**Mortgages and Transaction Avoidance under the Insolvency Directive**

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Across legal systems, mortgages are a prime target of avoidance actions, as illustrated, recently, in the Italian Supreme Court Judgement no. 22563 of 26 July 2023. Accordingly, across legal systems, mortgages which have been concluded in a suspect period before the opening of insolvency proceedings and/or which are considered detrimental to the body of creditors can be declared void. In our paper, we analyse how the introduction of the 2022 proposal could influence the assessment and outcome of avoidance actions with respect to these mortgages.

The *proposal of 7 December 2022* *harmonising certain aspects of insolvency law* promises to bring a new dawn, *inter alia*, for the regulation of transaction avoidance in EU Member States. Even though, nowadays, avoidance actions can be found across the domestic insolvency frameworks of the Member States, their exact criteria and legal consequences diverge. Therefore, the 2022 proposal hopes to bring more uniformity, and, hence, greater legal certainty on this matter, by outlining minimum harmonization standards to which the domestic laws of the Member States would have to comply. Consequently, this should benefit the freedom of capital movement in the EU and a greater integration of the EU’s capital markets.

The newly proposed avoidance rules may be particularly useful with respect to a specific kind of mortgages, i.e. ship mortgages. Ship mortgages are distinct from traditional mortgages because of their exposure to higher-ranked security interests in the form of maritime liens. These maritime liens are security interests with paramount priority, accorded by operation of law to certain categories of maritime creditors, such as seafarers and salvors. Insolvencies of shipping companies have revealed, however, how ship mortgagees can perform certain acts to gain priority over maritime liens after all. The question is whether the avoidance rules of the 2022 proposal would be able to target this controversialpriority of ship mortgages in a more uniform and adequate manner.

The answer could be found in Article 6 of the proposal governing the avoidance of preferences. This rule can target mortgages when they are perfected (presumably) to attain a preference over other creditors of the insolvent debtor, contravening the fundamental principle of insolvency law of *paritas creditorum*. Importantly, this provision only applies to *legal acts* that create such a preference. With respect to ship mortgages, however, it is questionable whether the acts causing their priority over maritime liens can be qualified as legal acts. Typically, their priority is created by *factual acts* by ship mortgagees, e.g. them exerting influence on the debtor-shipowner for the ship to sail at a time and to a place convenient to the mortgagee’s legal position. The *legal consequence* of such act is often a preferred position of the ship mortgage in the insolvency, but, if it does not concern a *legal act*, the transaction cannot be avoided. In our paper, we analyse further whether it is indeed true that such acts cannot be targeted by avoidance under the new proposed regime, and, if so, whether this is opportune from a normative perspective.