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**New Horizons: Insolvency III, Winding-up of
Insolvent EU Inc. and beyond**

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Academic Conference Vilamoura • 14-15 Oct 2026



*New horizons: Insolvency III,
winding-up of insolvent
EU Inc. and beyond*

Wednesday 13:00 – 13:15

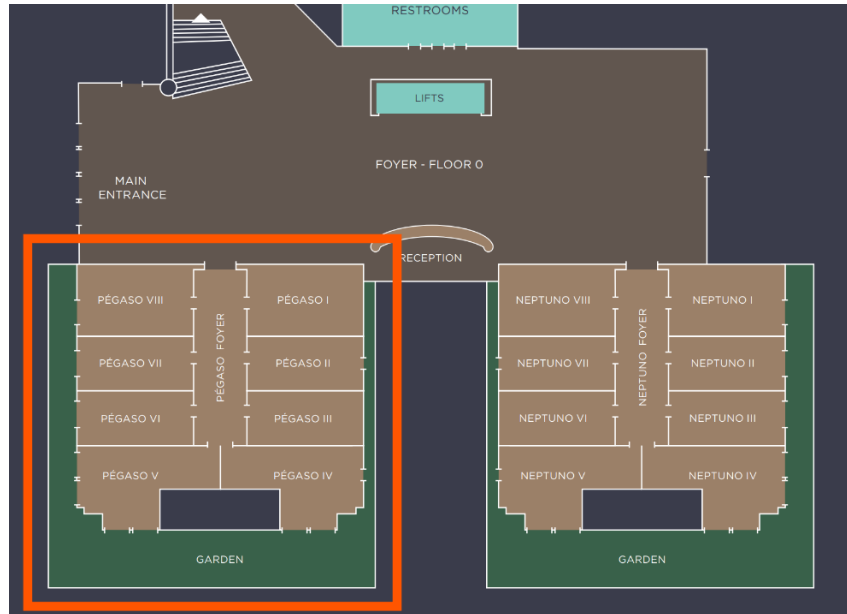
Welcome Address

**Jessica
Schmidt**

Chair of the INSOL Europe
Academic Forum



The Academic Conference will be taking the whole of the Pégaso space as outlined in red below:



Academic Locations

- **Academic Lunch (Wednesday):** The Voyage Restaurant (below the reception level: access is via stairs or lift)
- **Academic Conference room :** Pegaso
- **Academic Coffee breaks:** Pegaso Foyer
- **Academic Reception & Dinner :** The Voyage Restaurant (+ Terrace depending on the coastal winds)
- **Academic Lunch (Thursday):** The Voyage Restaurant



Academic materials (including latest updated technical programme)
available from <https://www.insol-europe.org/academic-forum-documents>

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2026 Vilamoura Academic Conference Materials

Technical programme as at 14 October 2026

Speaker materials - Wednesday 14 October

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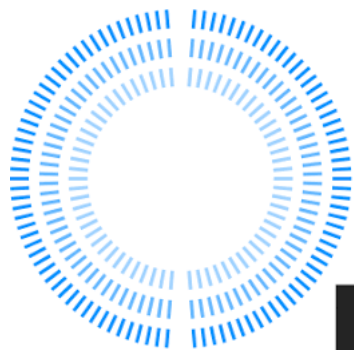
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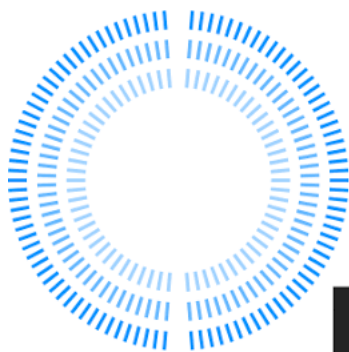
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Session One – EU Inc.: One Company, One Market, One Insolvency Framework?

Wednesday 13:15 – 15:00



Jessica Schmidt
Session Chair



**Alexandre Soveral
Martins**
EU Inc. Insolvency
Proceedings



Alexander Philipp Stern
From Creditor Protection to
Enabling Law? Rethinking
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The boundaries between
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proposal



EU Inc. Insolvency Proceedings

A Portuguese *Requiem*

Alexandre de Soveral Martins

Associate Professor with Aggregation

University of Coimbra – Law School

1. It was before it was

Proposal COM(2026) 321 FINAL – arts. 88-102

First Presidency compromise text 17.7.2026
(11829/26) – Deleted!!!

