A closer look at...

Simplified winding-up proceedings: The undead provision

Emmanuelle Inacio takes a closer look at the Directive harmonising certain aspects of insolvency law

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The Directive (EU) 2026/799 of the European Parliament and of the Council of 30 March 2026 harmonising certain aspects of insolvency law[1] was published in the Official Journal of the European Union on 1st April and will enter into force on 21 April. Member States will then have to transpose the Directive into national law by 22 January 2029.

The Directive addresses five pillars of minimum harmonisation in targeted areas of insolvency law: avoidance actions; pre-pack proceedings; asset tracing; creditors' committees; and duty to file for insolvency. The sixth pillar of minimum harmonisation of the European Commission's Directive proposal of 7 December 2022[2] devoted to simplified winding-up proceedings for microenterprises[3] (Title VI) has been removed from the final text of the directive.

As a reminder, provisions for liquidating insolvent microenterprises were introduced to strengthen procedural efficiency. According to the European Commission, the cost of ordinary insolvency procedures for these companies is prohibitively high and the possibility to benefit from a debt discharge would enable them to unblock entrepreneurship capital for new projects. Although the provisions of the original Directive proposal concerning simplified winding-up proceedings only apply to microenterprises, Member States could extend their application also to small and medium-sized enterprises that are not microenterprises. The original Article 39 of the Directive proposal titled "*insolvency practitioner*" provided that an insolvency practitioner will only be appointed if (a) the debtor, a creditor or a group of creditors requests such an appointment and (b) the costs of the intervention of the insolvency practitioner can be funded by the insolvency estate or by the party that requested the appointment.

In Recital 40 of the Directive proposal, the European Commission explained that

> "*in simplified winding-up proceedings, the appointment of an insolvency practitioner is usually unnecessary given the simple business operations carried out by the microenterprises that make their supervision by the competent authority possible and sufficient. Therefore, the debtor should remain in control of its assets and day-to-day operation of the business. At the same time, to ensure that simplified winding-up proceedings can be conducted effectively and efficiently, the debtor should, upon commencement of and throughout the proceedings, provide accurate, reliable and complete information relating to its financial position and business affairs.*"

These proposed provisions were seen as a threat to the insolvency practitioners who would almost never be appointed in winding-up proceedings for microenterprises. Indeed, most of the insolvency proceedings in Member States, where insolvency practitioners are appointed, are winding-up proceedings of microenterprises which could harm this profession. Moreover, these provisions were inconsistent with the ones strengthening the tracing of assets belonging to the insolvency estate since only an insolvency practitioner can request the courts to access bank account registries or access registries relating to the debtor's assets. Thus, access to this information would not be possible in the context of simplified winding-up proceedings for microenterprises and the value of the insolvency estate for creditors would not be protected. Therefore, the controversial Title VI has been removed from the final compromise text due to concerns over its practical applicability, and its potential impact on existing national systems. However, in order to promote an efficient and inclusive insolvency framework that supports entrepreneurship and economic renewal, Recital 62 and Art. 4(5) of the Directive state that Member States should be able to maintain or introduce simplified winding-up proceedings for microenterprises.

> *Simplified winding-up proceedings have re-emerged in the European Commission's proposal for a Regulation on the 28th regime corporate legal framework*

Interestingly, simplified winding-up proceedings have re-emerged in the European Commission's proposal for a Regulation on the 28th regime corporate legal framework - "EU Inc." recently published on 18 March 2026.[4]

The Regulation proposal establishes the framework for a new optional harmonised EU company, a limited liability company available across all Member States, that can be created by one or more natural or legal persons, from scratch or via conversions, mergers or divisions and must carry the "EU Inc." designation. The company must have its registered office in a Member State and its central administration or principal place of business within the EU. EU Inc. gains legal personality upon registration and is recognised in all Member States. The company is governed by the Regulation, its articles of association, and the national law of the Member State where it is registered. All procedures (formation, lifecycle management, shareholder communications and payments) must be fully available online. EU Inc. is subject to the employee participation rules of its Member State of registration, with additional safeguards applying in cross-border operations under Directive 2017/1132 relating to certain aspects of company law.

The proposal envisages incorporation within 48 hours, with registration costs capped at €100 where standard articles of association are used. The formation process is intended to rely on the existing EU digital identity infrastructure. The proposal also includes practical cross-border tools. The proposal is designed so that information filed once can then be re-used for related public processes, including tax identification, VAT and other registration requirements, rather than being submitted repeatedly to different authorities.

Regarding the insolvency proceedings of an EU Inc., the Proposal introduces a Chapter X on "*winding-up of insolvent EU Inc. companies that are innovative startups*" whose objective is to ensure that innovative startups[5] are wound up in an orderly manner, using a swift and cost-effective proceeding. The chapter's main aim is to simplify the procedure and lower the associated administrative costs. In principle, the debtor should remain in possession of the business' assets and affairs throughout the simplified winding up proceedings. Article 90(1) provides that an insolvency practitioner within the meaning of Article 2, point (5), of the European Insolvency Regulation Recast shall be appointed when simplified winding-up proceedings are opened. Article 90(2) adds that

> "*by way of derogation from paragraph 1, the debtor, a creditor or a group of creditors may request that an insolvency practitioner is not appointed provided that the EU Inc. innovative startup demonstrates that it has an up-to-date current balance sheet and that it has submitted its most recent required annual statement to the relevant national authorities.*"

The European Commission recognises in Rec. 69 that

> "*unlike in restructuring, in insolvent liquidation it is of utmost importance that the proceedings are conducted with the involvement of an insolvency practitioner who ensures compliance with all legal requirements and acts in the interests of the creditors. This expertise is needed, in particular, when it comes to the protection of the rights of employees or to the conformity with environmental law standards. The smooth administration of simplified winding-up proceedings for EU Inc. that are innovative startups therefore requires, as a general rule, the appointment of an insolvency practitioner. As an exception, however, and only when the prudent behaviour of the debtor in the period leading to insolvency justifies this, the debtor itself, a creditor or a group of creditors should have the right to request that the winding-up proceeding is conducted without an insolvency practitioner. It is within the discretion of the competent court or authority to decide whether or not to grant such derogation taking into account all relevant circumstances.*"

The European Commission shifted its position since 2022 as regards the appointment of the insolvency practitioner that should be the rule in simplified winding-up proceedings and leaves to the courts or authorities to decide on the exception to this rule.

The European Commission has asked the Parliament and Council to work towards an agreement by the end of 2026. ■

> "Chapter X aims to ensure that innovative startups are wound up in an orderly manner, using a swift and cost-effective proceeding"

Footnotes:

1 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202600799

2 https://eur-lex.europa.eu/legal content/EN/TXT/?uri=CELEX%3A52022PC0702&qid=1671112573694

3 Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36, ELI: http://data.europa.eu/eli/reco/2003/361/oj).

4 https://commission.europa.eu/document/download/3e9822aa-8cef-40a1-904e-a53fc68e7265_en?filename=Proposal%20for%20an%20EU%20Inc%20corporate%20legal%20framework.pdf

5 The Regulation proposal sits alongside a recommendation on the definition of innovative enterprises, innovative startups and innovative scaleups: https://research-and-innovation.ec.europa.eu/document/download/4e3cd140-47ed-4de2-be02-af1f344a2990_en