be used for all communications between the competent authority, and where relevant, the insolvency practitioner, and the parties to***

*deleted*

*the proceedings.*

Or. nl

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

**Amendment 228**

**Billy Kelleher**

**Proposal for a directive**

**Recital 38**

*Text proposed by the Commission*

*Amendment*

**(38)** *In order to establish cost-effective and expeditious simplified winding-up proceedings for microenterprises, short deadlines should be introduced. Similarly, formalities for all procedural steps, including for the opening of the proceedings, the lodgement and the admission of claims, the establishment of the insolvency estate and the realisation of the assets should be minimised. A standard form should be used for submitting a request to open simplified winding-up proceedings and electronic means should be used for all communications between the competent authority, and where relevant, the insolvency practitioner, and the parties to the proceedings.* **deleted**

Or. en

**Amendment 229**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 38**

*Text proposed by the Commission*

*Amendment*

**(38) In order to establish cost-effective and expeditious simplified winding-up proceedings for microenterprises, short deadlines should be introduced. Similarly, formalities for all procedural steps, including for the opening of the proceedings, the lodgement and the admission of claims, the establishment of the insolvency estate and the realisation of the assets should be minimised. A standard form should be used for submitting a request to open simplified winding-up proceedings and electronic means should be used for all communications between the competent authority, and where relevant, the insolvency practitioner, and the parties to the proceedings.**

*deleted*

Or. en

## **Amendment 230**

**Ton Diepeveen**

### **Proposal for a directive**

#### **Recital 39**

*Text proposed by the Commission*

*Amendment*

**(39) All microenterprises should be able to commence proceedings to address their financial difficulties and obtain a discharge. Access to simplified winding-up proceedings should not depend on the microenterprise's ability to cover the administrative costs of such proceedings. The laws of the Member States should introduce rules for covering the costs of administering simplified winding-up proceedings where assets and sources of revenue of the debtor are insufficient to cover those costs.**

*deleted*

Or. nl

## *Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

### **Amendment 231**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

### **Proposal for a directive**

#### **Recital 39**

*Text proposed by the Commission*

*Amendment*

**(39)** *All microenterprises should be able to commence proceedings to address their financial difficulties and obtain a discharge. Access to simplified winding-up proceedings should not depend on the microenterprise's ability to cover the administrative costs of such proceedings. The laws of the Member States should introduce rules for covering the costs of administering simplified winding-up proceedings where assets and sources of revenue of the debtor are insufficient to cover those costs.* **deleted**

Or. en

### **Amendment 232**

**Billy Kelleher**

### **Proposal for a directive**

#### **Recital 39**

*Text proposed by the Commission*

*Amendment*

**(39)** *All microenterprises should be able to commence proceedings to address their financial difficulties and obtain a discharge. Access to simplified winding-up proceedings should not depend on the microenterprise's ability to cover the administrative costs of such proceedings.* **deleted**

*The laws of the Member States should introduce rules for covering the costs of administering simplified winding-up proceedings where assets and sources of revenue of the debtor are insufficient to cover those costs.*

Or. en

#### **Amendment 233**

**Jana Toom**

#### **Proposal for a directive**

#### **Recital 39**

*Text proposed by the Commission*

(39) All microenterprises should be able to commence proceedings to address their financial difficulties and obtain a discharge. Access to simplified winding-up proceedings should not depend on the microenterprise's ability to cover the administrative costs of such proceedings. The laws of the Member States should introduce rules for covering the costs of administering simplified winding-up proceedings where assets and sources of revenue of the debtor are insufficient to cover those costs.

*Amendment*

(39) All microenterprises should be able to commence proceedings to address their financial difficulties and obtain a discharge. Access to simplified winding-up proceedings should not depend on the microenterprise's ability to cover the administrative costs of such proceedings. ***In this regard, Member States should introduce a maximum threshold for the remuneration of insolvency practitioners appointed in simplified winding-up proceedings.*** The laws of the Member States should introduce rules for covering the costs of administering simplified winding-up proceedings where assets and sources of revenue of the debtor are insufficient to cover those costs.

Or. en

#### **Amendment 234**

**Ton Diepeveen**

#### **Proposal for a directive**

#### **Recital 40**

*Text proposed by the Commission*

*Amendment*

**(40) In simplified winding-up proceedings, the appointment of an insolvency practitioner is usually unnecessary given the simple business operations carried out by the microenterprises that make their supervision by the competent authority possible and sufficient. Therefore, the debtor should remain in control of its assets and day-to-day operation of the business. At the same time, to ensure that simplified winding-up proceedings can be conducted effectively and efficiently, the debtor should, upon commencement of and throughout the proceedings, provide accurate, reliable and complete information relating to its financial position and business affairs.**

*deleted*

Or. nl

*Justification*

*A situation in which a court has to rely solely on information provided by the debtor himself when a microenterprise is being liquidated opens the door to abuse.*

**Amendment 235**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 40**

*Text proposed by the Commission*

*Amendment*

**(40) In simplified winding-up proceedings, the appointment of an insolvency practitioner is usually unnecessary given the simple business operations carried out by the microenterprises that make their supervision by the competent authority possible and sufficient. Therefore, the debtor should remain in control of its assets and day-to-day operation of the business. At the same time, to ensure that simplified winding-up proceedings can be conducted effectively and efficiently, the**

*deleted*

*debtor should, upon commencement of and throughout the proceedings, provide accurate, reliable and complete information relating to its financial position and business affairs.*

Or. en

**Amendment 236**  
**Billy Kelleher**

**Proposal for a directive**  
**Recital 40**

*Text proposed by the Commission*

*Amendment*

**(40)** *In simplified winding-up proceedings, the appointment of an insolvency practitioner is usually unnecessary given the simple business operations carried out by the microenterprises that make their supervision by the competent authority possible and sufficient. Therefore, the debtor should remain in control of its assets and day-to-day operation of the business. At the same time, to ensure that simplified winding-up proceedings can be conducted effectively and efficiently, the debtor should, upon commencement of and throughout the proceedings, provide accurate, reliable and complete information relating to its financial position and business affairs.*

*deleted*

Or. en

**Amendment 237**  
**Jana Toom**

**Proposal for a directive**  
**Recital 40**

*Text proposed by the Commission*

*Amendment*

**(40)** *In simplified winding-up*

**(40)** The debtor should remain in control

*proceedings, the appointment of an insolvency practitioner is usually unnecessary given the simple business operations carried out by the microenterprises that make their supervision by the competent authority possible and sufficient. Therefore, the debtor should remain in control of its assets and day-to-day operation of the business. At the same time, to ensure that simplified winding-up proceedings can be conducted effectively and efficiently, the debtor should, upon commencement of and throughout the proceedings, provide accurate, reliable and complete information relating to its financial position and business affairs.*

of its assets and day-to-day operation of the business. To ensure that simplified winding-up proceedings can be conducted effectively and efficiently, the debtor should, upon commencement of and throughout the proceedings, provide accurate, reliable and complete information relating to its financial position and business affairs.

Or. en

**Amendment 238**  
**Jana Toom**

**Proposal for a directive**  
**Recital 40 a (new)**

*Text proposed by the Commission*

*Amendment*

*(40a) The appointment of an insolvency practitioner may not be necessary in the simplified winding up proceedings of certain microenterprises with simple business operations and insolvency estates. In this regard, it should be possible for the debtor or creditors to request that an insolvency practitioner not be appointed. The court should grant the request if there is a low risk of fraud and abuse.*

Or. en

**Amendment 239**  
**Ton Diepeveen**

**Proposal for a directive**

## Recital 41

*Text proposed by the Commission*

*Amendment*

**(41) A microenterprise debtor should be able to benefit from a temporary stay of individual enforcement actions, in order to be able to preserve the value of the insolvency estate and ensure a fair and orderly conduct of the proceedings. Member States, however, may allow competent authorities to exclude certain claims from the scope of the stay, in well-defined circumstances.** *deleted*

Or. nl

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

## Amendment 240

**Billy Kelleher**

**Proposal for a directive**

**Recital 41**

*Text proposed by the Commission*

*Amendment*

**(41) A microenterprise debtor should be able to benefit from a temporary stay of individual enforcement actions, in order to be able to preserve the value of the insolvency estate and ensure a fair and orderly conduct of the proceedings. Member States, however, may allow competent authorities to exclude certain claims from the scope of the stay, in well-defined circumstances.** *deleted*

Or. en

## Amendment 241

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

## **Proposal for a directive**

### **Recital 41**

*Text proposed by the Commission*

*Amendment*

**(41) A microenterprise debtor should be able to benefit from a temporary stay of individual enforcement actions, in order to be able to preserve the value of the insolvency estate and ensure a fair and orderly conduct of the proceedings. Member States, however, may allow competent authorities to exclude certain claims from the scope of the stay, in well-defined circumstances.** *deleted*

Or. en

## **Amendment 242**

**Ton Diepeveen**

## **Proposal for a directive**

### **Recital 42**

*Text proposed by the Commission*

*Amendment*

**(42) Disputed claims should be dealt with in a way that does not unnecessarily complicate the conduct of simplified winding-up proceedings for microenterprises. If disputed claims cannot be quickly dealt with, the ability to dispute a claim may be used to create unnecessary delays. In deciding on the treatment of a disputed claim, the competent authority should be empowered to allow the continuation of the simplified winding-up proceedings with respect to undisputed claims only.** *deleted*

Or. nl

### *Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and*

*subsidiarity.*

**Amendment 243**

**Billy Kelleher**

**Proposal for a directive**

**Recital 42**

*Text proposed by the Commission*

*Amendment*

**(42) Disputed claims should be dealt with in a way that does not unnecessarily complicate the conduct of simplified winding-up proceedings for microenterprises. If disputed claims cannot be quickly dealt with, the ability to dispute a claim may be used to create unnecessary delays. In deciding on the treatment of a disputed claim, the competent authority should be empowered to allow the continuation of the simplified winding-up proceedings with respect to undisputed claims only.**

**deleted**

Or. en

**Amendment 244**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 42**

*Text proposed by the Commission*

*Amendment*

**(42) Disputed claims should be dealt with in a way that does not unnecessarily complicate the conduct of simplified winding-up proceedings for microenterprises. If disputed claims cannot be quickly dealt with, the ability to dispute a claim may be used to create unnecessary delays. In deciding on the treatment of a disputed claim, the competent authority should be empowered to allow the continuation of the simplified**

**deleted**

*winding-up proceedings with respect to undisputed claims only.*

Or. en

**Amendment 245**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 43**

*Text proposed by the Commission*

*Amendment*

**(43) In the context of simplified winding-up proceedings, avoidance actions should only be brought by a creditor or, where appointed, by the insolvency practitioner. In taking the decision to convert the simplified winding-up proceedings to standard insolvency proceedings for the purpose of the conduct of avoidance proceedings, the competent authority should weigh various considerations, including the anticipated cost, duration and complexity of avoidance proceedings, the likelihood of the successful recovery of assets and expected benefits to all creditors.**

*deleted*

Or. en

**Amendment 246**

**Billy Kelleher**

**Proposal for a directive**

**Recital 43**

*Text proposed by the Commission*

*Amendment*

**(43) In the context of simplified winding-up proceedings, avoidance actions should only be brought by a creditor or, where appointed, by the insolvency practitioner. In taking the decision to convert the simplified winding-**

*deleted*

*up proceedings to standard insolvency proceedings for the purpose of the conduct of avoidance proceedings, the competent authority should weigh various considerations, including the anticipated cost, duration and complexity of avoidance proceedings, the likelihood of the successful recovery of assets and expected benefits to all creditors.*

Or. en

**Amendment 247**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 43 a (new)**

*Text proposed by the Commission*

*Amendment*

*(43a) All creditors who have claims against the insolvent debtor must participate in the insolvency proceedings in order to be circumscribed by the concept of 'realization of claims against the debtor', which is the purpose of the insolvency proceedings. Exempted from this obligation are employees and holders of claims resulting from the continuation of the proceedings - they will have their claims paid in accordance with the documents from which they arise. If not, these creditors will also be entered in the claims tables, but only at their request. Creditors have individual, conflicting interests. They will therefore compete to maximize their chances of recovering their claims against the debtor as fully as possible. To this end, they will resort to disputes and complaints, including mutual ones, which is why careful and objective arbitration between creditors with distinct positions in the pecking order and divergent interests is necessary. This arbitration must be exercised by the specialized judge who has judicial control of the proceedings and who can rely on the mediation of the insolvency*

*practitioner appointed in the case.*

Or. en

**Amendment 248**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 43 b (new)**

*Text proposed by the Commission*

*Amendment*

***(43b) The independence of the members of the creditor committee and the prohibition of conflicts of interest in which they might find themselves are of fundamental importance. Affiliates, shareholders or (former) managers of the debtor should not be allowed to sit on the creditor committee.***

Or. en

**Amendment 249**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Recital 44**

*Text proposed by the Commission*

*Amendment*

***(44) Member States should ensure that the assets of the insolvency estate in simplified winding-up proceedings can be realised through public on-line judicial auction, if the competent authority considers this means of realisation of assets as appropriate. For this reason, Member States should ensure that one or more electronic auction systems are maintained in their territory for that purposes. This obligation should be without prejudice to the multiple platforms that exist in some Member States for on-line judicial auctions of***

***deleted***

*specific types of assets.*

Or. en

**Amendment 250**

**Billy Kelleher**

**Proposal for a directive**

**Recital 44**

*Text proposed by the Commission*

*Amendment*

***(44) Member States should ensure that the assets of the insolvency estate in simplified winding-up proceedings can be realised through public on-line judicial auction, if the competent authority considers this means of realisation of assets as appropriate. For this reason, Member States should ensure that one or more electronic auction systems are maintained in their territory for that purposes. This obligation should be without prejudice to the multiple platforms that exist in some Member States for on-line judicial auctions of specific types of assets.***

***deleted***

Or. en

**Amendment 251**

**Gheorghe Piperea**

**Proposal for a directive**

**Recital 44 a (new)**

*Text proposed by the Commission*

*Amendment*

***(44a) The opening of insolvency proceedings means placing the debtor under the protection of the court, which translates mainly into : (i) the discontinuation of any individual enforcement proceedings against the debtor, (ii) freezing the value of the claim at its nominal amount as of the date of the***

*opening of the proceedings, (iii) the continuation of ongoing contracts essential to the survival of the debtor's business.*

