New challenges for insolvency: towards harmonisation or uniformisation?

Myriam Mailly reports on the latest updates in the EU and on the latest information made available to INSOL Europe members on the INSOL Europe website

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For updates on new technical content recently published on the INSOL Europe website, visit: www.insol-europe.org/technical-content/introduction or contact Myriam Mailly at: technical@insol-europe.org

> *The final version of the consolidated table produced by Lexis+UK based on the national reports from all the EU Member states and the UK, is now available*

Implementation Of EU Directive 2019/1023 – News Analysis 2026 – What is working or not at national level?

In addition to our dedicated **tracker**, the final version of the **consolidated table** produced by Lexis+UK based on the national reports from all the EU Member states and the UK, I am pleased to let you know that **news analysis 2026 is now available!**

To update this joint project, current and prospective contributors to the INSOL Europe/Lexis+ UK initiative were invited to indicate (1) whether practice has led to a more refined interpretation of the national legislation implementing the Restructuring Directive, or whether any other significant legislative developments have occurred since its implementation; (2) three aspects of the restructuring plan framework that they consider to be working particularly well in their jurisdiction; and (3) three aspects of the framework that, in their view, could be improved.

All the key documents are available at: *www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023*

Latest news from the EU (2026)

EU Directive Insolvency III of 30 March 2026: Towards a minimum harmonisation of national insolvency legislations

As mentioned in my previous Technical Column, Directive (EU) 2026/799 of the European Parliament and of the Council of 30 March 2026 harmonising certain aspects of insolvency law has now been published in the Official Journal and is available at: *https://eur-lex.europa.eu/eli/dir/2026/799/oj.*

It is now for the Member States to implement the Directive by **22 January 2029**. The countdown has begun and the next few years promise to be particularly interesting for those following developments in European insolvency law.

The 28th Regime: Progress of the legislative process and initial reflections on the proposed insolvency regime

Following the recommendations adopted by the European Parliament on 20 January 2026 and the European Commission's Proposal for a Regulation published on 18 March 2026 (COM(2026) 321 final), a public consultation was launched between 30 April and 25 June 2026.

For INSOL Europe members interested in reviewing the contributions resulting from that consultation, the principal issues under discussion concerning the **insolvency of an EU Inc. incorporated as an innovative start-up (Chapter X)** may be summarised as follows: (1) the introduction of simplified winding-up proceedings and a framework for the electronic auction of assets, which should, unless deemed inappropriate, be conducted and completed within six months from the filing of the application; (2) extensive use of electronic means of communication throughout all stages of the proceedings in order to reduce costs; (3) the appointment of an insolvency practitioner, subject to the court's discretion in specific circumstances; (4) safeguards ensuring compliance with legal requirements, protection of creditors' interests, employees' rights and environmental law standards; (5) the adoption of the debtor's inability to pay debts as they fall due as the criterion for the commencement of proceedings, subject where appropriate to additional conditions determined by Member States; (6) the introduction of harmonised EU standard forms enabling the commencement of proceedings without mandatory legal representation; (7) the possibility of a temporary stay of individual enforcement actions; and (8) the specialisation of national courts in disputes involving EU Inc. companies.

All comments received will be synthesised by the European Commission and presented to both the European Parliament and the Council with a view to informing the legislative debate during the forthcoming interinstitutional negotiations and facilitating the achievement of a political compromise before the end of 2026. At this stage, the proposal should be assessed as it currently stands in order to appreciate its potential implications, while recognising that the legislative process remains ongoing. The observations below are therefore based exclusively on publicly available information as at 29 May 2026.

A first step towards unification?

Several features of the proposal suggest that it may constitute a meaningful step towards a unified insolvency regime within the European Union.

First, the proposal introduces a

single test for the purpose of opening winding-up proceedings for all eligible EU Inc. companies, namely the debtor's inability to pay debts as they fall due. This cash-flow insolvency test appears both straightforward and predictable from the perspective of creditors, who would no longer be required to analyse the various commencement criteria applicable across Member States and their interpretation by national courts when assessing recovery prospects. Admittedly, a degree of uncertainty remains insofar as Member States retain some discretion to clarify the scope of this criterion.

Secondly, the proposal seeks to ensure that winding-up proceedings are completed within a maximum overall period of twelve months, consisting of an initial six-month period that may be extended where necessary. Such an objective does not appear unrealistic in such proceedings specifically designed to facilitate a debtor's rapid fresh start. Whether courts applying the proposed regime will be capable of consistently meeting those deadlines remains an open question. Nevertheless, the proposed specialisation of courts dealing with EU Inc. matters may contribute significantly to achieving that objective.

Efficiency gains may also arise from the full digitalisation of those proceedings. In particular, the extensive reliance on electronic communication tools should reduce both costs and administrative complexity, especially where creditors and debtors are located in different Member States.

Finally, while the absence of mandatory legal representation for eligible debtors may further reduce costs, it remains uncertain whether this feature will survive the trilogue negotiations. It is worth recalling that the possibility of dispensing with an insolvency practitioner was one of the more controversial aspects of the Commission's earlier proposal on the simplified liquidation of micro-enterprises (COM(2022) 702 final), which was ultimately abandoned in the course of negotiations leading to the adoption of the Insolvency III Directive.

A framework too narrow to deliver effective unification?

Notwithstanding its attractive features, the path towards unification envisaged by the proposal remains relatively narrow.

First, the proposed regime applies exclusively to EU Inc. companies qualifying as '*innovative start-ups*', a concept itself defined by a non-binding recommendation of the European Commission. Consequently, all other EU Inc. companies would continue to be governed by the insolvency laws of their respective Member States. In practical terms, the new framework is therefore likely to affect only a limited category of debtors. This concern partly explains why several professional organisations suggested during the first consultation phase that the scope of the proposal should be expanded.

For such an expansion to achieve meaningful unification, however, the European co-legislators would need to address several shortcomings in the current proposal and further develop the framework so as to move closer to a genuinely uniform European insolvency proceeding directly applicable throughout the Union. One notable omission concerns the ranking of claims. Given that the proposal specifically addresses the liquidation of eligible debtors, it is somewhat surprising that it does not contain provisions governing creditor priorities. As matters currently stand, issues such as the ranking of claims and retention of title arrangements would continue to be governed by national law. Indeed, Article 4(2) of COM(2026) 321 final provides that questions not expressly covered by the Regulation remain subject to the law of the Member State in which the EU Inc. has its registered office. Such an approach may significantly limit the effectiveness, predictability and uniformity of the proposed framework. Questions may also arise from the absence of a minimum capital requirement. In practice, creditors may be required to revisit their risk assessment methodologies and may increasingly seek personal guarantees or security interests from directors, shareholders or third parties as a condition for extending credit.

It should further be recalled that Directive (EU) 2026/799 harmonising certain aspects of insolvency law likewise does not address the ranking of claims. Equally noteworthy is the fact that the liquidation title initially included in the Commission's proposal concerning micro-enterprises (COM(2022) 702 final) ultimately disappeared from the final legislative package.

Next steps in the legislative process

Divergent positions among Member States illustrate both the political sensitivity and the technical complexity of introducing a unified insolvency regime for innovative start-up within the broader framework of the proposed 28th Regime. They also suggest that Chapter X is likely to remain one of the most debated aspects of the proposal during the forthcoming negotiations between the Parliament and the Council. The coming months will therefore be decisive in determining whether the 28th Regime will include or not dedicated provisions on simplified winding-up proceedings! ■

> *Divergent positions among Member States illustrate both the political sensitivity and the technical complexity of introducing a unified insolvency regime*

Further Information

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