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EU Insolvency Directive must protect – not harm – people

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Robert van Moorsel (Corporate & Recovery.legal) explains why the draft of the EU Insolvency Directive as it stands ("draft") is harmful for a healthy and balanced business environment and why the draft needs to take care of the people of the EU. There are two specific topics that need to be adjusted or removed from the draft. Being:

- the proposed liability of managing directors – against creditors that are already "in the money" – that forces directors to start the pre pack or bankruptcy, and
- the proposed EU pre pack itself, that fails to barricade harmful *intra-concern* pre packs and explicitly extinguishes the rights of the most vulnerable workers.

Furthermore, the presentation for the Academic Forum explains and highlights:

- why the EU Insolvency Directive *should* award involuntary creditors (such as victims of environmental pollution) an absolute priority over all rights and entitlements of voluntary creditors. Involuntary creditors did not have a choice to become creditor, nor did they have a chance to assess and negotiate their position against the debtor and they also did not have the monetary benefits that voluntary creditors have collected and/or had in mind while entering into a relationship with the debtor. The absolute priority for involuntary creditors has been suggested in the US (and the Netherlands) by several scholars.

Robert C.M. van Moorsel is (co-)author of several publications regarding the above topics and has advised several members of the Dutch House of Representatives to make the Dutch Scheme WHOA more favourable for businesses and for vulnerable creditors and – earlier – on a proposal that would have obstructed intra-concern pre packs. Furthermore, he has advised members of the Dutch Senate to not adopt the Dutch pre pack law (WCO I) without rules that would protect the most vulnerable workers. Robert is an attorney-at-law at Corporate & Recovery.legal. The presentation echoes the March 2023 consultation reaction of Corporate & Recovery.legal on the draft EU Insolvency Directive.
https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12592-Insolvency-laws-increasing-convergence-of-national-laws-to-encourage-cross-border-investment/F3386735_en

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