

## **Definition of Insolvency**

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On 7 December 2022, the European Commission published a proposal for a Directive on harmonising certain aspects of insolvency law. It contains, among others, proposals for harmonisation of transactions avoidance laws that follow the Model Law which we developed in our previous project on “Harmonisation of Transactions Avoidance Laws” (Intersentia, 2022).

Encouraged by this successful impact of academic research, we have decided to start a second independent (i.e. not funded by the EU or any interest group) research project which builds upon the first one. The topic of this project will be “Definition of insolvency”. This was one of the issues that was on the agenda of the European Commission. However, it turned out that the EC decided not to pursue this because, apparently, the subject was too difficult and the time was not yet ripe for harmonisation. In our view, it is necessary to address this topic as soon as possible, not least because the proposal for the Directive refers to insolvency as a triggering event (e.g. in Art. 36) or the debtor’s inability to pay (see Art. 6(1)(a), in accordance with § 2(1)No. 1 of our Model Law), but without defining these terms. Hence, this question needs answers sooner or later and we intend – as with our first project – to present these answers to the European Commission in due time, so that it can be taken account of in the discussion of the Commission proposals.

Regarding methodology, we are planning to proceed in a similar way as with the first project. We have already established a working group consisting of national reporters from all Member States of the EU and the UK. We have drafted a questionnaire on the national laws regarding our topic. This questionnaire has been sent to the national reporters who are requested to complete it from the perspective of their national laws. The reports were due by end of August. Having evaluated the answers, we will draft a report on our topic and discuss this with the national reporters at a conference scheduled for November 2023. As regards methodology, we would again prefer to use a principle-based approach, even though it can be assumed that it will have less significance here than it did the first time around.

At the point in time when the INSOL Europe academic conference takes place, we will have the answers from the national reporters and will have formulated a first draft of our report. Hence, it is the ideal time to introduce our preliminary findings and discuss them with the audience, hoping that this will enrich our research, contribute to the outcome, and support the attempts to harmonise insolvency laws in Europe.