Second Presidency compromise 7.9.2026 –
Deleted!!!

2. Scope of application

Scope of application of arts. 88.º a 102.º

Art. 88.º, 1, of the Proposal

«This Chapter applies to EU Inc. companies which are innovative startups»

Innovative startups = Commission Recommendation (EU) 2026/720 of 18 March 2026 on the definition of innovative enterprises, innovative startups and innovative scaleups

An 'innovative startup' is an enterprise which fulfils all of the following criteria:

(a) it is an innovative enterprise within the meaning of point 2;

(b) it is an autonomous enterprise within the meaning of point 5.1.

(c) it is an enterprise which employs fewer than 100 persons and whose annual turnover or annual balance sheet total, or both, does not exceed EUR 10 million;

(d) it has been operating for less than 10 years following its registration.

An 'innovative enterprise' is an enterprise which fulfils at least one of the following criteria:

(a) in at least one of the three preceding financial years, it has incurred research and development costs representing either at least 10 % of its total operating costs or at least 5 % of its total net sales;

(b) having the objective of commercialisation, in the last three financial years it has developed, is developing or will, in the foreseeable future, develop products, services or business processes, which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure.

3. The first question

Art. 3 - EU Inc. shall be a legal form provided for in the legal order of each Member State, which shall have the following characteristics [...]

Art. 92, 3, a) : The standard form referred to in paragraph 2 shall contain at least the following information: (a) where an EU Inc. innovative startup is a legal person

Art. 102, 2: Where the debtor is a legal person, the decision on the closure [...]

Art. 92.º, 3, b):

3. The standard form referred to in paragraph 2 shall contain at least the following information:

(b) if an EU Inc. innovative startup is an entrepreneur, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth

4. To be or not to be (insolvent)

Art. 89

1. **Insolvent** EU Inc. innovative startups may request the opening of simplified winding-up proceedings in accordance with this Chapter.
2. An EU Inc. innovative startup shall be deemed insolvent for the purposes of simplified winding-up proceedings **when it is generally unable to pay its debts as they mature. Member States shall set out clear, simple and easily ascertainable conditions** under which an EU Inc. innovative startup is deemed to be generally unable to pay its debts as they mature.

5. Legitimacy to request

Article 92

Request for the opening of simplified winding-up proceedings

1. An insolvent EU Inc. innovative startup or any creditor of the insolvent EU Inc. innovative startup can submit a request for the opening of simplified winding-up proceedings to a court or a competent authority.

2. The request for the opening of simplified winding-up proceedings shall be submitted using a standard form. The representation by a lawyer or another legal professional shall not be compulsory.

[...]

6. The insolvency practitioner (or maybe not)

Article 90

Insolvency practitioner

1. An insolvency practitioner within the meaning of Article 2, point (5), of Regulation (EU) 2015/848 of the European Parliament and of the Council⁴⁹ shall be appointed when simplified winding-up proceedings are opened.

2. 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.

Article 96

Decision on the procedure to be used

1. In simplified winding-up proceedings, once the insolvency estate has been established, the insolvency practitioner, or in its absence the debtor, shall proceed with the realisation of the assets and the distribution of the proceeds.

7. The opening of the proceedings

Art. 93.^o - «The court or the competente authority shall, without delay, take a decision on the request for the opening of simplified winding-up proceedings [...]»

Without giving an opportunity for opposition if it is not the debtor requesting it?

And the right to defense? And the right to a fair trial?

Claim submitted to a court – national
Is a European jurisdiction set aside?"

8. The stay

Article 94

Stay of individual enforcement actions

Debtors shall benefit from a stay of individual enforcement actions by operation of law or upon the decision of the court or the competent authority conducting those proceedings.

9. Sale of assets

Article 97

Electronic auction systems for the sale of the assets of the debtor

1. Each Member State shall ensure, by [*PO: the last day of the 24th month after the date of entry into force of this Regulation*] that one or several electronic auction platforms are established and maintained in its territory to be used for the purpose of the sale of the assets of the insolvency estate of the EU Inc. innovative startup in simplified winding-up proceedings.