Or. en

**Amendment 252**  
**Billy Kelleher**

**Proposal for a directive**  
**Recital 45**

*Text proposed by the Commission*

*Amendment*

***(45) The auction systems operated for the purposes of realising the assets of debtors in simplified winding-up proceedings should be interconnected via the European e-Justice Portal. The e-Justice Portal should serve as a central electronic access point to the on-line judicial auction processes run in the national system or systems, provide a search functionality for users and guide them to the relevant national on-line platforms if they intend to participate in the bidding. When determining the technical specifications of that interconnection system by way of implementing act, the Commission should, in accordance with the Commission's "Dual Pillar Approach"<sup>37</sup>, present the result of the analysis of existing solutions already provided by the Commission with the potential for their reuse or should carry out a market screening for potential off-the shelf commercial solutions to use as such or with little customisation.***

***deleted***

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<sup>37</sup> *For digital solutions, the dual pillar approach is about reusing existing solutions, including corporate building blocks, before considering ready-made market solutions. Customised development is the last option. See*

**Amendment 253**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 45**

*Text proposed by the Commission*

*Amendment*

**(45) The auction systems operated for the purposes of realising the assets of debtors in simplified winding-up proceedings should be interconnected via the European e-Justice Portal. The e-Justice Portal should serve as a central electronic access point to the on-line judicial auction processes run in the national system or systems, provide a search functionality for users and guide them to the relevant national on-line platforms if they intend to participate in the bidding. When determining the technical specifications of that interconnection system by way of implementing act, the Commission should, in accordance with the Commission's "Dual Pillar Approach"<sup>37</sup>, present the result of the analysis of existing solutions already provided by the Commission with the potential for their reuse or should carry out a market screening for potential off-the shelf commercial solutions to use as such or with little customisation.**

**deleted**

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<sup>37</sup> *For digital solutions, the dual pillar approach is about reusing existing solutions, including corporate building blocks, before considering ready-made market solutions. Customised development is the last option. See*

**Amendment 254**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 46**

*Text proposed by the Commission*

*Amendment*

**(46) In the case of insolvency of an unlimited liability microenterprise debtor, individuals who are personally liable for the debtor's debts should not be personally liable for unsatisfied claims following liquidation of the insolvency estate of the debtor. Therefore, Member States should ensure that in simplified winding-up proceedings entrepreneur debtors, as well as those founders, owners or members of an unlimited liability microenterprise debtor who are personally liable for the debts of the microenterprise subject to simplified winding-up proceedings, are fully discharged from their debts. For the purpose of granting such discharge, Member States should apply Title III of Directive (EU) 2019/1023 mutatis mutandis.**

**deleted**

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

**Amendment 255**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive  
Recital 46**

*Text proposed by the Commission*

*Amendment*

**(46) In the case of insolvency of an unlimited liability microenterprise debtor, individuals who are personally liable for the debtor's debts should not be personally liable for unsatisfied claims following liquidation of the insolvency estate of the debtor. Therefore, Member States should ensure that in simplified winding-up proceedings entrepreneur debtors, as well as those founders, owners or members of an unlimited liability microenterprise debtor who are personally liable for the debts of the microenterprise subject to simplified winding-up proceedings, are fully discharged from their debts. For the purpose of granting such discharge, Member States should apply Title III of Directive (EU) 2019/1023 mutatis mutandis.**

*deleted*

Or. en

**Amendment 256  
Billy Kelleher**

**Proposal for a directive  
Recital 46**

*Text proposed by the Commission*

*Amendment*

**(46) In the case of insolvency of an unlimited liability microenterprise debtor, individuals who are personally liable for the debtor's debts should not be personally liable for unsatisfied claims following liquidation of the insolvency estate of the debtor. Therefore, Member States should ensure that in simplified winding-up proceedings entrepreneur debtors, as well as those founders, owners or members of an unlimited liability microenterprise debtor who are personally liable for the debts of the microenterprise**

*deleted*

*subject to simplified winding-up proceedings, are fully discharged from their debts. For the purpose of granting such discharge, Member States should apply Title III of Directive (EU) 2019/1023 mutatis mutandis.*

Or. en

## **Amendment 257**

**Ton Diepeveen**

### **Proposal for a directive**

#### **Recital 47**

*Text proposed by the Commission*

*Amendment*

*(47) It is important to ensure a fair balance between the interests of the debtor and creditors in insolvency proceedings. Creditors' committees allow for better involvement of creditors in insolvency proceedings, in particular when creditors would otherwise be inhibited from doing so individually, due to limited resources, economic significance of their claims or the lack of geographic proximity. Creditors' committees can especially help cross-border creditors better exercise their rights and ensure their fair treatment. Member States should allow the establishment of a creditors' committee once proceedings are opened. A creditors' committee should be established only provided that creditors agree. Member States may also allow to establish it before proceedings are opened and after the filing for insolvency. In this case, however, Member States should provide that creditors agree to its continuation and composition at the general meeting. If creditors disagree with the composition, they may also establish a new creditors' committee.*

*deleted*

Or. nl

## *Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

### **Amendment 258**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

### **Proposal for a directive**

#### **Recital 47**

#### *Text proposed by the Commission*

(47) It is important to ensure a fair balance between the interests of the debtor and creditors in insolvency proceedings. Creditors' committees allow for better involvement of creditors in insolvency proceedings, in particular when creditors would otherwise be inhibited from doing so individually, due to limited resources, economic significance of their claims or the lack of geographic proximity. Creditors' committees can especially help cross-border creditors better exercise their rights and ensure their fair treatment. Member States should allow the establishment of a creditors' committee once proceedings are opened. A creditors' committee should be established only provided that creditors agree. Member States may also allow to establish it before proceedings are opened and after the filing for insolvency. In this case, however, Member States should provide that creditors agree to its continuation and composition at the general meeting. If creditors disagree with the composition, they may also establish a new creditors' committee.

#### *Amendment*

(47) It is important to ensure a fair balance between the interests of the debtor ***on the one hand*** and creditors ***as well as employees on the other hand*** in insolvency proceedings. Creditors' committees allow for better involvement of creditors ***and workers*** in insolvency proceedings, in particular when creditors ***and workers*** would otherwise be inhibited from doing so individually, due to limited resources, economic significance of their claims or the lack of geographic proximity. Creditors' committees can especially help cross-border creditors better exercise their rights and ensure their fair treatment. Member States should allow the establishment of a creditors' committee once proceedings are opened. A creditors' committee should be established only provided that creditors agree. Member States may also allow to establish it before proceedings are opened and after the filing for insolvency. In this case, however, Member States should provide that creditors agree to its continuation and composition at the general meeting. If creditors disagree with the composition, they may also establish a new creditors' committee.

**Amendment 259**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 47 a (new)**

*Text proposed by the Commission*

*Amendment*

***(47a) The management of the affairs and conduct of the insolvent debtor will be under the control of the creditors and under the supervision of the insolvency practitioner. Of crucial importance are the independence of the insolvency practitioner and the prohibition of any conflict of interest in which he may find himself. Concurrent appointments as insolvency practitioner in proceedings opened against undertakings which are mutually debtors and creditors are prohibited. The prohibition also extends to situations where the insolvency practitioner has more than one subsidiary, branch or agency and the practitioner uses this technique to circumvent the conflict of interest prohibition by circumventing the law.***

Or. en

**Amendment 260**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 47 b (new)**

*Text proposed by the Commission*

*Amendment*

***(47b) Except in cases of fraud and continuing actions that ruin the debtor's business or assets, control of the debtor's affairs after the opening of insolvency proceedings remains with the debtor's legal representatives prior to the opening***

*of the proceedings, according to the debtor in possession rule, in the meaning that the UNCITRAL Model Law gives to the rule.*

Or. en

**Amendment 261**  
**Gheorghe Piperea**

**Proposal for a directive**  
**Recital 47 c (new)**

*Text proposed by the Commission*

*Amendment*

*(47c) After the opening of the insolvency proceedings, the debtor's business will be run under conditions similar to those existing when it was a business in bonis, according to the business as usual rule. Obviously, all the conditions specific to insolvency proceedings will apply, with transparency, judicial review and expediency being essential.*

Or. en

**Amendment 262**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 48**

*Text proposed by the Commission*

*Amendment*

*(48) The cost of setting up and operating a creditors' committee should be commensurate to the value it generates. The establishment of the creditors' committee should not be justified in those instances where the cost of its set-up and operations is significantly higher than the economic relevance of the decisions it may take. This may be the case where there are too few creditors,*

*deleted*

*where the large majority of creditors has a small share in the claim against the debtor or where the expected recovery from the insolvency estate in insolvency proceedings is significantly lower than the cost of the set-up and operation of the creditors' committee. This occurs in particular in insolvency cases of microenterprises.*

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

**Amendment 263**

**Ton Diepeveen**

**Proposal for a directive**

**Recital 49**

*Text proposed by the Commission*

*Amendment*

***(49) Member States should clarify the requirements, duties and procedures for the appointment of members of the creditors' committee, as well as the functions attributed to the creditors' committee. Member States should be given the option to decide whether the appointment should be done by the general meeting of creditors or by the court. To avoid undue delays in the set-up of the creditors' committee, the members should be appointed expeditiously. Member States should cater for a fair representation of creditors in the committee and ensure that the participation in the creditors' committee is not precluded to creditors whose claim is not yet admitted or to creditors that are***

***deleted***

*resident in another Member State.*

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

**Amendment 264**  
**Arash Saeidi**

**Proposal for a directive**  
**Recital 49**

*Text proposed by the Commission*

(49) Member States should clarify the requirements, duties and procedures for the appointment of members of the creditors' committee, as well as the functions attributed to the creditors' committee. Member States should be given the option to decide whether the appointment should be done by the general meeting of creditors or by the court. To avoid undue delays in the set-up of the creditors' committee, the members should be appointed expeditiously. Member States should cater for a fair representation of creditors in the committee and ensure that the participation in the creditors' committee is not precluded to creditors whose claim is not yet admitted or to creditors that are resident in another Member State.

*Amendment*

(49) Member States should clarify the requirements, duties and procedures for the appointment of members of the creditors' committee, as well as the functions attributed to the creditors' committee. Member States should be given the option to decide whether the appointment should be done by the general meeting of creditors or by the court. To avoid undue delays in the set-up of the creditors' committee, the members should be appointed expeditiously. Member States should cater for a fair representation of creditors in the committee and ensure that the participation in the creditors' committee is not precluded to creditors whose claim is not yet admitted or to creditors that are resident in another Member State. ***Member States should ensure fair representation of employees as creditors within the committee.***

Or. en

**Amendment 265**

**Jana Toom, Billy Kelleher**

**Proposal for a directive**

**Recital 49**

*Text proposed by the Commission*

(49) Member States should clarify the requirements, duties and procedures for the appointment of members of the creditors' committee, as well as the functions attributed to the creditors' committee. Member States should be given the option to decide whether the appointment should be done by the general meeting of creditors or by the court. To avoid undue delays in the set-up of the creditors' committee, the members should be appointed expeditiously. Member States should cater for a fair representation of creditors in the committee and ensure that the participation in the creditors' committee is not precluded to creditors whose claim is not yet admitted or to creditors that are resident in another Member State.

*Amendment*

(49) Member States should clarify the requirements, duties and procedures for the appointment of members of the creditors' committee, as well as the functions attributed to the creditors' committee. Member States should be given the option to decide whether the appointment should be done by the general meeting of creditors or by the court. To avoid undue delays in the set-up of the creditors' committee, the members should be appointed expeditiously. Member States should cater for a fair representation of creditors in the committee and ensure that the participation in the creditors' committee is not precluded to creditors whose claim is not yet admitted or to creditors that are resident in another Member State. ***Member States should make sure that employees are represented in the creditors' committee.***

Or. en

**Amendment 266**

**Gheorghe Piperea**

**Proposal for a directive**

**Recital 49 a (new)**

*Text proposed by the Commission*

*Amendment*

***(49a) A claw-back action is an action for the recovery of certain assets or values of the debtor's business in order to maximize the debtor's assets (claw-back action). The action relates to the suspect period, i.e. the period of 2 to 4 years prior to the opening of insolvency proceedings, when the debtor can be presumed to have, by voluntary legal acts, prejudiced creditors through fraudulent outsourcing of assets,***

*ruinous business deals or unusual transactions such as acts of assignation or gift, especially in relation to significant shareholders or relatives.*

Or. en

**Amendment 267**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 50**

*Text proposed by the Commission*

*Amendment*

**(50) Fair representation of creditors in the creditors' committee is particularly important in relation to unsecured creditors that are micro, small or medium-sized enterprises, which in the case of insolvency of a debtor which is a large enterprise, if not paid promptly, are also exposed to insolvency (domino effect). Proper representation in the creditors' committee of such creditors could ensure that in the course of the distribution of the recovered proceeds they receive their parts more expeditiously.** **deleted**

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

**Amendment 268**  
**René Repasi**

**Proposal for a directive**  
**Recital 50**

*Text proposed by the Commission*

(50) Fair representation of creditors in the creditors' committee is particularly important *in relation* to unsecured creditors that are micro, small or medium-sized enterprises, which in the case of insolvency of a debtor which is a large enterprise, if not paid promptly, are also exposed to insolvency (domino effect). Proper representation in the creditors' committee of such creditors could ensure that in the course of the distribution of the recovered proceeds they receive their parts more expeditiously.

*Amendment*

(50) Fair representation of creditors in the creditors' committee is particularly important *to employees, for whom the delay of wage payments regularly poses an existential threat, as well as* to unsecured creditors that are micro, small or medium-sized enterprises, which in the case of insolvency of a debtor which is a large enterprise, if not paid promptly, are also exposed to insolvency (domino effect). Proper representation in the creditors' committee of such creditors could ensure that in the course of the distribution of the recovered proceeds they receive their parts more expeditiously.

Or. en

**Amendment 269**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 50**

*Text proposed by the Commission*

(50) Fair representation *of creditors* in the creditors' committee is particularly important in relation to unsecured creditors that are micro, small or medium-sized enterprises, which in the case of insolvency of a debtor which is a large enterprise, if not paid promptly, are also exposed to insolvency (domino effect). Proper representation in the creditors' committee of such creditors could ensure that in the course of the distribution of the recovered proceeds they receive their parts more expeditiously.

*Amendment*

(50) Fair representation in the creditors' committee is particularly important in relation to *workers and* unsecured creditors that are micro, small or medium-sized enterprises, which in the case of insolvency of a debtor which is a large enterprise, if not paid promptly, are also exposed to insolvency (domino effect). Proper representation in the creditors' committee of such creditors could ensure that in the course of the distribution of the recovered proceeds they receive their parts more expeditiously.

