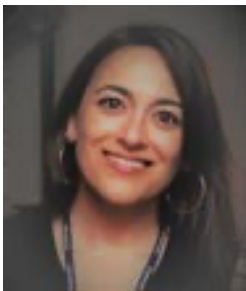


A closer look at...

Latest news on harmonisation of EU Insolvency Laws

Emmanuelle Inacio reports on the latest updates on this hot topic



EMMANUELLE INACIO
INSOL Europe
Chief Technical Officer

As regards the legislative status of the proposal of the European Commission (EC) for a directive harmonising certain aspects of insolvency of 7 December 2022, as a reminder, the Council reached a partial general approach on the compromise text on 13 December 2024.¹

Issued by the Hungarian Presidency, the partial general approach included Titles II (Avoidance actions), III (Tracing assets belonging to the insolvency estate), V (Directors' duty to request the opening of insolvency proceedings and civil liability) and VIII (Measures enhancing transparency of national insolvency laws) and the related provisions in Title I (General provisions).²

The work of the Polish Presidency has then focused on the titles not included in the partial general approach reached under Hungarian Presidency, namely Title IV (Pre-pack proceedings), Title VI (Winding-up of insolvent microenterprises), Title VII (Creditors' committee), and Title IX (Final provisions) and the related provision in Title I (General provisions). Additionally, in light of the negotiations on these titles, some provisions in Titles III, V and VIII needed to be adapted. Several compromise proposals on these titles were presented by the Polish Presidency at nine Working Party meetings and one Justice and Home Affairs (JHA) Council meeting to reach a

general approach. The Polish Presidency has sought to clarify the obligations for Member States, ensure that the proposal better reflects the specificities of national insolvency laws and find a balance between the different viewpoints of the Member States.

General approach of the Council

On 12 June 2025, the Council reached a general approach³ whose main elements of the compromise are set out below.

Title I (General provisions)

In Article 1, the scope of application of Title IV and VII has been limited to legal persons; however, Member States can extend the application of these provisions to natural persons who are entrepreneurs.

The definitions provided in Article 2(1), particularly those for "best-interest-of-creditors test" and "pre-pack proceedings" have been refined and further clarified in the recitals. Additionally, definitions for "preparation phase" and "liquidation phase" have been introduced to further illustrate the pre-pack mechanism.

Article 3a clarifies how the minimum-harmonisation nature of the Directive translates into the different provisions in the Directive: in the case of Title VII, this allows Member States to introduce measures that provide for greater participation of creditors in insolvency proceedings.

Title IV (Pre-pack mechanism)

The changes introduced in the compromise text aim to preserve the flexibility of the pre-pack mechanism, ensuring the sale of the business as a going concern without creating burdensome procedures.

While the sale of the business is typically prepared by the monitor, the compromise text clarifies that Member States can provide that the sale takes place following a public auction or upon approval by the creditors.

In response to concerns about the assignment of contracts, expressed at technical level and during the policy debate at the JHA Council in March 2025, the Presidency sought, on the one hand, to ensure that the interests of the counterparty on which a new contractual relationship is imposed are appropriately taken into account, and on the other hand, to ensure the effectiveness of pre-pack proceedings. As a result, the text provides that Member States may require the consent of the debtor's counterparty, depending on the type of contract, the quality of the parties, or the interests of the business. Additionally, Member States may allow the counterparty to terminate the assigned contract within three months of the assignment.

Lastly, the compromise text ensures that the creditors' interests are adequately safeguarded throughout the pre-pack mechanism.

“

The compromise text ensures that the creditors' interests are adequately safeguarded throughout the pre-pack mechanism

”

Title VI (Winding-up of insolvent microenterprises)

After discussing several compromise proposals at technical level, Title VI on the special regime for microenterprises has been removed from the compromise text due to concerns over its practical applicability, and its potential impact on existing national systems. Key issues raised included uncertainty over the definition of a microenterprise, the appointment of an insolvency practitioner, and the role of the court in the proceedings.

