Harmonising certain aspects of insolvency law

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The Committee on Legal Affairs adopted the report by Emil RADEV (EPP, BG) on the proposal for a directive of the European Parliament and of the Council harmonising certain aspects of insolvency law.

The competent committee recommended that the European Parliament adopt its position at first reading by amending the Commission's proposal as follows.

Minimum standards

The minimum standards provided for in this Directive should aim at approximating the insolvency laws of the Member States, taking into account in particular the following objectives: (i) maximising legal certainty as to the value of companies; (ii) improving the efficiency of insolvency proceedings, both in terms of costs and length; (iii) improving the predictability and fairness of the distribution of value among creditors; and (iv) safeguarding the activities and viability of companies.

Revocable actions

Transactions that are detrimental to creditors must be more effectively challenged. The amendments clarify the conditions for closing loopholes that previously allowed transactions to escape scrutiny. These amendments thus strengthen creditor protection.

Asset tracing mechanisms

Insolvency practitioners should be allowed to **access information contained in bank account registers** indirectly, by requesting the courts or administrative authorities designated in their Member State to be granted access to the bank account registers and to carry out searches.

Access to bank account information should only be granted on a case-by-case basis, where relevant for specific insolvency proceedings for the purpose of identifying and tracing assets belonging to the insolvency estate, as well as assets subject to avoidance actions. However, Member States should be able to adopt or maintain national rules allowing insolvency practitioners to access and consult their bank account registers.

For the purposes of asset tracing, insolvency practitioners should be granted timely access to certain categories of **beneficial ownership** information, such as the name, month and year of birth, country of residence and nationality of the beneficial owner, and the nature and extent of the beneficial interests held.

In order to ensure efficient asset tracing in **cross-border insolvency proceedings**, insolvency practitioners appointed in a Member State should be granted expeditious access to national registers and databases, even if those registers and databases are located in a Member State other than that in which the insolvency practitioner has been appointed. Access should be granted without the intervention of a court or an intermediate authority.

Access to national registers and databases should not be denied solely on the grounds that the applicant is an insolvency practitioner established in another Member State.

Pre-pack proceedings

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.

To guarantee that the sale process is prepared in a fair way, the monitor should be independent of 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.

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: namely a preparation phase and a liquidation phase. Those phases should respect the principles applicable to judicial proceedings in each Member State.

Deadline for the duty to submit a request for the opening of insolvency proceedings

Member States should set a time limit for the obligation to submit an application for the opening of insolvency proceedings. That time limit should not exceed three months from the date on which the directors became aware of the company's insolvency. If the company regains its solvency before that time limit, Member States should be able to provide that a new time limit starts to run if the company subsequently becomes insolvent again.

Microenterprises

Member States should be able to maintain or introduce **simplified winding-up procedures** for micro-enterprises, while respecting the high standards of transparency and fairness provided for in this Directive and other relevant instruments. The procedures should be available even where the debtor has no assets or where the available assets are insufficient to cover the costs of the proceedings or the cost of the intervention of an insolvency practitioner.

Members noted that significant legal uncertainties, risks of abuse and administrative burden transferred to SMEs can be caused/ triggered by the provisions related to simplified winding-up proceedings for microenterprises under Title VI. The framework lacks adequate protections for creditors and other stakeholders, potentially resulting in financial losses and reduced trust in insolvency proceedings.

Creditors' Committees

This Directive should strengthen the provisions on creditors' committees, ensuring fair representation of all categories of creditors, including cross-border creditors, and increased transparency in the decision-making process. Fair representation of creditors in the creditors' committee is particularly important for workers who are creditors and for whom a delay in the payment of wages could pose an existential threat.