Or. en

**Amendment 270**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 51**

*Text proposed by the Commission*

*Amendment*

**(51)** *An important task of the creditors' committee should be to verify that insolvency proceedings are conducted in a way that protects creditors' interests. The committee's role in the monitoring of the fairness and integrity of the proceedings can only be performed effectively if the creditors' committee and its members act independently from the insolvency practitioner and are accountable only to the creditors who established it.* **deleted**

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

**Amendment 271**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 52**

*Text proposed by the Commission*

*Amendment*

**(52)** *The number of members in the creditors' committee should, on the one hand, be sufficiently large to ensure diversity of views and interests in the committee and, on the other hand, remain relatively limited to deliver on its tasks effectively and timely. Member States should clarify when and how the* **deleted**

*composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw. They should also clarify the conditions for the removal of members that acted relentlessly against creditors' interest.*

Or. nl

#### *Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

#### **Amendment 272**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

#### **Proposal for a directive**

#### **Recital 52**

##### *Text proposed by the Commission*

(52) The number of members in the creditors' committee should, ***on the one hand***, be sufficiently large to ensure diversity of views and interests in the committee ***and, on the other hand, remain relatively limited to deliver on its tasks effectively and timely***. Member States should clarify when and how the composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw. They should also clarify the conditions for the removal of members that acted relentlessly against creditors' interest.

##### *Amendment*

(52) The number of members in the creditors' committee should be sufficiently large to ensure diversity of views and interests in the committee. Member States should clarify when and how the composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' ***or workers'*** best interests, or wish to withdraw. They should also clarify the conditions for the removal of members that acted relentlessly against creditors' interest.

Or. en

## Amendment 273

Arash Saeidi

### Proposal for a directive

#### Recital 52

*Text proposed by the Commission*

(52) The number of members in the creditors' committee should, on the one hand, be sufficiently large to ensure diversity of views and interests in the committee and, on the other hand, remain relatively limited to deliver on its tasks effectively and timely. Member States should clarify when and how the composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw. They should also clarify the conditions for the removal of members that acted relentlessly against creditors' interest.

*Amendment*

(52) The number of members in the creditors' committee should, on the one hand, be sufficiently large to ensure diversity of views and interests in the committee and, on the other hand, remain relatively limited to deliver on its tasks effectively and timely. Member States should clarify when and how the composition of the committee needs to be altered, which could happen if representatives are no longer able to act, including in the creditors' best interests, or wish to withdraw. They should also clarify the conditions for the removal of members that acted relentlessly against creditors' interest *or who have a conflict of interest.*

Or. en

## Amendment 274

Ton Diepeveen

### Proposal for a directive

#### Recital 53

*Text proposed by the Commission*

***(53) Members of the creditors' committee retain discretion in the organisation of the work, as long as the working methods are lawful, transparent and effective. Member States should therefore require that the creditors' committee set out the working methods, specifying how meetings should be run, who could attend and vote, and how the impartiality and the confidentiality of the work of the committee is ensured. These***

*Amendment*

***deleted***

*working methods should be allowed to also set out a role for employers' representatives or transparency towards other creditors. Creditors should be able to participate and vote electronically or delegate the voting right to a third person, provided this person is duly authorised. This possibility would be particularly beneficial for creditors resident in other Member States.*

Or. nl

#### *Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

#### **Amendment 275**

**René Repasi**

#### **Proposal for a directive**

#### **Recital 53**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

provided this person is duly authorised. This possibility would be particularly beneficial for creditors resident in other Member States.

to a third person, provided this person is duly authorised. This possibility would be particularly beneficial for creditors resident in other Member States.

Or. en

**Amendment 276**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 54**

*Text proposed by the Commission*

*Amendment*

**(54) Member States should ensure that the court has the power to determine the working methods for the creditors' committee, if they are not established expeditiously. The Commission should establish standard working methods that should facilitate the task of the creditors' committee and reduce the need for courts to intervene in the case of missing working methods.**

**deleted**

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

**Amendment 277**  
**Ton Diepeveen**

**Proposal for a directive**  
**Recital 55**

*Text proposed by the Commission*

*Amendment*

**(55) *The creditors' committee should be granted sufficient rights to perform its functions efficiently and effectively. Member States should ensure that the creditors' committee can interact with insolvency practitioners, courts, the debtor, external advisors and the creditors whom it represents, as necessary, to enable the committee to form and communicate a view on matters of direct interest and relevance to creditors, and for this view to be duly considered in proceedings. Member States could also empower the creditors' committee to make decisions..*** *deleted*

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

**Amendment 278  
Ton Diepeveen**

**Proposal for a directive  
Recital 57**

*Text proposed by the Commission*

*Amendment*

**(57) *To encourage creditors to become members of the creditors' committee, Member States should limit their individual civil liability when they carry out functions in accordance with this Directive. Nonetheless, members of the creditors' committee acting fraudulently or negligently, when carrying out those functions, can be removed and held liable for their actions. In those cases, Member States should provide that the members are held individually liable for the*** *deleted*

*detriment caused by their misconduct.*

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

**Amendment 279**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 57**

*Text proposed by the Commission*

(57) To encourage creditors to become members of the creditors' committee, Member States should limit their individual civil liability when they carry out functions in accordance with this Directive. Nonetheless, members of the creditors' committee acting fraudulently or negligently, when carrying out those functions, can be removed and held liable for their actions. In those cases, Member States should provide that the members are held individually liable for the detriment caused by their misconduct.

*Amendment*

(57) To encourage creditors ***and workers or their representatives*** to become members of the creditors' committee, Member States should limit their individual civil liability when they carry out functions in accordance with this Directive. Nonetheless, members of the creditors' committee acting fraudulently or negligently, when carrying out those functions, can be removed and held liable for their actions. In those cases, Member States should provide that the members are held individually liable for the detriment caused by their misconduct.

Or. en

**Amendment 280**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Recital 60 a (new)**

*Text proposed by the Commission*

*Amendment*

***(60a) This Directive is without prejudice to the application of Union law with regard to workers' rights, in particular Directive 98/59, Directive 2001/23, Directive 2002/14, Directive 2009/38, Directive 2016/2341 and Directive 2008/94.***

Or. en

## **Amendment 281**

**Ton Diepeveen**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) the duty of directors to submit a request for the opening of insolvency proceedings;*** ***deleted***

Or. nl

#### *Justification*

*Countries such as the Netherlands and Sweden do not have a duty to request the opening of insolvency proceedings and have the highest asset recovery ratios in the whole of the European Union. There is no causal connection at all between a duty to request the opening of insolvency proceedings and the asset recovery ratio. Furthermore, during the stakeholder consultation the experts were not asked to give their views on the introduction of such a duty.*

## **Amendment 282**

**Ton Diepeveen**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

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

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

**Amendment 283****Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive****Article 1 – paragraph 1 – point e***Text proposed by the Commission**Amendment*

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

Or. en

**Amendment 284****Ton Diepeveen****Proposal for a directive****Article 1 – paragraph 1 – point f***Text proposed by the Commission**Amendment*

**(f) *creditors' committees;***                      ***deleted***

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

**Amendment 285**

**Arash Saeidi**

**Proposal for a directive**

**Article 1 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

***(fa) procedures for information and consultation of employees in the event of the opening of insolvency proceedings, of a proposed transfer or a restructuring or liquidation plan having an impact on employment.***

Or. en

**Amendment 286**

**René Repasi**

**Proposal for a directive**

**Article 1 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The minimum standards laid down in this Directive aim to converge Member States' insolvency laws, in particular having regard to the following objectives:***

***(a) maximization of [legal certainty about] a firm's value;***

***(b) improving efficiency of insolvency procedures both in terms of cost and length (especially for micro-enterprises);***

***(c) improving predictability and fair distribution of value amongst creditors;***

***(d) protecting employees and preserving jobs.***

Or. en

**Amendment 287**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

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

*Text proposed by the Commission*

*Amendment*

**1a.** *The minimum standards laid down in this Directive aim to approximate Member States' insolvency laws, in particular regarding the following objectives:*

*(a) maximising of legal certainty about a company's value;*

*(b) improving efficiency of insolvency proceedings both in terms of cost and length, in particular for SMEs;*

*(c) improving predictability as well as ensuring a fair and equitable distribution of value amongst creditors;*

*(d) improving the protection of employees and preserving jobs.*

Or. en

**Amendment 288**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 1 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

**1b.** *This Directive is without prejudice to workers' rights to be informed and consulted in accordance with Union and national law. This concerns in particular information and consultation regarding insolvency plans or elements of insolvency plans which may impact terms and conditions of employment, structure of the undertaking, probable development and production and sales, substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of*

*undertakings or important parts thereof,  
and collective redundancies.*

Or. en

**Amendment 289**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Article 1 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. To address the difficulties of SMEs and microenterprises in particular, and their need for additional support measures in case of insolvency and financial distress, the Commission shall support the exchange of best practices between Member States and provide guidance on that basis and on the basis of exchanges with SME representatives.***

Or. en

**Amendment 290**

**Ton Diepeveen**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

***(aa) ‘insolvency’ means an insolvency in accordance with the national law of the Member State in which the insolvent company has its registered office;***

Or. nl

**Amendment 291**

**Ton Diepeveen**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) ‘legal act’ means any human behaviour, ***including an omission***, producing a legal effect;

*Amendment*

(f) ‘legal act’ means any human behaviour ***carried out knowingly and*** producing a legal effect;

Or. nl

**Amendment 292**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) ‘legal act’ means any human behaviour, ***including an omission, producing*** a legal effect;

*Amendment*

(f) ‘legal act’ means any human behaviour ***that can be classified as active conduct and produces*** a legal effect;

Or. it

*Justification*

*To avoid misuse of avoidance action, in the case of conduct that is legitimate and does not indicate a specific intention, it is preferable to limit avoidance cases to active conduct.*

**Amendment 293**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point j**

*Text proposed by the Commission*

(j) ‘microenterprise’ means a ***microenterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC***;

*Amendment*

*deleted*

Or. nl

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

**Amendment 294**

**Arash Saeidi**

**Proposal for a directive**

**Article 2 – paragraph 1 – point j**

*Text proposed by the Commission*

(j) ‘microenterprise’ means *a microenterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC;*

*Amendment*

(j) microenterprise’ means *an enterprise or an entrepreneur which employs fewer than 4 persons, whose annual turnover total does not exceed 500, 000 and whose balance sheet total does not exceed 250, 000.*

Or. en

**Amendment 295**

**Ton Diepeveen**

**Proposal for a directive**

**Article 2 – paragraph 1 – point k**

*Text proposed by the Commission*

(k) ‘*unlimited liability microenterprise*’ means *a microenterprise with or without separate legal personality and without limited liability protection of any of its founders, owners or members;*

*Amendment*

*deleted*

Or. nl

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

## Amendment 296

Ton Diepeveen

### Proposal for a directive

#### Article 2 – paragraph 1 – point o

*Text proposed by the Commission*

*Amendment*

(o) **‘creditors’ committee’ means a representative body of creditors appointed in accordance with the applicable law on insolvency proceedings with consultative and other powers as specified in that law;** *deleted*

Or. nl

#### *Justification*

*There is no evidence at all that creditors’ committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors’ committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors’ committees for small and medium-sized insolvencies. Creditors’ committees therefore only make sense in the case of very large insolvencies.*

## Amendment 297

Mario Mantovani

### Proposal for a directive

#### Article 2 – paragraph 1 – point q

*Text proposed by the Commission*

*Amendment*

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

(q) **‘party closely related to the debtor’ means:**

Or. it

#### *Justification*

*The definition of parties closely related to the debtor appears, as worded, to be too broad and could cause problems with interpretation and undesirable effects.*

**Amendment 298**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 2 – paragraph 1 - point q - subparagraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

Or. it

*Justification*

*The definition of parties closely related to the debtor appears to be too broad and could cause problems with interpretation and undesirable effects.*

**Amendment 299**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 2 – paragraph 1 - point q - subparagraph 2 – point iii**

*Text proposed by the Commission*

*Amendment*

(iii) persons living in the household of the debtor;

(iii) persons living in the household of the debtor, ***as evidenced by public certifications***;

Or. it

**Amendment 300**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 2 – paragraph 1 - point q - subparagraph 2 – point iv**

*Text proposed by the Commission*

*Amendment*

(iv) ***persons who are working for the debtor under a contract of employment with access to non-public information on the affairs of the debtor, or otherwise performing tasks through which they have***

***deleted***

*access to non-public information on the affairs of the debtor, including advisers, accountants or notaries;*

Or. it

**Amendment 301**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 2 – paragraph 1 - point q - subparagraph 2 – point v**

*Text proposed by the Commission*

*Amendment*

(v) 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 performs duties which provide for access to non-public information on the affairs of the debtor.*

(v) legal entities in which the debtor or one of the persons referred to in points (i) to **(iii)** of this subparagraph is a member of the administrative, management or supervisory bodies.

Or. it

**Amendment 302**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 2 – paragraph 1 - point q - subparagraph 2 – point v**

*Text proposed by the Commission*

*Amendment*

(v) 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 performs duties which provide for access to non-public information on the affairs of the debtor.

**(iv)** legal entities in which the debtor or one of the persons referred to in points (i) to **(iii)** of this subparagraph is a member of the administrative, management or supervisory bodies or performs duties which provide for access to non-public information on the affairs of the debtor.

Or. it

**Amendment 303**  
**Mario Mantovani**

**Proposal for a directive**

**Article 2 – paragraph 1 - point q - subparagraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

Or. it

*Justification*

*The definition of parties closely related to the debtor appears to be too broad and could cause problems with interpretation and undesirable effects.*

**Amendment 304**

**René Repasi**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 305**

**Maravillas Abadía Jover**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

***(qa) "notification": attested communication at the request of the***

*administrative or judicial authorities that ensures access to due knowledge of the proceedings.*

Or. en

**Amendment 306**  
**Maravillas Abadía Jover**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point q b (new)**

*Text proposed by the Commission*

*Amendment*

*(qb) "processes or tools": instruments or resources used to ensure unambiguous access to information for third parties with a legitimate interest, in order to facilitate the exercise of a right by them.*

Or. en

**Amendment 307**  
**Maravillas Abadía Jover**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point q c (new)**

*Text proposed by the Commission*

*Amendment*

*(qc) "affected creditors": all those natural or legal persons holding claims against the insolvent debtor, including the holders of contingent claims, regardless of whether the insolvent debtor included them in its insolvency application.*

Or. en

**Amendment 308**  
**Arash Saeidi**

**Proposal for a directive**  
**Article 3 a (new)**

**Article 3a**

***National law and minimum harmonization***

- 1. Member States may adopt or maintain laws providing for a higher level of protection for the body of creditors than that provided for in Titles II, IV, and VII, provided that they comply with Union law.***
- 2. Member States may adopt or maintain laws facilitating access by insolvency practitioners to bank account information held in their bank account registers, to beneficial ownership information, and to national registers and databases to a greater extent than the rules provided for in Title III.***
- 3. Member States shall ensure that salary claims at the time of the opening of insolvency proceedings are given priority in the distribution of the insolvency assets. In this respect, they shall ensure that employee representatives have their salary claims preserved throughout the insolvency proceedings.***
- 4. Collective rights of employees, including union representation and collective agreements, cannot be annulled or restricted in insolvency proceedings, except by reasoned decision of the court in the clear interest of preserving the business or jobs.***

Or. en

**Amendment 309**

**René Repasi**

**Proposal for a directive**

**Article 4 – paragraph 1 a (new)**

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

Or. en

**Amendment 310**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Member States shall ensure that avoidance actions do not affect non-abusive transactions in favour of existing or former employees' nor occupational pensions entitlements. These transactions, entitlements and legal acts relating to them are excluded from this Title.*

Or. en

**Amendment 311**  
**Daniel Buda**

**Proposal for a directive**  
**Article 5 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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 where such provisions provide a greater protection of the general body of creditors than those set out in Chapter 2 of this Title.

