

# Restructuring and insolvency at EU level: A proposal for a new Directive!

Myriam Maily writes about the newly published Proposal for a Directive released by the European Commission in relation to the EU's Capital Markets Union in the context of a limited progress on the final stage of implementation of the EU Preventive Restructuring Directive (2019) in the remaining Member States after the Summer period.



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## New EU measures to further develop the EU's Capital Markets Union (CMU): a Proposal for a Directive Harmonising Certain Aspects of Insolvency Law (COM(2022) 702 Final)

On 7 December 2022, the European Commission proposed new measures to further develop the EU's Capital Markets Union (CMU), including a proposal for a Directive harmonising certain aspects of Insolvency Law.

The proposal for a Directive targets the three key dimensions of insolvency law: (i) the recovery of assets from the liquidated insolvency estate; (ii) the efficiency of proceedings; and (iii) the predictable and fair distribution of recovered value among creditors.

The proposed Directive is divided into nine titles: general provisions (Title I), avoidance actions (Title II), tracing assets (Title III), pre-pack proceedings (Title IV), duties of directors (Title V), simplified winding-up proceedings for microenterprises (Title VI), creditors' committee (Title VII) sets out provisions on the creditors' committee, measures strengthening transparency of national laws on insolvency proceedings (Title VIII) and final provisions (Title IX).

For example, the Proposal includes rules on actions to preserve the insolvency estate (i.e. avoiding actions by debtors that would reduce the value that

creditors can get), on creditors' committees to ensure a fair distribution of the recovered value among creditors; on so-called "pre-pack" proceedings (i.e. where the sale of the business is agreed before the insolvency starts) and on the duty on directors to timely file for insolvency to avoid that the value of the company deteriorates.

It also introduces a simplified regime for microenterprises to lower the costs of winding them down and to enable the companies' owners to be discharged from debt, granting them a fresh start as entrepreneurs.

It also requires Member States to produce an information factsheet, summarising the essential elements of their national insolvency laws to facilitate decisions by a cross-border investor.

For more information, please visit our website at: [www.insol-europe.org/technical-content/introduction](http://www.insol-europe.org/technical-content/introduction)

### Have your say!

The Proposal for a Directive harmonising certain aspects of insolvency law (COM(2022) 702 final) is open for feedback from **8 December 2022 – 1 March 2023** (midnight Brussels time), the eight-week feedback period being extended every day until the adopted proposal is available in all EU languages.

INSOL Europe members' contributions are very important as all feedback received will be summarised by the European Commission and presented to the

European Parliament and Council with the aim of feeding into the legislative debate.

You can write in any official language of the EU (including English) by a free text (4000 characters maximum) or by adding an attachment (files must be less than 5MB). Please be aware that feedback received will also be published on the site of the European Commission.

To have your say, you will need to adhere to the feedback rules and to register or login using your account from <https://tinyurl.com/5t5y94ab>

## Limited progress on the final stage of implementation of the Directive on Restructuring and Insolvency in all EU Member States

Mainly due to the delay of national legislative processes, a number of EU Member States have not yet implemented the EU Directive into their national laws. As a reminder, the deadline for the transposition of the Directive was 17 July 2022.

On 21 September 2022, the European Commission published its intention to send letters of formal notice to Member States that have failed to notify national measures fully transposing it, namely, Belgium, Bulgaria, Cyprus, Czech Republic, Luxembourg, Latvia, Malta, the Netherlands, Poland and Slovenia.

While the full implementation of the EU Directive by all EU Member States will not therefore



*The Proposal is open for feedback from December 2022 – March 2023*



take place in 2022, Dutch, Cypriot and Maltese Acts implementing the EU Directive on Insolvency, Restructuring and Second Chance have however been adopted end of year 2022.

The progress of the implementation of the EU Directive in EU Member States is still available on the INSOL Europe website at: [www.insol-europe.org/tracker-eu-directive-on-restructuring-and-insolvency](http://www.insol-europe.org/tracker-eu-directive-on-restructuring-and-insolvency).

### INSOL Europe/ LexisPSL Joint Research on implementation of EU Directive 2019/1023

As a reminder, this research looks at how the EU Member States as well as the UK (before Brexit) have implemented Directive (EU) 2019/1023 as part of the Joint Project between INSOL Europe and LexisPSL to track implementation.