Title VII (Creditors' committee)

The main concern raised by Member States was that the committee might cause delays in proceedings or create unnecessary complexity, ultimately outweighing any advantages it might offer creditors. In response, the compromise text gives Member States the possibility of narrowing down the establishment of the creditors' committee to large enterprises. Additionally, the compromise text provides that the creditors' committee may be avoided where its establishment would outweigh its benefits.

The compromise text also simplifies and increases flexibility in the procedure for setting up the creditors' committee. It further clarifies the rights and duties of the creditors' committee, ensuring it remains effective and relevant in insolvency proceedings.

Title IX (Final provisions)

A new provision has been introduced allowing Member States to temporarily derogate from applying the provisions in Titles II (Avoidance actions), V (Directors' duty) and VII (Creditor's committee) in extraordinary situations which seriously disrupt economic activities at the level of the Member States or their regions. This measure is intended to mitigate the risk of widespread insolvencies, particularly where enforcing these provision could exacerbate the economic situation. However, any derogation must be proportionate

and strictly limited in scope and time to what is essential in order to address the extraordinary situation and is subject to oversight by the Commission.

Due to the complexity of national insolvency regimes and the need for a detailed evaluation of how the Directive interacts with existing national frameworks, the transposition period has been extended to three years. Member States facing specific challenges in implementing the Directive may further extend the transposition period by one year.

The compromise text also clarifies that workers' collective rights are not affected by the provisions in Titles IV and VII.

The general approach closes discussions at Council level and launches negotiations with the European Parliament under the Danish presidency (July-December 2025).

European Parliament draft report

In the European Parliament, as a reminder, the draft report by Emil Radev, EPP, the Rapporteur of the responsible Committee on Legal Affairs (JURI) of the EU Parliament, was published on 20 March 2025.⁴ Concerning the controversial provisions for liquidating insolvent microenterprises to strengthen procedural efficiency (Title VI), the Rapporteur has concluded that the best course of action is to remove Title VI from the Directive Proposal entirely, echoed by the general approach of the Council of 12 June 2025. This decision reflects the need to ensure that insolvency rules are both robust and resistant to manipulation. Indeed, microenterprises, due to their smaller scale and limited resources, require tailored insolvency procedures that provide a balance between efficiency and creditor protection. Following extensive consultations with stakeholders, including legal experts, industry representatives, and financial institutions, the Rapporteur has identified 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.⁵

The deadline for tabling amendments of the **JURI Committee** was 22 April 2025. The JURI Committee approved the report on **24 May 2025** with 19 votes for, 4 against and 0 abstentions and decided to open interinstitutional negotiations with the adopted report which was tabled for plenary on 1st July 2025 for first reading.⁶ The JURI Committee decision to enter into interinstitutional negotiations was announced in plenary on 7 July and confirmed on 8 July. The European Parliament will need now to vote in plenary on the adopted report on first reading.

The establishment of a special EU regime for insolvent microenterprises will be at the heart of the interinstitutional negotiations. ■

Footnote:

1 Emmanuelle INACIO, Progress on harmonisation of EU Insolvency Laws, Winter 2024/2025, Issue 98, p. 14-15.

2 <https://data.consilium.europa.eu/doc/document/ST-16283-2024-INIT/en/pdf>

3 <https://data.consilium.europa.eu/doc/document/ST-9257-2025-INIT/en/pdf>

4 Emmanuelle INACIO, Update on harmonisation of EU Insolvency Laws, Spring 2025, Issue 99, p. 16-17.

5 https://www.europarl.europa.eu/doceo/document/A-10-2025-0126_EN.html

6 https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-legal-affairs-ordinary-meeting_20250624-1215-COMMITTEE-JURI

Title VI on the special regime for microenterprises has been removed from the compromise text due to concerns over its practical applicability