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 where such provisions provide a greater protection of the general body of creditors than those set out in Chapter 2 of this Title *provided that these provisions*

***respect the principle of proportionality  
and do not affect honest business  
transactions conducted under normal  
market conditions.***

Or. ro

**Amendment 312  
Mario Mantovani**

**Proposal for a directive  
Article 5 – paragraph 1**

*Text proposed by the Commission*

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 where such provisions ***provide a greater protection of the general body of creditors than those set out in Chapter 2 of this Title.***

*Amendment*

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 where such provisions ***ensure a similar level of*** protection of the general body of creditors.

Or. it

*Justification*

*It is important to ensure that the proposal expressly allows Member States to choose to maintain their existing and proven national regimes when they consider them adequate for the intended purpose of creditor protection.*

**Amendment 313  
Jana Toom, Billy Kelleher**

**Proposal for a directive  
Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 5a***

***Applicable law***

***The law applicable to avoidance actions***

*under this Title shall be the law of the Member State within the territory of which insolvency proceedings are opened.*

Or. en

**Amendment 314**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 6 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) within three months prior to the **submission of the request** for the opening of insolvency proceedings, under the condition that the debtor was unable to pay its mature debts; or

(a) within three months prior to the **date** for the opening of insolvency proceedings, under the condition that the debtor was unable to pay its mature debts; or

Or. it

*Justification*

*The declaration of insolvency by the court, and not simply the request to open insolvency proceedings, should be a better starting point for two reasons: 1) a simple request might not be accepted; 2) Member States have different disclosure requirements in relation to such information.*

**Amendment 315**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 6 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***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).***

***deleted***

*Justification*

*The declaration of insolvency by the court, and not simply the request to open insolvency proceedings, should be a better starting point for two reasons: 1) a mere request may not be accepted; 2) Member States have different disclosure requirements in relation to such information.*

**Amendment 316**  
**René Repasi**

**Proposal for a directive**  
**Article 6 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 317**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 6 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. nl

**Amendment 318**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 6 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

(b) *the insolvency practitioner proves* that creditor knew that the debtor was unable to pay its mature debts or that *an* insolvency proceedings has been opened.

Or. it

*Justification*

*In the case of credit, the proposal should specify that the burden of proof of knowledge on the part of creditors should lie with the insolvency practitioner. Several provisions of the Proposal include as a possible trigger for recovery the fact that the creditor ‘knew or should have known of the borrower’s inability to pay its debts’. This could put creditors in a difficult position.*

**Amendment 319**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 6 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The creditor’s knowledge referred to in the first subparagraph, point (b), shall be presumed if the creditor was a party closely related to the debtor.*

*deleted*

Or. it

**Amendment 320**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 6 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. By way of derogation from paragraphs 1 and 2, Member States shall*

*deleted*

*ensure that the following legal acts cannot be declared void:*

*(a) legal acts performed directly against fair consideration to the benefit of the insolvency estate;*

*(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 drawee if it 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.*

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

Or. nl

*Justification*

*It must be possible for any legal act to be declared void.*

**Amendment 321**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 6 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

By way of derogation from paragraphs 1 and 2, Member States shall ensure that the following legal acts cannot be declared void:

By way of derogation from paragraphs 1 and 2, Member States shall ensure that **at least** the following legal acts cannot be declared void:

Or. it

*Justification*

*An exhaustive list of such acts would prevent Member States from considering certain specific features of their legal systems. Member States should be free to provide for further exemptions.*

**Amendment 322**

**René Repasi**

**Proposal for a directive**

**Article 6 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) legal acts performed directly against fair consideration to the benefit of the insolvency estate;

(a) legal acts performed directly against fair consideration to the benefit of the insolvency estate, **in particular wages**;

Or. en

**Amendment 323**

**Jana Toom, Billy Kelleher**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

**(ba) payments on remuneration to employees due prior to the opening of insolvency proceedings;**

Or. en

**Amendment 324**

**René Repasi**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

**(ca) where relevant, in accordance with national law, legal acts that serve as satisfaction or collateralisation of claims of social security authorities.**

Or. en

**Amendment 325**

**Jana Toom, Billy Kelleher**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

**(ca) legal acts that serve as satisfaction or collateralisation of claims of social security institutions.**

Or. en

**Amendment 326**

**René Repasi**

**Proposal for a directive**

**Article 6 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that where payments on bills of exchange or cheques are concerned as referred to in the first subparagraph, point (b), the amount paid on the bill or cheque shall be restituted by the last endorser or, if the latter endorsed the bill on account of a third party, by such party if the last endorser or the third party knew **or should have known** that the debtor was unable to pay its mature debts

Member States shall ensure that where payments on bills of exchange or cheques are concerned as referred to in the first subparagraph, point (b), the amount paid on the bill or cheque shall be restituted by the last endorser or, if the latter endorsed the bill on account of a third party, by such party if the last endorser or the third party knew that the debtor was unable to pay its mature debts or that a request for the

or that a request for the opening of insolvency proceedings has been submitted at the moment of endorsing the bill or having it endorsed. This knowledge is presumed if the last endorser or the third party was a party closely related to the debtor.

opening of insolvency proceedings has been submitted at the moment of endorsing the bill or having it endorsed. This knowledge is presumed if the last endorser or the third party was a party closely related to the debtor.

Or. en

**Amendment 327**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 6 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

Or. nl

**Amendment 328**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 7 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that legal acts of the debtor against no or a manifestly inadequate consideration can be declared void where they were perfected within a time period of one year prior to the submission of the request for the opening of insolvency proceedings or after the submission of such request.

*Amendment*

1. Member States shall ensure that legal acts of the debtor against no or a manifestly inadequate consideration can be declared void where they were perfected within a time period of one year prior to the submission of the request for the opening of insolvency proceedings or after the submission of such request. ***The payment of a third-party debt in a three-person relationship shall not be automatically considered as a legal act against no or a manifestly inadequate consideration.***

Or. en

**Amendment 329**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 7 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that legal acts of the debtor against no or a manifestly inadequate consideration can be declared void where they were perfected within a time period of one year prior to the submission of the request for the opening of insolvency proceedings or after the submission of such request.

*Amendment*

1. Member States shall ensure that legal acts of the debtor against no or a manifestly inadequate consideration can be declared void where they were perfected within a time period of one year prior to the ***date*** of the opening of insolvency proceedings.

Or. it

*Justification*

*The declaration of insolvency by the court, and not simply the request to open insolvency proceedings, should be a better starting point for two reasons: 1) a simple request may not be accepted; 2) Member States have different disclosure requirements in relation to such information.*

**Amendment 330**  
**Arash Saeidi**

**Proposal for a directive**  
**Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Paragraph 1 shall not apply to salary changes, compensation and other benefits granted in good faith to an employee where there would be a substantial alteration for him of the expected sums.**

Or. en

**Amendment 331**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 8 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that legal acts by which the debtor has intentionally caused a detriment to the general body of creditors **can be** declared void where both of the following conditions are met:

Member States shall ensure that legal acts by which the debtor has intentionally caused a detriment to the general body of creditors **are** declared void where both of the following conditions are met:

Or. en

**Amendment 332**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 8 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) those acts were perfected either within a time period of **four years** prior to the **submission of the request for** the opening of insolvency proceedings **or after the submission of such request;**

(a) those acts were perfected either within a time period of **18 months** prior to the **date** of the opening of insolvency proceedings;

*Justification*

*A period of four years prior to the submission of the request seems too long. It is important to reduce legal uncertainty, which can also have a negative impact on the debtor. The declaration of insolvency by the court, and not simply the request to open insolvency proceedings, should be a better starting point for two reasons: 1) a simple request may not be accepted; 2) Member States have different disclosure requirements in relation to such information.*

**Amendment 333**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 8 – paragraph 1 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) those acts were perfected either within a time period of **four** years prior to the submission of the request for the opening of insolvency proceedings or after the submission of such request;

*Amendment*

(a) those acts were perfected either within a time period of **two** years prior to the submission of the request for the opening of insolvency proceedings or after the submission of such request;

*Justification*

*A shorter retrospective period ensures greater legal certainty and requires less forensic investigation by the insolvency practitioner, the creditors and the courts. There is also no data at all demonstrating that longer retrospective periods lead to higher asset recovery ratios.*

**Amendment 334**  
**Daniel Buda**

**Proposal for a directive**  
**Article 8 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b)the other party to the legal act knew or should have known of the debtor’s intent to cause a detriment to the general body of creditors.

*Amendment*

(b)the other party to the legal act knew or should have known of the debtor’s intent to cause a detriment to the general body of creditors **and did not act in good faith.**

**Amendment 335**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 8 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. it

**Amendment 336**  
**René Repasi**

**Proposal for a directive**  
**Article 8 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 337**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 8 – paragraph 1 – subparagraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 338**

**Ton Diepeveen**

**Proposal for a directive**

**Article 8 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The knowledge referred to in the first subparagraph, point (b), shall be presumed if the other party to the legal act was a party closely related to the debtor.*

*deleted*

**Amendment 339**

**Daniel Buda**

**Proposal for a directive**

**Article 8 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The knowledge referred to in the first subparagraph, point (b), shall be presumed if the other party to the legal act was a party closely related to the debtor.

The knowledge referred to in the first subparagraph, point (b), shall be presumed if the other party to the legal act was a party closely related to the debtor *except where the other party can show that they acted in good faith and under normal market conditions.*

**Amendment 340**

**Daniel Buda**

**Proposal for a directive**

**Article 8 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The knowledge referred to in the first*

shall be presumed if the other party to the

*subparagraph, point (b)*, shall be presumed if the other party to the legal act was a party closely related to the debtor.

legal act was a party closely related to the debtor *except where the other party can show that they acted in good faith and under normal market conditions*.

Or. ro

**Amendment 341**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 8 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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).*

*deleted*

Or. it

**Amendment 342**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 9 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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.

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. ***Compensation shall only be given for damage that is an immediate and direct consequence of the legal act that has been declared void.***

Or. it

*Justification*

*It is important to exclude indirect damage.*

**Amendment 343**

**Ton Diepeveen**

**Proposal for a directive**

**Article 9 – paragraph 3**

*Text proposed by the Commission*

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 is **three** years from the date of the opening of insolvency proceedings.

*Amendment*

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 is **two** years from the date of the opening of insolvency proceedings.

Or. nl

*Justification*

*A shorter retrospective period ensures greater legal certainty and requires less forensic investigation by the insolvency practitioner, the creditors and the courts. There is also no data at all demonstrating that longer retrospective periods lead to higher asset recovery ratios.*

**Amendment 344**

**Mario Mantovani**

**Proposal for a directive**

**Article 11 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

(b) **the insolvency practitioner proves** the successor knew the circumstances on which the avoidance action is based.

Or. it

*Justification*

*In the case of third parties, the proposal should specify that the burden of proof of knowledge on the part of creditors should lie with the insolvency practitioner.*

**Amendment 345**

**René Repasi**

**Proposal for a directive**

**Article 11 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 346**

**Mario Mantovani**

**Proposal for a directive**

**Article 11 – paragraph 2 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***The ineffectiveness of the legal act that has been declared void does not affect the rights acquired by third parties in good faith.***

Or. it

*Justification*

*It should be clarified that there can be no automatic effect on a third party acting in good faith as a result of avoidance proceedings against the beneficiary of the legal act declared null and void. The rights of third parties acting in good faith must be guaranteed.*

**Amendment 347**

**Ton Diepeveen**

**Proposal for a directive**

**Title III**

*Text proposed by the Commission*

*Amendment*

***[...]***

***deleted***

*Justification*

*We first need to wait for BARIS to be rolled out within the framework of AMLD6 in 2029. We will then be able to assess how the integration of the various databases is working in practice and resolve any problems first, before rolling out BARIS for applications other than anti-money laundering, such as insolvency proceedings, at a later date.*

**Amendment 348**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 15 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) stricter access criteria are put in place for insolvency practitioners from Member States with no or inadequate training requirements for practising the profession of insolvency practitioner. These stricter access criteria shall be determined by the individual Member States.***

Or. nl

**Amendment 349**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. If a Member State establishes that the insolvency practitioner does not sufficiently demonstrate having received a proper level of training, access to national databases may be refused.***

Or. nl

## *Justification*

*The training requirements and access criteria for the role of insolvency practitioner differ significantly from one Member State to another. If an insolvency practitioner does not meet sufficient quality requirements, a Member State in which higher standards apply must be able to refuse access and, for example, appoint a national insolvency practitioner to act on behalf of the insolvency practitioner from another Member State.*

### **Amendment 350**

**Jana Toom, Billy Kelleher**

#### **Proposal for a directive**

#### **Article 18 – paragraph 1**

##### *Text proposed by the Commission*

1. Member States shall ensure that insolvency practitioners, regardless of the Member State where they have been appointed, have direct and expeditious access to the national asset registers listed in the Annex located in their territory, where available.

##### *Amendment*

1. Member States shall ensure that insolvency practitioners, ***when identifying and tracing assets relevant for the insolvency proceedings for which they are appointed***, regardless of the Member State where they have been appointed, have direct and expeditious access to the national asset registers listed in the Annex located in their territory, where available.