Art. 96, 2

2. However, the court or the competent authority may take a decision on the closure of the simplified winding-up proceedings without any realisation of the assets, where any of the following conditions is fulfilled:

- (a) there are no assets in the insolvency estate;
- (b) the assets of the insolvency estate are of such a low value that it would not justify the costs or administrative burden involved by their sale and the distribution of the proceeds;
- (c) the apparent value of encumbered assets is lower than the amount owed to the secured creditors and the court or the competent authority considers it justified to allow those secured creditors to take over the assets.

10. Closure of the proceedings

Art. 102

1. The court or the competent authority shall take a decision on the closure of the simplified winding-up proceedings within six months after the submission of the request for the opening of the simplified winding-up proceedings. The deadline may be extended once, by a maximum of six months in case additional time is needed for the sale of the debtor's business or assets, or for the distribution of proceeds. In the absence of such an extension or when the extended deadline expires, the procedure shall be automatically converted into an ordinary winding-up procedure.

2. Where the debtor is a legal person, the decision on the closure of the simplified winding-up proceedings shall trigger the relevant measures under national law leading to the dissolution of the legal personality of the EU Inc. innovative startup.

Thank you!

Cabedelo

Figueira da Foz - Portugal

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From Creditor Protection to Enabling Law?

—

Rethinking the Function of European Corporate Insolvency Law through the EU Inc.

Alexander P. Stern

Heidelberg University

Institute for German and European Corporate and Business Law

Characteristics of the EU Inc. Insolvency Proceedings



Available only to
innovative startups



Shortened period for
lodging claims



Accelerated
proceedings

Shareholder-Oriented Insolvency Proceedings

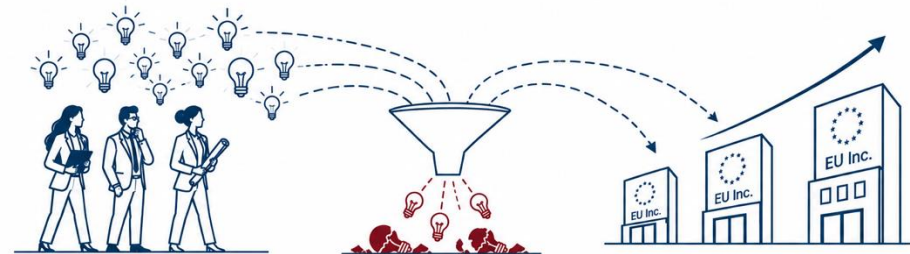


Function of the EU Inc. Insolvency Proceedings

- **Micro perspective:**
Facilitating the winding-up of one's own failed venture



- **Macro perspective:**
Filtering viable from non-viable innovations
Fostering continuous innovation