At the time of writing, reports from the following 21 EU Member States are available: Austria, Croatia, Cyprus (on a draft bill), Czech Republic (on a draft bill), Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Portugal, Romania, Slovakia, Slovenia (on a draft bill), Spain, Sweden, the Netherlands (on a draft bill) and the UK.

Individual articles, as well as the consolidated table are available at [www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023](http://www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023).

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### National Insolvency Statistics

On a **national** level, quarterly insolvency statistics have been published for Italy (Q1 2022), France (Q3 2022 – company insolvencies only) as well as for England & Wales and Northern Ireland & Scotland (Q3 2022 – both company and individual insolvencies).

Short commentaries on Italian and Finnish insolvency statistics in 2022, on the Greek unified Solvency Registry as well as a report on the first year of functioning of simplified restructuring proceedings in Poland (as at February 2022 and available in English) have also been made available to INSOL Europe Members. I am grateful to Nicola Martinelli from Studio Corno Avvocati, Jan Lilius from Hannes Snellman Attorneys, Yiannis Bazinas from Bazinas Law Firm and Karol Tatara & Mateusz Kaliński from Tatara & Partners for sharing this information.

At the **European** level, a link on statistics in relation to declarations of bankruptcies published by Eurostat on a quarterly basis has also been added for the benefit of the

For updates on new technical content recently published on the INSOL Europe website, visit: [www.insol-europe.org/technical-content/introduction](http://www.insol-europe.org/technical-content/introduction) or contact Myriam Mailly by email: [technical@insol-europe.org](mailto:technical@insol-europe.org)



## Other Useful Links

### Coffee Breaks Series 2022

> [www.insol-europe.org/publications/web-series](http://www.insol-europe.org/publications/web-series)

### Updated Insolvency Laws

> [www.insol-europe.org/technical-content/updated-insolvency-laws](http://www.insol-europe.org/technical-content/updated-insolvency-laws)

### National Insolvency Statistics

> [www.insol-europe.org/technical-content/national-insolvency-statistics](http://www.insol-europe.org/technical-content/national-insolvency-statistics)

### EIR Case Register

> <http://tinyurl.com/y7tf2zc4>

### European Insolvency Regulation

> [www.insol-europe.org/technical-content/useful-links-to-be-aware-of-before-applying-the-recast-insolvency-regulation-2015848](http://www.insol-europe.org/technical-content/useful-links-to-be-aware-of-before-applying-the-recast-insolvency-regulation-2015848)

> [www.insol-europe.org/technical-content/outcomes-of-national-insolvency-proceedings-within-the-scope-of-the-eir-recast](http://www.insol-europe.org/technical-content/outcomes-of-national-insolvency-proceedings-within-the-scope-of-the-eir-recast)

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> [www.insol-europe.org/technical-content/state-of-play-of-national-insolvency-data-by-outcomes-currently-available](http://www.insol-europe.org/technical-content/state-of-play-of-national-insolvency-data-by-outcomes-currently-available)

> [www.insol-europe.org/national-texts-dealing-with-the-eir-2015](http://www.insol-europe.org/national-texts-dealing-with-the-eir-2015)

### EU Directive on Restructuring and Insolvency (2019)

> [www.insol-europe.org/technical-content/eu-draft-directive](http://www.insol-europe.org/technical-content/eu-draft-directive)

> [www.insol-europe.org/technical-content/eu-directive-on-restructuring-and-insolvency](http://www.insol-europe.org/technical-content/eu-directive-on-restructuring-and-insolvency)

### Brexit Publications

> [www.insol-europe.org/technical-content/brexit-publications](http://www.insol-europe.org/technical-content/brexit-publications)

### USBC Chapter 15 Database

> [www.insol-europe.org/technical-content/introduction](http://www.insol-europe.org/technical-content/introduction)

### Academic Forum Publications

> [www.insol-europe.org/academic-forum-documents](http://www.insol-europe.org/academic-forum-documents)

> [www.insol-europe.org/academic-forum-news](http://www.insol-europe.org/academic-forum-news)

INSOL Europe members (latest edition of 17 November 2022). Are indeed available quarterly comparison in the EU and euro area, quarterly comparison by Member State and quarterly comparison by activity.

On a **global** level, a link to the 2021 Global Bankruptcy Report from Dun & Bradstreet Worldwide Network (May 2022) has also been made available.

All these relevant sources of information are available from the dedicated technical section of our website at:

[www.insol-europe.org/technical-content/national-insolvency-statistics](http://www.insol-europe.org/technical-content/national-insolvency-statistics). ■