Or. en

### **Amendment 351**

**Ton Diepeveen**

#### **Proposal for a directive**

#### **Article 18 – paragraph 2**

##### *Text proposed by the Commission*

2. ***With respect to access to the national asset registers listed in the Annex, every 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 granted to the insolvency practitioners appointed in that Member State.***

##### *Amendment*

***deleted***

*Justification*

*The level of training and accreditation criteria for the position of insolvency practitioner differ significantly from one Member State to another. This means that there is not a level playing field, and a level playing field cannot therefore be assumed to apply; see Article 15(2a) (new).*

**Amendment 352****René Repasi****Proposal for a directive****Article 19 – paragraph 1 – introductory part***Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 353****Ton Diepeveen****Proposal for a directive****Article 19 – paragraph 1 – point b***Text proposed by the Commission*

***(b) the liquidation phase, which aims at approving and executing the sale of the debtor's business or part thereof and at distributing the proceeds to the creditors.***

*Amendment****deleted***

Or. nl

*Justification*

*Pre-pack proceedings should only apply to the relaunch of an undertaking; here, during a*

*distinct phase prior to the actual insolvency, healthy assets can be separated from unhealthy assets.*

**Amendment 354**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 19 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. This Directive shall not prevent Member States from adopting provisions relating to pre-pack proceedings that offer greater protection of the rights of creditors and other parties involved than those laid down in this Title.***

Or. it

*Justification*

*During the preparatory phase, which is innovative and has no legal connotations, there is a risk that the procedure will not be adequately structured. It is appropriate to allow Member States to impose provisions that might offer greater protection.*

**Amendment 355**  
**René Repasi**

**Proposal for a directive**  
**Article 19 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 356**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 19 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. The introduction of a pre-pack procedure shall not lead to restrictions in the scope of action of insolvency administrators in the context of regular insolvency proceedings, who should continue to be authorised to seek a sale of the business.**

Or. en

**Amendment 357**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 19 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 358**  
**René Repasi**

**Proposal for a directive**  
**Article 19 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2b. Member States shall ensure that employees' representatives shall be informed and consulted ahead of the preparation phase and during all subsequent phases.**

Or. en

**Amendment 359**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Article 19 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

**2c. Member States shall safeguard employees' rights, including rights covered by collective labour agreements and pension rights, covering also pension premiums owed by the employer to a pension provider.**

Or. en

**Amendment 360**

**Mario Mantovani**

**Proposal for a directive**

**Article 20 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. For the purposes of Article 5(1) of Council Directive 2001/23/EC<sup>40</sup>, the liquidation phase shall be considered to be bankruptcy or insolvency proceedings instituted with a view to the liquidation of the assets of the transferor under the supervision of a competent public authority.**

**deleted**

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<sup>40</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the

*laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).*

Or. it

#### *Justification*

*If, as provided for in Article 20 of the proposal, 'the liquidation phase' of pre-pack proceedings referred to in Article 19(1), is considered an insolvency procedure, not only would the guarantees provided for the company's employees cease to apply, but there would also be a considerable risk of confusion between the pre-pack and insolvency proceedings, and the objective of harmonisation could be frustrated. The liquidation phase is an enforcement phase of the preparatory phase in which the sale of the company must be approved and executed, if the conditions are met, but this does not mean that it can be characterised as an insolvency procedure.*

#### **Amendment 361**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

#### **Proposal for a directive**

#### **Article 20 – paragraph 2**

##### *Text proposed by the Commission*

2. For the purposes of Article 5(1) of Council Directive 2001/23/EC<sup>40</sup>, the liquidation phase ***shall be considered to be bankruptcy or*** insolvency proceedings ***instituted*** with a view to the liquidation of the ***assets*** of the transferor ***under the supervision of a competent public authority.***

##### *Amendment*

2. For the purposes of Article 5(1) of Council Directive 2001/23/EC<sup>40</sup>, ***it is necessary in*** the liquidation phase ***to verify, in each situation, whether the pre-pack procedure and the*** insolvency proceedings ***at hand were carried out*** with a view to the liquidation of the ***undertaking as a result of the established insolvency*** of the transferor ***and not with a view to the mere reorganisation of that undertaking. In addition, it is necessary to establish that the objective of those proceedings is:***

***(a) to satisfy to the greatest extent possible the claims of all the creditors; and***

***(b) to enable the achievement of point (a) by implementing the liquidation through the transfer of the undertaking or a part thereof as a going concern, as prepared in***

*the pre-pack procedure and carried out following the insolvency proceedings.*

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<sup>40</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

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<sup>40</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

Or. en

## **Amendment 362**

### **René Repasi**

#### **Proposal for a directive**

#### **Article 20 – paragraph 2**

##### *Text proposed by the Commission*

2. For the purposes of Article 5(1) of Council Directive 2001/23/EC<sup>40</sup>, the liquidation phase shall be considered to be bankruptcy or insolvency proceedings instituted with a view to the liquidation of the assets of the transferor under the supervision of a competent public authority.

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<sup>40</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

##### *Amendment*

2. For the purposes of Article 5(1) of Council Directive 2001/23/EC<sup>40</sup>, the liquidation phase shall be considered to be bankruptcy or insolvency proceedings instituted with a view to the liquidation of the assets of the transferor under the supervision of a competent public authority ***provided that the liquidation of the undertaking as a going concern satisfies to the greatest extent possible the claims of all the creditors and preserves employment as far as possible.***

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<sup>40</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

Or. en

## Amendment 363

Daniel Buda

### Proposal for a directive Article 20 – paragraph 2

*Text proposed by the Commission*

2. For the purposes of Article 5(1) of Council Directive 2001/23/EC<sup>40</sup>, the liquidation phase shall be considered to be bankruptcy or insolvency proceedings instituted with a view to the liquidation of the assets of the transferor under the supervision of a competent public authority.

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<sup>40</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

*Amendment*

2. For the purposes of Article 5(1) of Council Directive 2001/23/EC<sup>40</sup>, the liquidation phase shall be considered to be bankruptcy or insolvency proceedings instituted with a view to the liquidation of the assets of the transferor under the supervision of a competent public authority, ***provided that this interpretation does not lead to a disproportionate burden on the transferee with respect to the rights and obligations arising out of the asset transfer.***

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<sup>40</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

Or. ro

## Amendment 364

Daniel Buda

### Proposal for a directive Article 21 – paragraph 1

*Text proposed by the Commission*

The court having jurisdiction in pre-pack proceedings shall have exclusive jurisdiction in matters relating to the scope and effects of the sale of the debtor's business or a part thereof in pre-pack proceedings on the debts and liabilities, as referred to in Article 28.

*Amendment*

The court having jurisdiction in pre-pack proceedings shall have exclusive jurisdiction in matters relating to the scope and effects of the sale of the debtor's business or a part thereof in pre-pack proceedings on the debts and liabilities, as referred to in Article 28, ***ensuring that the rights of guaranteed creditors and priority***

*wage claims are respected.*

Or. ro

**Amendment 365**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Article 22 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

Member States shall provide that, upon request of the debtor, the court appoints ***an independent*** monitor. ***Member States shall ensure that the creditors' committee or the provisional creditors' committee is involved in the appointment of the monitor and is heard by the court to that end.***

Or. en

**Amendment 366**

**Jana Toom, Billy Kelleher**

**Proposal for a directive**

**Article 22 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

Member States shall provide that, upon request of the debtor, the court appoints a monitor. ***The monitor shall be independent from the debtor, the debtor's shareholders, the creditors and any other party having a legal or economic interest in the debtor or the debtor's business.***

Or. en

**Amendment 367**

**Mario Mantovani**

**Proposal for a directive**  
**Article 22 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

Member States shall provide that, upon request of the debtor ***or of the creditors***, the court ***that declared the state of insolvency of the debtor opens a prepack proceeding and*** appoints a monitor.

Or. it

*Justification*

*The proposal should include the possibility for creditors to take the initiative to start a pre-pack proceeding, especially in situations where the debtor is not interested in transferring its business to third parties.*

**Amendment 368**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 22 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

***The appointment of the monitor shall start the preparation phase referred to in Article 19, paragraph 1.***

*Amendment*

***deleted***

Or. it

**Amendment 369**  
**René Repasi**

**Proposal for a directive**  
**Article 22 – paragraph 2 – subparagraph 1 – point a (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 370**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 22 – paragraph 2 – subparagraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

**(aa) obtains in advance, where it deems necessary, an independent assessment of the market value of the company;**

Or. it

*Justification*

*In order to determine the fair price and market value of the company, it is considered appropriate to provide that the commissioner may, as a preliminary step, obtain an independent valuation.*

**Amendment 371**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Article 22 – paragraph 2 – subparagraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

**(aa) consults with the employees of the debtor's business or their representatives;**

Or. en

**Amendment 372**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 22 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) justifies why **it considers** that the

(b) justifies why **they consider** that the

sale process is competitive, transparent,  
fair and meets market standards;

sale process is competitive, transparent,  
fair, *safeguards employment* and meets  
market standards;

Or. en

### **Amendment 373**

**Jana Toom, Billy Kelleher**

#### **Proposal for a directive**

##### **Article 22 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) *justifies why it considers* that the  
sale process is competitive, transparent,  
fair and meets market standards;

(b) *declares and substantiates* that the  
sale process is competitive, transparent,  
fair and meets market standards;

Or. en

### **Amendment 374**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

#### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

(ba) *carries out its tasks in consultation  
with workers' representations;*

Or. en

### **Amendment 375**

**Daniel Buda**

#### **Proposal for a directive**

##### **Article 22 – paragraph 2 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) states whether it considers that the  
best bid does not constitute a manifest

(d) states whether it considers that the  
best bid does not constitute a manifest

breach of the best-interest-of-creditors test.

breach of the best-interest-of-creditors test, ***taking account of the going-concern principle and maximisation of asset value for all creditors.***

Or. ro

#### **Amendment 376**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

#### **Proposal for a directive**

#### **Article 22 – paragraph 2 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) states whether it considers that the best bid does not constitute a manifest breach of the best-interest-of-creditors test.

(d) states whether it considers that the best bid does not constitute a manifest breach of the best-interest-of-creditors test, ***while taking into account the impact on employees.***

Or. en

#### **Amendment 377**

**Jana Toom, Billy Kelleher**

#### **Proposal for a directive**

#### **Article 22 – paragraph 2 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) ***states whether it considers*** that the best bid does not constitute a manifest breach of the best-interest-of-creditors test.

(d) ***declares and substantiates*** that the best bid does not constitute a manifest breach of the best-interest-of-creditors test.

Or. en

#### **Amendment 378**

**René Repasi**

#### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

*(da) ensures participation of a committee of creditors;*

Or. en

**Amendment 379**  
**René Repasi**

**Proposal for a directive**  
**Article 22 – paragraph 2 – subparagraph 1 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

*(db) ensures that the employees' representatives are consulted and informed.*

Or. en

**Amendment 380**  
**Jana Toom**

**Proposal for a directive**  
**Article 22 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Actions by the monitor listed in the first subparagraph shall be done in writing, be made available in digital format and in a timely manner to **all** parties involved in the preparation phase.

Actions by the monitor listed in the first subparagraph shall be done in writing **and shall** be made available in digital format and in a timely manner **only** to parties involved in the preparation phase. **Beyond that, the monitor shall maintain the confidentiality of all information obtained in connection with the preparation phase.**

Or. en

**Amendment 381**  
**Daniel Buda**

**Proposal for a directive**

## Article 22 – paragraph 2 – subparagraph 2

### *Text proposed by the Commission*

Actions by the monitor listed in the first subparagraph shall be done in writing, be made available in digital format and in a timely manner to all parties involved in the preparation phase.

### *Amendment*

Actions by the monitor listed in the first subparagraph shall be done in writing, be made available in digital format and in a timely manner to all parties involved in the preparation phase, ***with respect for the confidentiality of sensitive business information.***

Or. ro

## Amendment 382

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

### Proposal for a directive

## Article 22 – paragraph 2 – subparagraph 2

### *Text proposed by the Commission*

Actions by the monitor listed in the first subparagraph shall be done in writing, be made available in digital format and in a timely manner to all parties involved in the preparation phase.

### *Amendment*

Actions by the monitor listed in the first subparagraph shall be done in writing, be made available in digital format and in a timely manner to all parties involved in the preparation phase, ***including employees and their representatives.***

Or. en

## Amendment 383

**Ton Diepeveen**

### Proposal for a directive

## Article 23 – paragraph 1

### *Text proposed by the Commission*

Member States shall ensure that during the preparation phase, where the debtor ***is in a situation of likelihood of insolvency or*** is insolvent in accordance with national law, the debtor can benefit from a stay of individual enforcement actions in

### *Amendment*

Member States shall ensure that during the preparation phase, where the debtor is insolvent in accordance with national law, the debtor can benefit from a stay of individual enforcement actions in accordance with Articles 6 and 7 of

accordance with Articles 6 and 7 of Directive (EU) 2019/1023, where it facilitates the seamless and effective roll-out of the pre-pack proceedings. The monitor shall be heard prior to the decision on the stay of individual enforcement actions.

Directive (EU) 2019/1023, where it facilitates the seamless and effective roll-out of the pre-pack proceedings. The monitor shall be heard prior to the decision on the stay of individual enforcement actions.

Or. nl

### *Justification*

*There is no European definition of ‘likelihood of insolvency’. The different interpretations of this term could create considerable legal uncertainty.*

### **Amendment 384**

**Jana Toom, Billy Kelleher**

#### **Proposal for a directive**

#### **Article 23 – paragraph 1**

##### *Text proposed by the Commission*

Member States shall ensure that during the preparation phase, where the debtor is in a situation of likelihood of insolvency or is insolvent in accordance with national law, the debtor can benefit from a stay of individual enforcement actions in accordance with Articles 6 and 7 of Directive (EU) 2019/1023, where it ***facilitates the seamless and effective*** roll-out of the pre-pack proceedings. The monitor shall be heard prior to the decision on the stay of individual enforcement actions.

##### *Amendment*

Member States shall ensure that during the preparation phase, where the debtor is in a situation of likelihood of insolvency or is insolvent in accordance with national law, the debtor can benefit from a stay of individual enforcement actions in accordance with Articles 6 and 7 of Directive (EU) 2019/1023, where it ***is essential for the successful*** roll-out of the pre-pack proceedings. The monitor shall be heard prior to the decision on the stay of individual enforcement actions.

Or. en

### **Amendment 385**

**René Repasi**

#### **Proposal for a directive**

#### **Article 23 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 386**  
**René Repasi**

**Proposal for a directive**  
**Article 24 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 387**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 24 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 388**

**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 24 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a. Member States shall ensure that employees and their representatives are informed and consulted on the proposed guarantees. Their opinion shall be appended to the documents transmitted to the competent insolvency authority.**

Or. en

**Amendment 389**  
**René Repasi**

**Proposal for a directive**  
**Article 24 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 390**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Article 24 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

2. **Without prejudice to Article 32(2),** where the sale process only produces one binding offer, that offer shall be deemed to reflect the business market price.