Evolution of European Corporate Insolvency Law

Creditor focus of the
2000 European
Insolvency Regulation

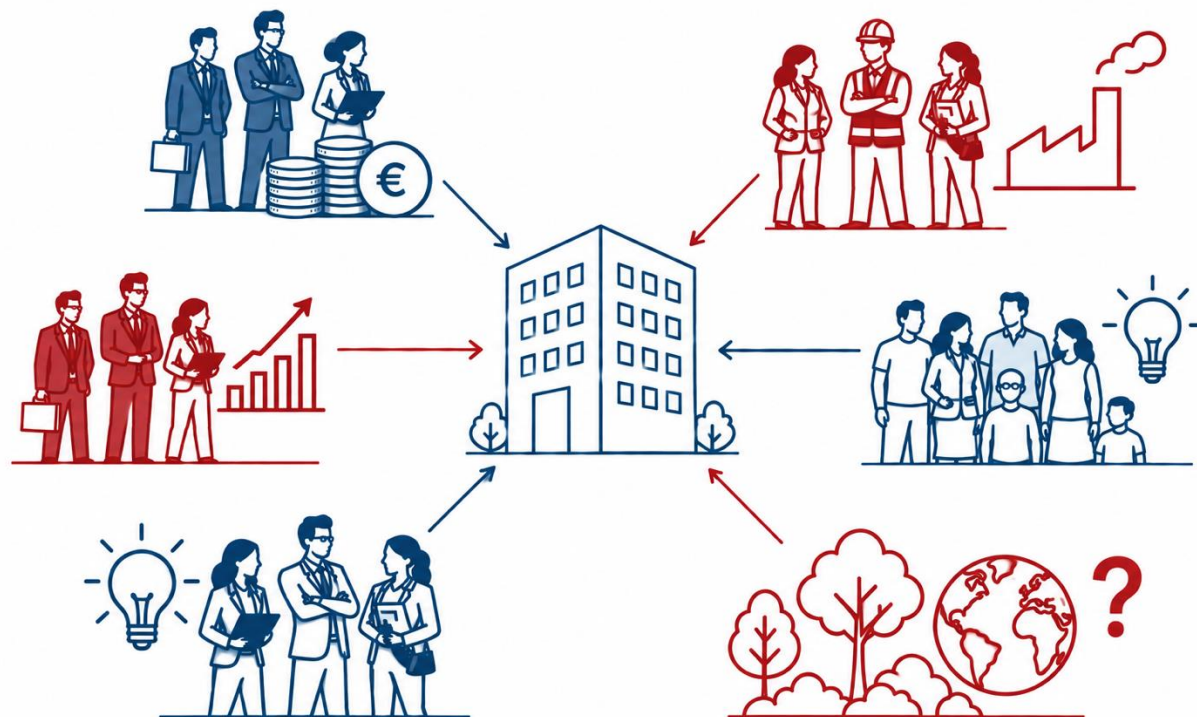
Broadening the focus to
employees and companies in the
2015 European Insolvency
Regulation and the
Restructuring Directive

Investor focus of the
Insolvency III Directive



A Guiding Principle?

- No coherent guiding principle?
- All groups addressed in insolvency law so far are stakeholders of the insolvent company
- The EU concept of the company: a multidimensional value creator



The Function of Insolvency Law in a Pluralistic Stakeholder Environment

- Balancing stakeholder interests
- The enabling function of the EU Inc. Insolvency Proceedings as one form of balancing
- Inherent limits to balancing stakeholder interests

Council Compromise – What Remains?

- Likely deletion of Articles 88 et seq.
- The EU Inc. as a lens on the overall function of European corporate insolvency law



Conclusions



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The boundaries between corporate law and insolvency law rules under the light of the EU Inc. proposal

Diogo Pessoa

Assistant Professor – Universidade Católica
Portuguesa / Lawyer – Rogério Alves &
Associados

The boundaries between corporate law and insolvency law

- The different concepts of insolvency within the Member States
- The cash-flow vs. balance sheet criteria
- The duty to file for insolvency

The current framework under the Directive (EU) 2017/1132

- Subscribed capital as a mandatory component
- Payment of dividends depending on Equity-(share capital + non-distributable reserves) – article 56
- The serious loss of subscribed capital – article 58

The different national rules implementing the serious loss of capital

- The border between corporate law and insolvency law
- The recapitalize or liquidate rule – e.g. the Italian model
- The purely informative system – e.g. the Portuguese model

The serious loss of capital

- Riduzione del capitale al disotto del minimo legale. Se, per la perdita di oltre un terzo del capitale, questo si riduce al disotto del minimo stabilito dal numero 4) dell'articolo 2463, gli amministratori devono senza indugio convocare l'assemblea per deliberare la riduzione del capitale ed il contemporaneo aumento del medesimo ad una cifra non inferiore al detto minimo. È fatta salva la possibilità di deliberare la trasformazione della società. – article 2482-ter/CC

The system under the EU,INC proposal

- The end of the mandatory share capital system – article 62/1
- «Shares of an EU Inc. company have no nominal value unless the articles of association provide otherwise. They accordingly do not represent a fraction of the company's capital. An EU Inc. company is also not required to have a minimum amount of capital, and conventional capital maintenance rules only apply to the extent the company chooses to build up capital. However, all distributions are subject to a balance sheet test and a solvency test which ensure that the company remains viable and able to satisfy claims of creditors. Both tests are also required for acquisitions of own shares by the company and for the redemption of shares».