**Amendment 391**

**Jana Toom, Billy Kelleher**

**Proposal for a directive**

**Article 24 – paragraph 3**

*Text proposed by the Commission*

3. Member States may depart from paragraph 1 only where the court runs a public auction in the liquidation phase in accordance with Article 26. In this case, Article 22(2), point (b) shall not apply.

*Amendment*

3. Member States may depart from paragraph 1 only where the court runs a public auction in the liquidation phase in accordance with Article 26(2). In this case, Article 22(2), point (b) shall not apply.

Or. en

**Amendment 392**

**Mario Mantovani**

**Proposal for a directive**

**Article 24 – paragraph 3 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The selling arrangements shall be chosen in accordance with the rules of the Member States on winding-up proceedings.***

Or. it

*Justification*

*The manner in which the activities are carried out will be assessed on a case-by-case basis and in accordance with the legal framework of each Member State.*

**Amendment 393**

**Jana Toom, Billy Kelleher**

**Proposal for a directive**

**Article 26 – paragraph 2**

*Text proposed by the Commission*

2. ***In case*** Member States ***apply Article 24(3)***, the public auction ***referred to in that provision*** shall last no longer than four weeks and shall be initiated within two weeks as of the opening of the liquidation phase. The offer selected by the monitor shall be used as the initial bid in the public auction. Member States shall ensure that the protections granted to the initial bidder in the preparation phase, such as expense reimbursement or break-up fees, are commensurate and proportionate, and do not deter potentially interested parties from bidding in the liquidation phase.

*Amendment*

2. ***By way of derogation from paragraph 1***, Member States ***shall ensure that the court runs a public auction in situations where one or more creditors demonstrate a credible suspicion of abuse.*** The public auction shall last no longer than four weeks and shall be initiated within two weeks as of the opening of the liquidation phase. The offer selected by the monitor shall be used as the initial bid in the public auction. Member States shall ensure that the protections granted to the initial bidder in the preparation phase, such as expense reimbursement or break-up fees, are commensurate and proportionate, and do not deter potentially interested parties from bidding in the liquidation phase.

Or. en

**Amendment 394**  
**Ton Diepeveen**

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

*Text proposed by the Commission*

1. ***Member States shall ensure that the acquirer of the debtor's business or part thereof is assigned the executory contracts which are necessary for the continuation of the debtor's business and the suspension of which would lead to a business standstill. The assignment shall not require the consent of the debtor's counterparty or counterparties.***

***The first subparagraph shall not apply if the acquirer of the debtor's business or part thereof is a competitor to the debtor's counterparty or counterparties.***

*Amendment*

***deleted***

Or. nl

## *Justification*

*This is an enforced contract takeover and is therefore in breach of the principle of freedom of contract.*

### **Amendment 395**

**Arash Saeidi**

#### **Proposal for a directive**

#### **Article 27 – paragraph 1 – subparagraph 1**

##### *Text proposed by the Commission*

Member States shall ensure that the acquirer of the debtor's business or part thereof is assigned the executory contracts which are necessary for the continuation of the debtor's business and the suspension of which would lead to a business standstill. The assignment shall not require the consent of the debtor's counterparty or counterparties.

##### *Amendment*

Member States shall ensure that the acquirer of the debtor's business or part thereof is assigned the executory contracts which are necessary for the continuation of the debtor's business and the suspension of which would lead to a business standstill. The assignment shall not require the consent of the debtor's counterparty or counterparties. ***This obligation concerns employment contracts in force on the date of the opening of the procedure, under pre-existing conditions.***

Or. en

### **Amendment 396**

**René Repasi**

#### **Proposal for a directive**

#### **Article 27 – paragraph 1 – subparagraph 1**

##### *Text proposed by the Commission*

Member States shall ensure that the acquirer of the debtor's business or part thereof is assigned the executory contracts which are necessary for the continuation of the debtor's business ***and the suspension of which would lead to a business standstill.*** The assignment shall not require the consent of the debtor's counterparty or counterparties.

##### *Amendment*

Member States shall ensure that the acquirer of the debtor's business or part thereof is assigned the executory contracts which are necessary for the continuation of the debtor's business. The assignment shall not require the consent of the debtor's counterparty or counterparties. ***The assignment shall require the consultation of the debtor's employees.***

**Amendment 397**

**Arash Saeidi**

**Proposal for a directive**

**Article 27 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The first subparagraph shall not apply if the acquirer of the debtor's business or part thereof is a competitor to the debtor's counterparty or counterparties.*

*deleted*

Or. en

**Amendment 398**

**Billy Kelleher**

**Proposal for a directive**

**Article 27 – paragraph 1 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*By way of derogation from the first subparagraph, Member States may provide that consent of the debtor's counterparty or counterparties is required insofar as is necessary, depending on the type of contract, the quality of the parties, or the interests of the business.*

Or. en

**Amendment 399**

**Billy Kelleher**

**Proposal for a directive**

**Article 27 – paragraph 2 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that the court

Member States shall ensure that the court

may decide to terminate the executory contracts referred to in paragraph 1, first subparagraph, provided that one of the following conditions applies:

may decide to terminate the executory contracts referred to in paragraph 1, first subparagraph, ***subject to a notice period no shorter than three months of the assignment***, provided that one of the following conditions applies:

Or. en

#### **Amendment 400**

**Arash Saeidi**

#### **Proposal for a directive**

#### **Article 27 – paragraph 2 – subparagraph 1 – introductory part**

##### *Text proposed by the Commission*

Member States shall ensure that the court may decide to terminate the executory contracts referred to in paragraph 1, first subparagraph, provided that one of the following conditions applies:

##### *Amendment*

Member States shall ensure that the court ***or the competent authority*** may decide to terminate the executory contracts referred to in paragraph 1, first subparagraph, provided that one of the following conditions applies:

Or. en

#### **Amendment 401**

**René Repasi**

#### **Proposal for a directive**

#### **Article 27 – paragraph 2 – subparagraph 1 – introductory part**

##### *Text proposed by the Commission*

Member States shall ensure that the ***court*** may decide to terminate the executory contracts referred to in paragraph 1, first subparagraph, provided that one of the following conditions applies:

##### *Amendment*

Member States shall ensure that the ***insolvency practitioner*** may decide to terminate the executory contracts referred to in paragraph 1, first subparagraph, provided that one of the following conditions applies:

Or. en

#### **Amendment 402**

**Billy Kelleher**

**Proposal for a directive  
Article 27 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

**Point (a) of the first subparagraph** shall **not apply to** executory contracts relating to licenses of intellectual and industrial property rights.

*Amendment*

**Member States** shall **ensure that** executory contracts relating to licenses of intellectual and industrial property rights, **of which the debtor is the licensor, are not terminated without the consent of the licensee.**

Or. en

**Amendment 403  
Jana Toom, Billy Kelleher**

**Proposal for a directive  
Article 27 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

Point (a) of the first subparagraph shall not apply to executory contracts relating to licenses of intellectual and industrial property rights.

*Amendment*

Point (a) of the first subparagraph shall not apply to executory contracts relating to **employees or** licenses of intellectual and industrial property rights.

Or. en

**Amendment 404  
Arash Saeidi**

**Proposal for a directive  
Article 27 – paragraph 3**

*Text proposed by the Commission*

3. **The law applicable to the assignment or to the termination of executory contracts shall be the law of the Member State where the liquidation phase has been opened.**

*Amendment*

3. **Without prejudice to this Article, the termination of executory contracts shall be governed by the national law.**

Or. en

**Amendment 405**

**Arash Saeidi**

**Proposal for a directive**

**Article 27 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. This Article is without prejudice to Council Directive 2001/23/EC and the protection afforded to employees under national laws.**

Or. en

**Amendment 406**

**René Repasi**

**Proposal for a directive**

**Article 27 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Where Member States do not provide for the application of Articles 3 and 4 of Council Directive 2001/23/EC to the transfer of an undertaking during the liquidation phase, they must ensure that the employees' representatives are heard where not all employment contracts are continued or the continuation of the business leads to a reduction of working conditions or salaries. Member States shall ensure that the termination of employment contracts shall not constitute a discrimination against specific employees.**

Or. en

**Amendment 407**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 408**  
**Billy Kelleher**

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

*Text proposed by the Commission*

*Amendment*

**3a. This Article is without prejudice to Council Directive 2001/23/EC and the protection afforded to employees under national laws.**

Or. en

**Amendment 409**  
**René Repasi**

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

*Text proposed by the Commission*

*Amendment*

**3b. This Article is without prejudice to the right of an employee to object to the transfer of her or his employment contract under national law.**

Or. en

**Amendment 410**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 28**

*Text proposed by the Commission*

*Amendment*

*Article 28*

*deleted*

***Debts and liabilities of the business acquired via the pre-pack proceedings***

***Member States shall ensure that the acquirer acquires the debtor's business or part thereof free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.***

Or. nl

**Amendment 411**  
**René Repasi**

**Proposal for a directive**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that the acquirer acquires the debtor's business or part thereof free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.

Member States shall ensure that the acquirer acquires the debtor's business or part thereof free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof. ***In this case the debtor remains jointly and severally liable with the acquirer.***

***This article is without prejudice to liabilities laid down by law and shall not apply to employment contracts.***

Or. en

**Amendment 412**  
**Arash Saeidi**

**Proposal for a directive**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

Member States shall ensure that the acquirer acquires the debtor's business or part thereof free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.

*Amendment*

***Without prejudice to Article 27 and Article 34 (3) and (4), as well as to the obligations arising from a contract of employment relations, concerned by the sale of business or part thereof,*** Member States shall ensure that the acquirer acquires the debtor's business, or part thereof, free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.

Or. en

**Amendment 413**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

Member States shall ensure that the acquirer acquires the debtor's business or part thereof free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.

*Amendment*

Member States shall ensure that the acquirer acquires the debtor's business or part thereof free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof. ***The purchaser must also be released from any joint and several liability with the debtor provided for by the legislation of each Member State.***

Or. it

*Justification*

*The proposed directive provides that the sale of the company under the pre-pack procedure should take place free of debts and liabilities. It should be noted that the bidder who purchases the company is also released from any joint and several obligations of any kind with the debtor provided for by national legislation.*

**Amendment 414**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Article 28 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***This article shall not apply to employment contracts.***

Or. en

**Amendment 415**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that the acquirer acquires the debtor's business or part thereof free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.

Member States shall ensure that the acquirer acquires the debtor's business or part thereof ***in accordance with Council Directive 2001/23/EC*** and free of debts and liabilities, unless the acquirer expressly consents to bear the debts and the liabilities of the business or part thereof.

Or. en

**Amendment 416**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 29 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***This paragraph shall not apply to trade unions or representatives of workers of the debtor.***

Or. en

**Amendment 417**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 30 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

Member States shall ensure that the criteria to select the best bid in the pre-pack proceedings **include employment safeguards as well** as the criteria **as** used to select between competing offers in winding-up proceedings.

Or. en

**Amendment 418**  
**René Repasi**

**Proposal for a directive**  
**Article 32 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 419**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Article 32 – paragraph 2**

*Text proposed by the Commission*

2. Where the offer made by a party closely related to the debtor is the only

*Amendment*

2. Where the offer made by a party closely related to the debtor is the only

existing offer, Member States shall introduce additional safeguards for the authorisation and execution of the sale of the debtor's business or part thereof. These safeguards shall at least include the duty for the monitor and the insolvency practitioner to reject the offer from the party closely related to the debtor if the offer does not satisfy the best-interest-of-creditors test.

existing offer, Member States shall introduce additional safeguards for the authorisation and execution of the sale of the debtor's business or part thereof. These safeguards shall at least include ***requiring the valuation of the business market price*** and the duty for the monitor and the insolvency practitioner to reject the offer from the party closely related to the debtor if the offer does not satisfy the best-interest-of-creditors test.

Or. en

**Amendment 420**  
**René Repasi**

**Proposal for a directive**  
**Article 32 – paragraph 2**

*Text proposed by the Commission*

2. Where the offer made by a party closely related to the debtor is the only existing offer, Member States shall introduce additional safeguards for the authorisation and execution of the sale of the debtor's business or part thereof. These safeguards shall at least include the duty for the monitor and the insolvency practitioner to reject the offer from the party closely related to the debtor if the offer does not satisfy the ***best-interest-of-creditors test***.

*Amendment*

2. Where the offer made by a party closely related to the debtor is the only existing offer, Member States shall introduce additional safeguards for the authorisation and execution of the sale of the debtor's business or part thereof. These safeguards shall at least include the duty for the monitor and the insolvency practitioner to reject the offer from the party closely related to the debtor if the offer does not satisfy the ***broader objectives of insolvency legislation as listed in Article 1(1a)***.

Or. en

**Amendment 421**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 33 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) grantors of interim financing are entitled to receive payment with priority in the context of subsequent insolvency procedures in relation to other creditors that would otherwise have superior or equal claims;

(b) grantors of interim financing are entitled to receive payment with priority in the context of subsequent insolvency procedures in relation to other creditors that would otherwise have superior or equal claims. ***This pre-emption shall not apply for proceeds of the liquidation of the pledged or mortgaged assets, for the part allocated to the pledgee or mortgage creditors;***

Or. it

#### *Justification*

*It should be clarified that the interests of existing secured creditors cannot be prejudiced in any way. In particular, in establishing that providers of interim financing are entitled to receive priority payment in subsequent insolvency proceedings, the proposal in (b) and (c) should clarify that this priority does not apply to the proceeds from the liquidation of assets subject to a pledge or mortgage, in respect of the portion allocated to pledgees or mortgagees.*

#### **Amendment 422 Mario Mantovani**

#### **Proposal for a directive Article 33 – paragraph 1 – point c**

##### *Text proposed by the Commission*

(c) security interests over the sale proceeds may be granted to providers of interim financing in order to secure reimbursement;

##### *Amendment*

(c) security interests over the sale proceeds may be granted to providers of interim financing in order to secure reimbursement. ***This pre-emption shall not apply for proceeds of the liquidation of the pledged or mortgaged assets, for the part allocated to the pledgee or mortgage creditors;***

Or. it

#### *Justification*

*The proposed directive allows the bidder to offset the price offered against its secured claims against the debtor, prohibiting this practice when it results in an unfair advantage in the bidding process. The provision allows for offsetting provided that the value of such credits is significantly lower than the market value of the company. It seems preferable to specify the compensable value of any secured claims of the bidder at 20 %*

**Amendment 423**  
**Arash Saeidi**

**Proposal for a directive**  
**Article 33 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Member States may reserve a right of pre-emption where they consider that the insolvent company is of essential strategic interest.**

Or. en

**Amendment 424**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 33 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Member States shall ensure that, where security interests encumber the business subject to the pre-pack proceedings, creditors who are the beneficiaries of those security interests may offset their claims in their bid only provided that the value of those claims is significantly below market value of the business.