Rules about distributions

- The assets of the company required to maintain the capital shall not be distributed to the shareholders, unless the capital is reduced in accordance with Art. 77. Article 63/1
- Any consideration or part of a consideration for shares that is not contributed to capital shall not be subject to the restriction under paragraph 1 and shall be freely distributable in accordance with Article 72, unless otherwise provided in the articles of associations or a decision to issue new shares. Article 63/2

Rules about distributions

- The decision on a distribution shall only take effect if the board of directors certifies in a statement signed by all directors that, based on the most recent financial statements and after thoroughly examining the company's current and future affairs, it has formed the reasonable opinion that following the distribution, (a) the total amount of assets as set out in the most recent balance sheet would remain greater than the total amount of liabilities and capital (balance sheet test), and (b) the company will be able to pay its debts as they fall due in the normal course of business in the 12 months following the date of the distribution (solvency test). – article 72/3

The serious loss of capital

- No equivalent in the proposal
- The absence of alternatives in some of the jurisdictions that abolished the minimum share capital
- «Abweichend von § 49 Abs. 3 muss die Versammlung der Gesellschafter bei drohender Zahlungsunfähigkeit unverzüglich einberufen werden» - §5a, Abs. 4 GmbHG.

Possible alternatives

- A GM for informative purposes when there is a loss of equity of a certain percentage when compared to the previous year.
- A GM for informative purposes when the equity reaches zero.
- The shift from Company Law to Insolvency Law.



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Coffee break



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Session Two – Streamlining Insolvency: New Challenges in Pre-Packs and Simplified Liquidations

Wednesday 15:30 – 17:00



Eugenio Vaccari
Session Chair



Elda Marques
Mergers and Divisions by
Acquisition in Pre-Pack
Proceedings: Asymmetric
Creditor Protection and the
Waiver of Company Law
Formalities under Directive
(EU) 2026/799



**João Pedro
Pinto-Ferreira**
Too Close to Be Fair?
Pre-Pack Sales to Related
Parties



**José Gonçalves
Machado**
The Present and Future of
Simplified Liquidation
Regimes for Micro and
Small Enterprises



Mergers and Divisions by Acquisition in Pre-Pack Proceedings

*Asymmetric creditor protection and the waiver of Company Law
formalities under Directive (EU) 2026/799*

Elda Marques

Assistant professor of Corporate Law at FEP – Faculty of Economics and Management of the
University of Porto

Integrated researcher at CIJ – Center of Interdisciplinary Research on Justice (Faculty of Law of
the University of Porto)

Agenda

- ☐ **Research Question: Mergers and Divisions as implementation techniques of Pre-packs**
- ☐ **The EU Directive 2026/799: Pre-Pack Sales and the Clean-Break Rule**
- ☐ **The EU Company Law Directive: Inclusion or Exclusion of Insolvent and Restructuring Companies**
- ☐ **Competing Rationales for Creditor Protection**
- ☐ **The 2022 Reform of the Spanish Insolvency Act**
- ☐ **The Case for Asymmetric Creditor Protection**
- ☐ **Conclusions and Policy Recommendations**

Directive (EU) 2026/799: A New Framework for Pre-Packs

Debtor

Business continuity

Transfer of permits/contracts

Operational preservation

Acquirer

EU framework for pre-pack sales

**Two-phase
structure**

**A first confidential preparatory
phase**

**A subsequent formal liquidation
phase**

Mergers and Divisions as Pre-Pack techniques?

EU company law framework for mergers and divisions of companies subject to insolvency proceedings or to preventive restructuring frameworks

Company Law Directive (regarding corporate structural reorganizations)

1. The sole mandatory prohibition (scope of application)

The Directive stipulates only one direct mandatory exclusion: companies in liquidation **where the distribution of assets has already commenced**

Company Law Directive (regarding corporate structural reorganizations)

2. Optional Member State Exclusion

For all other crisis situations, that is for companies subject to insolvency proceedings or to preventive restructuring frameworks, the Directive adopts an opt-out model for Member States

Need for coordination between corporate reorganizations law and insolvency law

Mergers and Divisions as Pre-Pack techniques?

A paradox arises regarding creditor protection

M&A

**Universal succession:
liabilities follow assets**

M&A VS Pre-Pack

Pre-Pack

**Article 31: clean-break
rule**

Mergers and Divisions as Pre-Pack techniques?