3. Member States shall ensure that, where security interests encumber the business subject to the pre-pack proceedings, creditors who are the beneficiaries of those security interests may offset their claims in their bid only provided that the value of those claims is significantly below market value of the business, **and does not exceed the limit of 20 % of the amount of the credit secured against the debtor's assets.**

Or. it

*Justification*

*The proposed directive allows the bidder to offset the price offered against its secured claims against the debtor, prohibiting this practice when it results in an unfair advantage in the bidding process. The provision allows for offsetting provided that the value of such credits is significantly lower than the market value of the company. It seems preferable to specify the compensable value of any secured claims of the bidder at 20 %*

**Amendment 425**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 34 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 34a**

***Protection of the interests of the workers***

***1. Member States shall ensure that individual and collective workers' rights, under Union and national labour law are not affected by the pre-pack proceedings framework.***

***2. Member States shall ensure that workers' representatives are informed and consulted by:***

***(i) the debtor, before requesting the court to appoint a monitor in accordance with Article 22;***

***(ii) the court, before appointing the monitor as insolvency practitioner in accordance with Article 25 and before authorising the execution of the sale of the debtor's business or part thereof; and***

***(iii) the monitor, before issuing an opinion in accordance with Article 26.***

***The Commission shall provide guidelines and Member States shall implement rules to ensure the effectiveness of the information and consultation under the first subparagraph.***

Or. en

**Amendment 426**  
**Ton Diepeveen**

**Proposal for a directive**  
**Title V**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. nl

*Justification*

*Countries such as the Netherlands and Sweden do not have a duty to request the opening of insolvency proceedings and have the highest asset recovery ratios in the whole of the European Union. There is no causal connection at all between a duty to request the opening of insolvency proceedings and the asset recovery ratio. Furthermore, during the stakeholder consultation the experts were not asked to give their views on the introduction of such a duty.*

**Amendment 427**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Title V**

*Text proposed by the Commission*

*Amendment*

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

DIRECTORS' DUTY TO ***TAKE ALL  
POSSIBLE MEASURES TO PREVENT  
BANKRUPTCY AND TO*** REQUEST  
THE OPENING OF INSOLVENCY  
PROCEEDINGS AND CIVIL LIABILITY

Or. en

**Amendment 428**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Article 36 – title**

*Text proposed by the Commission*

*Amendment*

Duty to request the opening of insolvency  
proceedings

Duty to ***take all possible measures to  
prevent bankruptcy and to*** request the  
opening of insolvency proceedings

Or. en

## Amendment 429

René Repasi

### Proposal for a directive Article 36 – paragraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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

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

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

Or. en

## Amendment 430

Kira Marie Peter-Hansen

on behalf of the Greens/EFA Group

### Proposal for a directive Article 36 – paragraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

- 1. Member States shall ensure that, where a legal entity becomes insolvent, its directors are obliged to take all possible measures to prevent bankruptcy before submitting a request for the opening of*

be expected to have been aware that the legal entity is insolvent.

insolvency proceedings.

**1a.** *A request shall be submitted with the court no later than 3 months after the directors became aware or can reasonably be expected to have been aware that the legal entity is insolvent and after having assessed all possible measures to prevent bankruptcy.*

Or. en

**Amendment 431**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 36 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

Member States shall ensure that, where a legal entity becomes insolvent ***in accordance with national law***, its directors are obliged to submit a request for the opening of insolvency proceedings with the court no later than 3 months after the directors became aware that the legal entity is insolvent ***in accordance with national law***.

Or. nl

**Amendment 432**  
**Billy Kelleher**

**Proposal for a directive**  
**Article 36 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***By way of derogation, Member States may provide that the duty referred to in Article 36(1) is suspended for directors who are natural persons and are personally liable for all of the company's debt where at***

*least the following two conditions are met:*

*(a) the directors inform 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 (1), in order to ensure that the creditors are able to request the opening of insolvency proceedings; and,*

*(b) the directors take measures that are designed to avoid damage for the creditors of the insolvent company, provided such measures were reasonably likely to give rise to the same or a better outcome for creditors.*

Or. en

**Amendment 433**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 36 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 36a*

*By way of derogation from Article 36, Member States may take measures equivalent to the duty to request the opening of insolvency proceedings, such as regulations on making directors personally liable.*

Or. nl

**Amendment 434**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 37 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that the

1. Member States shall ensure that the

insolvent legal entity's directors are liable for damages incurred by creditors as a result of their failure to comply with the obligation laid down in Article 36.

insolvent legal entity's directors are liable for damages incurred by creditors **and workers** as a result of their failure to comply with the obligation laid down in Article 36.

Or. en

#### **Amendment 435**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

#### **Proposal for a directive**

#### **Article 37 – paragraph 2**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

Or. en

#### **Amendment 436**

**René Repasi**

#### **Proposal for a directive**

#### **Article 37 – paragraph 2**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

Or. en

**Amendment 437**

**Billy Kelleher**

**Proposal for a directive**

**Article 37 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. If Member States have exercised the option in Article 36(1a), they shall ensure that the directors who take measures referred to in Article 36(1a) are liable, in accordance with national law, for damage caused to creditors that would not otherwise have been caused had the opening of insolvency proceedings been requested in accordance with Article 36(1). 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, provided such measures were reasonably likely to give rise to the same or a better outcome for creditors.**

Or. en

**Amendment 438**

**Ton Diepeveen**

**Proposal for a directive**

**Title VI**

*Text proposed by the Commission*

*Amendment*

**[...]**

**deleted**

Or. nl

*Justification*

*By definition, microenterprises do not have a cross-border dimension. Introducing regulations for such enterprises therefore contravenes the principles of proportionality and subsidiarity.*

**Amendment 439**  
**Mario Mantovani**

**Proposal for a directive**  
**Title VI**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. it

*Justification*

*The procedure envisaged for microenterprises is not satisfactory: on the one hand, it appears to place an excessive burden on the debtor, while on the other, it does not provide sufficient protection for creditors.*

**Amendment 440**  
**Billy Kelleher**

**Proposal for a directive**  
**Title VI**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. en

**Amendment 441**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Title VI**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. en

## Amendment 442

René Repasi

### Proposal for a directive Article 38 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. Member States shall ensure that microenterprises, when insolvent, ***with less than 20 creditors at the moment of the request for opening an insolvency proceeding***, have access to simplified winding-up proceedings that comply with the provisions laid down in this Title.

Or. en

## Amendment 443

Ton Diepeveen

### Proposal for a directive Article 38 – paragraph 2

*Text proposed by the Commission*

2. A microenterprise shall be deemed insolvent for the purposes of simplified winding-up proceedings when it is generally unable to pay its debts as they mature. Member States shall set out the conditions under which a microenterprise is deemed to be generally unable to pay its debts as they mature and ensure that these conditions are clear, simple and easily ascertainable by the microenterprise concerned.

*Amendment*

2. A microenterprise shall be deemed insolvent, ***in accordance with national law***, for the purposes of simplified winding-up proceedings when it is generally unable to pay its debts as they mature. Member States shall set out the conditions under which a microenterprise is deemed to be generally unable to pay its debts as they mature and ensure that these conditions are clear, simple and easily ascertainable by the microenterprise concerned.

Or. nl

## Amendment 444

René Repasi

### Proposal for a directive Article 38 – paragraph 2

*Text proposed by the Commission*

2. A microenterprise shall be deemed insolvent for the purposes of simplified winding-up proceedings when it is generally unable to pay its debts as they mature. Member States shall set out the conditions under which a microenterprise is deemed to be generally unable to pay its debts as they mature and ensure that these conditions are clear, simple and easily ascertainable by the microenterprise concerned.

*Amendment*

2. A microenterprise shall be deemed insolvent for the purposes of simplified winding-up proceedings when it is generally unable to pay its debts as they mature ***or when its debts exceed its assets.*** Member States shall set out the conditions under which a microenterprise is deemed to be generally unable to pay its debts as they mature and ensure that these conditions are clear, simple and easily ascertainable by the microenterprise concerned.

Or. en

**Amendment 445**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 38 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Member States may determine the scope of application of the simplified winding-up procedure by using more restrictive size parameters than those laid down for microenterprises.***

Or. it

*Justification*

*Given that in many Member States the fabric of microenterprises, as defined by the EU, is very extensive, it seems appropriate to leave it up to each Member State to determine which enterprises should be covered by the new simplified rules, rather than adhering to a rigid definition of microenterprises.*

**Amendment 446**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 39**

*Text proposed by the Commission*

*Amendment*

**Article 39**

**deleted**

***Insolvency practitioner***

***Member States shall ensure that in simplified winding-up proceedings an insolvency practitioner may only be appointed if both of the following conditions are met:***

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

***(b) the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that requested the appointment.***

Or. nl

*Justification*

*A situation in which a court has to rely solely on the information supplied by the debtor himself opens the door to abuse.*

**Amendment 447  
Jana Toom**

**Proposal for a directive  
Article 39 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that in simplified winding-up proceedings an insolvency practitioner ***may only*** be appointed ***if both*** of the following conditions are met:

Member States shall ensure that in simplified winding-up proceedings an insolvency practitioner ***is appointed, except where the debtor, a creditor or a group of creditors requests that one not*** be appointed.

***A request as referred to in the first subparagraph shall be granted only where all of the following conditions are met:***

***(a) the debtor has an up-to-date balance sheet;***

***(b) the debtor has consistently complied with its tax and social security***

*obligations;*

*(c) the creditors' interests are adequately protected.*

Or. en

## **Amendment 448**

**René Repasi**

### **Proposal for a directive**

#### **Article 39 – paragraph 1 – introductory part**

##### *Text proposed by the Commission*

Member States shall ensure that in simplified winding-up proceedings an insolvency practitioner *may only be* appointed if **both of** the following conditions are met:

##### *Amendment*

Member States shall ensure that in simplified winding-up proceedings ***the debtor, a creditor or a group of creditors may request that*** an insolvency practitioner ***is not*** appointed if the following conditions are met:

Or. en

## **Amendment 449**

**Mario Mantovani**

### **Proposal for a directive**

#### **Article 39 – paragraph 1**

##### *Text proposed by the Commission*

Member States shall ensure that in simplified winding-up proceedings an insolvency practitioner *may only be* appointed ***if both of the following conditions are met:***

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

***(b) the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that requested the appointment.***

##### *Amendment*

Member States shall ensure that in simplified winding-up proceedings an insolvency practitioner ***is always*** appointed.

Or. it

## *Justification*

*The failure to provide for the appointment of an insolvency practitioner for microenterprises raises several issues: It will not be possible to prepare the balance sheet due to a lack of information and the absence of a professional who is able to verify the existence of receivables.*

### **Amendment 450**

**Arash Saeidi**

#### **Proposal for a directive**

##### **Article 39 – paragraph 1 – introductory part**

*Text proposed by the Commission*

Member States *shall ensure that in simplified winding-up proceedings* an insolvency practitioner *may only* be appointed *if both of the following conditions are met:*

*Amendment*

Member States *may determine whether and in which circumstances* an insolvency practitioner *is to* be appointed *in simplified winding-up proceedings.*

Or. en

### **Amendment 451**

**Arash Saeidi**

#### **Proposal for a directive**

##### **Article 39 – paragraph 1 – point a**

*Text proposed by the Commission*

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

*Amendment*

*deleted*

Or. en

### **Amendment 452**

**Jana Toom**

#### **Proposal for a directive**

##### **Article 39 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 453**

**René Repasi**

**Proposal for a directive**

**Article 39 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

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

*(a) the microenterprise has a current balance sheet;*

Or. en

**Amendment 454**

**Jana Toom**

**Proposal for a directive**

**Article 39 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that requested the appointment.*

*deleted*

Or. en

**Amendment 455**

**Arash Saeidi**

**Proposal for a directive**

**Article 39 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that*

*deleted*

*requested the appointment.*

Or. en

**Amendment 456**

**René Repasi**

**Proposal for a directive**

**Article 39 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) *the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that requested the appointment.*

*Amendment*

(b) *the microenterprise has an up-to-date accounting system;*

Or. en

**Amendment 457**

**René Repasi**

**Proposal for a directive**

**Article 39 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*(ba) the microenterprise has an asset list;*

*Amendment*

Or. en

**Amendment 458**

**René Repasi**

**Proposal for a directive**

**Article 39 – paragraph 1 – point b b (new)**

*Text proposed by the Commission*

*(bb) the microenterprise has an up-to-date list of creditors;*

*Amendment*

Or. en

**Amendment 459**  
**René Repasi**

**Proposal for a directive**  
**Article 39 – paragraph 1 – point b c (new)**

*Text proposed by the Commission*

*Amendment*

***(bc) the microenterprise has met payments on taxes and social security contributions.***

Or. en

**Amendment 460**  
**René Repasi**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 461**  
**Jana Toom**

**Proposal for a directive**  
**Article 39 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 39a***

***Remuneration of insolvency practitioner***  
***1. Member States shall set a maximum threshold for the remuneration of insolvency practitioners appointed in***

*simplified winding-up proceedings.*

**2. Member States shall ensure that the remuneration of insolvency practitioners appointed in simplified winding-up proceedings is paid where the assets of the insolvency estate are insufficient to cover it.**

Or. en

**Amendment 462**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 41 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Member States shall ensure that insolvent microenterprises can submit a request for the opening of simplified winding-up proceedings to a competent authority. ***Member States may also determine the scope of application of the simplified winding-up procedure by using more restrictive size parameters than those laid down for microenterprises.***

Or. it

*Justification*

*Given that in many Member States the fabric of microenterprises, as defined by the EU, is very extensive, it seems appropriate to leave it up to each Member State to determine which enterprises should be covered by the new simplified rules, rather than adhering to a rigid definition of microenterprises.*

**Amendment 463**  
**René Repasi**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 464**  
**René Repasi**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 465**  
**Ton Diepeveen**

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

*Text proposed by the Commission*

(b) the debtor is not insolvent pursuant to Article 38(2) of this Directive;

*Amendment*

(b) the debtor is not insolvent, *in accordance with national law, and* pursuant to Article 38(2) of this Directive;

Or. nl

**Amendment 466**  
**René Repasi**

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

*Text proposed by the Commission*

*Amendment*

**2a. Paragraph 1 shall not apply to employees' claims.**

***By way of derogation from the first subparagraph, Member States may apply paragraph 1 to employees' claims if, and to the extent that, Member States ensure that the payment of such claims is guaranteed in preventive restructuring frameworks at a similar level of protection.***

Or. en

**Amendment 467**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 45 – paragraph 2 – subparagraph 2 – point b**

*Text proposed by the Commission*

(b) an invitation to the creditor to lodge any claims not included in the list referred to in point (a) or to rectify any incorrect statement on those claims no later than 30 days upon the receipt of the notice;

*Amendment*

(b) an invitation to the creditor to lodge any claims not included in the list referred to in point (a) or to rectify any incorrect statement on those claims no later than 30 days upon the receipt of the notice, ***or within 60 days if the creditor can prove that it were not aware of this situation.***

Or. it

*Justification*

*The intent is to safeguard the satisfaction of creditors acting in good faith.*

**Amendment 468**  
**René Repasi**

**Proposal for a directive**  
**Article 47 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the pursuit and enforcement of avoidance actions shall not be mandatory, but shall be left to the discretion of

*Amendment*

(a) the pursuit and enforcement of avoidance actions shall not be mandatory, but shall be left to the discretion of

creditors or, *when applicable*, of the insolvency practitioner;

creditors or, *where appointed*, of the insolvency practitioner;

Or. en

#### **Amendment 469**

**Arash Saeidi**

#### **Proposal for a directive**

#### **Article 48 – paragraph 1**

##### *Text proposed by the Commission*

1. Member States shall ensure that the competent authority or, where appointed, the insolvency practitioner, determines the final list of assets that constitute the insolvency estate, *on the basis of the* list of assets *submitted* by the debtor *as referred to Article 41(4), point (c) and of the relevant additional information received thereafter*.

##### *Amendment*

1. Member States shall ensure that the competent authority or, where appointed, the insolvency practitioner, determines the final list of assets that constitute the insolvency estate, *no insolvency practitioner has been appointed, the final* list of assets *shall be prepared* by the debtor *and approved by the court or the competent authority*.

Or. en

#### **Amendment 470**

**René Repasi**

#### **Proposal for a directive**

#### **Article 48 – paragraph 2**

##### *Text proposed by the Commission*

2. The assets of the insolvency estate shall include assets in the possession of the debtor at the time of the opening of simplified winding-up proceedings, assets acquired after the submission of the request for opening of such proceedings and assets recovered through avoidance actions or other actions.

##### *Amendment*

2. The assets of the insolvency estate shall include assets in the possession of the debtor at the time of the opening of simplified winding-up proceedings, assets acquired after the submission of the request for opening of such proceedings and assets recovered through avoidance actions or other actions.

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

**Amendment 471**

**Jana Toom**

**Proposal for a directive**

**Article 48 – paragraph 2**

*Text proposed by the Commission*

2. The assets of the insolvency estate shall include assets in the ***possession*** of the debtor at the time of the opening of simplified winding-up proceedings, assets acquired after the submission of the request for opening of such proceedings and assets recovered through avoidance actions or other actions.

*Amendment*

2. The assets of the insolvency estate shall include assets in the ***ownership*** of the debtor at the time of the opening of simplified winding-up proceedings, assets acquired after the submission of the request for opening of such proceedings and assets recovered through avoidance actions or other actions.

Or. en

**Amendment 472**

**René Repasi**

**Proposal for a directive**

**Article 49 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall ensure that in simplified winding-up proceedings once the insolvency estate has been established and the list of claims against the debtor has been determined, the competent authority:

*Amendment*

1. Member States shall ensure that in simplified winding-up proceedings once the insolvency estate has been established and the list of claims against the debtor has been determined, the competent authority, ***or, where appointed, the insolvency practitioner:***

Or. en

**Amendment 473**

**René Repasi**

**Proposal for a directive**

**Article 49 – paragraph 3**

*Text proposed by the Commission*

3. Member States shall ensure that, where the competent authority proceeds with the realisation of the debtor's assets as referred to in paragraph 1, point (a), the competent authority also specifies the means of realisation of the assets. Other means than the sale of the debtor's assets through an electronic public auction may only be selected, if their use is deemed more appropriate in light of the nature of the assets or the circumstances of the proceedings.

*Amendment*

3. Member States shall ensure that, where the competent authority ***or, where appointed, the insolvency practitioner*** proceeds with the realisation of the debtor's assets as referred to in paragraph 1, point (a), the competent authority also specifies the means of realisation of the assets. Other means than the sale of the debtor's assets through an electronic public auction may only be selected, if their use is deemed more appropriate in light of the nature of the assets or the circumstances of the proceedings.

Or. en

**Amendment 474**

**Arash Saeidi**

**Proposal for a directive  
Article 54 – paragraph 4**

*Text proposed by the Commission*

4. ***If there are bids both on the acquisition of the debtor's business as a going concern and on the individual assets of the insolvency estate, creditors shall decide which of the alternatives they prefer.***

*Amendment*

4. ***Member States may set out the conditions under which the debtor's existing shareholders or directors are authorised to participate in the electronic auction and bid.***

Or. en

**Amendment 475**

**Arash Saeidi**

**Proposal for a directive  
Article 55 – paragraph 2**

*Text proposed by the Commission*

2. Member States ***shall*** ensure that ***the decision on*** the closure of the simplified

*Amendment*

2. Member States ensure that the closure of the simplified winding-up

winding-up proceedings **includes a specification of the time period leading to** the discharge of the entrepreneur debtor or of those **founders, owners or members** of an unlimited liability microenterprise **debtor who are personally liable** for the **debts of the debtor**.

proceedings **allows** the discharge of the entrepreneur debtor or of those **equity holders** of an unlimited liability microenterprise, **and may provide** for the **time period leading to such discharge, subject to the exceptions provided in Title III of Directive (EU) 2019/1023**.

Or. en

**Amendment 476**  
**Ton Diepeveen**

**Proposal for a directive**  
**Title VI – Chapter 5**

*Text proposed by the Commission*

*Amendment*

[...]

**deleted**

Or. nl

**Amendment 477**  
**Ton Diepeveen**

**Proposal for a directive**  
**Title VII**

*Text proposed by the Commission*

*Amendment*

[...]

**deleted**

Or. nl

*Justification*

*There is no evidence at all that creditors' committees affect the recovery of debts and healthy assets belonging to an estate. Furthermore, the costs associated with these creditors' committees are charged to the estates, which runs counter to the rationale behind this Directive, which is to maximise the value of the recoverable assets of the failed undertaking. Moreover, in practice it is extremely difficult to find creditors who are prepared to sit on creditors' committees for small and medium-sized insolvencies. Creditors' committees therefore only make sense in the case of very large insolvencies.*

## Amendment 478

Ton Diepeveen

### Proposal for a directive Article 58 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. Member States shall ensure that a creditors' committee is established only if the general meeting of creditors so decides, ***and only in the case of insolvencies of undertakings with more than 250 employees, an annual turnover of more than EUR 50 million and fixed assets at the end of the financial year of more than EUR 43 million, in accordance with Directive 2013/34/EU.***

Or. nl

*Justification*

*The establishment of a creditors' committee is cumbersome and expensive, and the costs are charged to the estate. Establishing such creditors' committees therefore only makes sense in the case of very large estates and they should thus be restricted to large undertakings in accordance with the prevailing European definition.*

## Amendment 479

Ton Diepeveen

### Proposal for a directive Article 58 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

***By way of derogation from paragraph (1) Member States may provide that, before the opening of insolvency proceedings, the creditors' committee can be established as of the submission of a request for the opening of insolvency proceedings where one or more creditors submit a request to the court for the establishment of such committee.***

*Amendment*

***deleted***

Or. nl

**Amendment 480**  
**Arash Saeidi**

**Proposal for a directive**  
**Article 58 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Member States may provide that a creditors' committee is not established, where, due to circumstances related to the nature and scope of the debtor's business, it determines that the costs of the establishment of the creditors' committee would outweigh the benefits.**

Or. en

**Amendment 481**  
**Maravillas Abadía Jover**

**Proposal for a directive**  
**Article 58 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Member States shall ensure that all creditors holding claims that make up the debtor's liabilities are notified in all insolvency proceedings.**

Or. en

**Amendment 482**  
**Maravillas Abadía Jover**

**Proposal for a directive**  
**Article 58 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

**3b. Member States shall implement processes or tools that enable insolvency proceedings and the reasons for insolvency alleged by the insolvent debtor to be monitored by all affected creditors.**

Or. en

**Amendment 483**  
**Maravillas Abadía Jover**

**Proposal for a directive**  
**Article 58 – paragraph 3 c (new)**

*Text proposed by the Commission*

*Amendment*

**3c. Member States shall ensure that all affected parties may participate in the appointment of an insolvency practitioner in no-asset insolvency proceedings regardless of their participation percentage in the debtor's total liabilities.**

Or. en

**Amendment 484**  
**Arash Saeidi**

**Proposal for a directive**  
**Article 59 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that the **members** of the creditors' committee **are appointed either at the general meeting of creditors or by decision of the court, within 30 days from the date of the opening of the proceedings as referred to in Article 24(2), point (a) of Regulation (EU) 2015/848.**

1. Member States shall ensure that the **composition** of the creditors' committee **fairly reflects, as far as possible, the different interests of creditors. Member States may provide that persons other than creditors are eligible for the appointment to the creditors' committee. In particular, Member States shall ensure**

*the mandatory inclusion of one or more representatives of the employees, or their representatives, in the creditors' committee, where employees are creditors or their interests are significantly affected by the restructuring process.*

Or. en

**Amendment 485**  
**Jana Toom, Billy Kelleher**

**Proposal for a directive**  
**Article 59 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that the members of the creditors' committee are appointed either at the general meeting of creditors or by decision of the court, within 30 days from the date of the opening of the proceedings as referred to in Article 24(2), point (a) of Regulation (EU) 2015/848.

*Amendment*

1. ***Where the establishment of the creditors' committee is decided pursuant to Article 58,*** Member States shall ensure that the members of the creditors' committee are appointed either at the general meeting of creditors or by decision of the court, within 30 days from the date of the opening of the proceedings as referred to in Article 24(2), point (a) of Regulation (EU) 2015/848.

Or. en

**Amendment 486**  
**Ton Diepeveen**

**Proposal for a directive**  
**Article 59 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that the members of the creditors' committee are appointed ***either*** at the general meeting of creditors ***or by decision of the court,*** within 30 days from the date of the opening of the proceedings as referred to in Article 24(2), point (a) of Regulation (EU)

*Amendment*

1. Member States shall ensure that the members of the creditors' committee are appointed at the general meeting of creditors within 30 days from the date of the opening of the proceedings as referred to in Article 24(2), point (a) of Regulation (EU) 2015/848.

**Amendment 487**

**René Repasi**

**Proposal for a directive  
Article 59 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 488**

**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive  
Article 59 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 489**

**Arash Saeidi**

**Proposal for a directive  
Article 59 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

3. Member States shall ensure that the **members** appointed **to** the creditors' committee **proportionately** reflect the different interests of creditors or groups **of creditors, including employees**.

Or. en

**Amendment 490**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Article 59 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Member States shall ensure that the creditors' committee includes members that are employees or representatives of employees, without prejudice to existing information and consultation rights for workers. Persons who are not creditors may also be appointed as members of the creditors' committee.**

Or. en

**Amendment 491**

**Jana Toom, Billy Kelleher**

**Proposal for a directive**

**Article 59 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Without prejudice to paragraph 3, Member States shall ensure that the creditors' committee includes a representative of the employees of the debtor's business.**

**Amendment 492**

**Billy Kelleher**

**Proposal for a directive**

**Article 59 – paragraph 4 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States may provide that persons other than creditors are eligible for the appointment to the creditors' committee.***

Or. en

**Amendment 493**

**René Repasi**

**Proposal for a directive**

**Article 61**

*Text proposed by the Commission*

*Amendment*

***Article 61***

***deleted***

***Number of members***

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

Or. en

**Amendment 494**

**Mario Mantovani**

**Proposal for a directive**

**Article 61 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that the number of members composing the

Member States shall ensure that the number of members composing the

creditors' committee *is at least 3 and does not exceed 7*.

creditors' committee is *representative of the interests of all creditors*..

Or. it

*Justification*

*Limiting the number of members does not guarantee that the interests of all creditors are truly represented. If the number is limited, there is a risk that the interests of certain categories of creditors will not be represented.*

**Amendment 495**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Article 61 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

Member States shall ensure that the number of members composing the creditors' committee is at least 3.

Or. en

**Amendment 496**

**Kira Marie Peter-Hansen**

on behalf of the Greens/EFA Group

**Proposal for a directive**

**Article 64 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Member States shall ensure that the creditors' committee's function is to ensure that in the conduct of the insolvency proceedings the creditors' interests are protected and individual creditors are involved.

*Amendment*

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

Or. en

**Amendment 497**  
**René Repasi**

**Proposal for a directive**  
**Article 64 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Member States shall ensure that the creditors' committee's function is to ensure that in the conduct of the insolvency proceedings the creditors' interests are protected and individual creditors are involved.

*Amendment*

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

Or. en

**Amendment 498**  
**Arash Saeidi**

**Proposal for a directive**  
**Article 64 – paragraph 1 – subparagraph 2 – point e**

*Text proposed by the Commission*

(e) the duty to provide information to the creditors represented by the creditors' committee and the right to receive information from those creditors;

*Amendment*

(e) **notwithstanding Article 63(2)(d)**, the duty to provide information to the creditors represented by the creditors' committee and the right to receive information from those creditors;

Or. en

**Amendment 499**  
**Mario Mantovani**

**Proposal for a directive**  
**Article 68 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) be drawn up and submitted to the Commission in **an official language** of the

*Amendment*

(a) be drawn up and submitted to the Commission in **all languages** of the

Union by [6 months after the deadline for transposition of this Directive];

**European** Union by [6 months after the deadline for transposition of this Directive];

Or. it

**Amendment 500**  
**René Repasi**

**Proposal for a directive**  
**Article 69 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 69a**

**Data reporting**

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

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

Or. en

**Amendment 501**  
**René Repasi**

**Proposal for a directive**  
**Article 70 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

By [5 years after the deadline for transposition of this Directive], the Commission shall present to the European

By [5 years after the deadline for transposition of this Directive], the Commission shall present to the European

Parliament, the Council and the European Economic and Social Committee a report on the application and impact of this Directive.

Parliament, the Council and the European Economic and Social Committee a report on the application and impact ***and its effectiveness in reaching the objectives*** of this Directive. ***The report shall be accompanied, if appropriate, by a legislative proposal.***

Or. en

**Amendment 502**  
**Kira Marie Peter-Hansen**  
on behalf of the Greens/EFA Group

**Proposal for a directive**  
**Article 70 – paragraph 1**

*Text proposed by the Commission*

By [5 years after the deadline for transposition of this Directive], the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application and impact of this Directive.

*Amendment*

By [5 years after the deadline for transposition of this Directive] ***and every 5 years thereafter***, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application and impact of this Directive.

Or. en