Insolvency-Law protection versus Company-Law protection

M&A

⇒ opposition rights
⇒ safeguards through
guarantees

M&A VS Pre-Pack

Pre-Pack

⇒ value maximization
⇒ competitive bidding
⇒ judicial supervision

Mergers and Divisions as Pre-Pack techniques?

Competing Rationales for Creditor Protection

Mechanism	M&A	Pre-Pack
Successor liability	Yes	No
Court Approval	No	Yes
Protection logic	Asset continuity	Market Value

Mergers and Divisions as Pre-Pack techniques?

Compatibility of executing a pre-pack through national and cross-border mergers or divisions

Primacy of insolvency law



Creditor interests are already safeguarded within the pre-pack framework



Additional protection under merger and division formalities becomes redundant

Mergers and Divisions as Pre-Pack techniques?

Spanish legal framework

Interface between structural modifications law (Royal Decree-Law 5/2023) and insolvency law (Law 16/2022)

Corporate reorganizations law (Royal Decree-Law 5/2023)

Article 3 Limitations and exclusions

- Liquidating companies may undertake structural transactions until asset distribution begins
- Companies subject to insolvency proceedings or restructuring plans may nevertheless undertake conversions, mergers, divisions, and universal transfers of assets and liabilities
- The best-interest-of-creditors test is assessed against the outcome of Spanish insolvency proceedings
- Cross-border conversions are prohibited for companies in insolvency liquidation
- The regime does not apply to entities subject to the EU bank resolution framework

Insolvency law (Royal Decree-Law 1/2020, amended by Law 16/2022)

Article 399 ter Merger, Division, or Universal Transfer of Assets and Liabilities in Implementation of a Composition Agreement

- If a composition agreement provides for a structural transaction, insolvency creditors lose the individual protection rights normally available under the structural modifications regime
- The registration of a merger, total division, or universal transfer of assets and liabilities that extinguishes the insolvent company automatically triggers the closure of the insolvency proceedings

Mergers and Divisions as Pre-Pack techniques?

Spanish legal framework

Comparative Overview of Insolvency Acquisition Routes (Royal Decree-Law 1/2020)

Criterion	Art. 399 ter (Composition)	Art. 614 (Liquidative Plan)	Art. 224 bis (Pre-pack)
Stage	Composition phase of insolvency proceedings	Pre-insolvency (prior to the opening of insolvency proceedings)	Pre-insolvency / early insolvency
Transaction	Express admissibility of <u>merger or division</u>	Business sale (hive-down to NewCo as an operational restructuring measure)	Business sale (hive-down as instrumental)
Debt	Transferred and restructured	Remains with parent	Remains with debtor
Creditor Protection	Composition vote (the individual safeguards provided by RDL 5/2023 are excluded)	Class voting + court confirmation	Judicial supervision
Outcome	Extinction through merger or division and termination of the insolvency proceedings.	Dissolution and pre-insolvency liquidation of the residual estate	Ordinary insolvency liquidation followed by the company's dissolution and extinction.

Mergers and Divisions as Pre-Pack techniques?

Asymmetric Creditor Protection

**Debtor (acquired
company) creditors**

protected through market-
tested value



Acquirer creditors

protected by the clean-
break rule, subject to
limited exceptions

Mergers and Divisions as Pre-Pack techniques?

Transposition of the pre-pack framework

If pre-pack involves a corporate reorganization

Insolvency creditors shall not
have the individual corporate
protection rights



Individual creditor-protection rights
of the acquiring company's
creditors should likewise be
disapplied where the clean-break
rule governs the transaction

The primacy of insolvency-law creditor protection over company-law creditor protection in pre-pack transactions should be recognized as the general legal solution



Thank you !

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Too Close to Be Fair? Pre-Pack Sales to Related Parties

João Pedro Pinto-Ferreira

Assistant Professor at NOVA School of Law | Integrated
Researcher of CEDIS

The central question

- The people most likely to save the business are often the same people most likely to exploit information advantages.
- Should persons with potential access to non-public information on the debtor be allowed to acquire the business or part thereof in a pre-pack?

The central question

Why should pre-pack sales to closely related parties be allowed?	Why should pre-pack sales to closely related parties be feared?
Knowledge of the business.	Asymmetry of information.
Preservation of the business (especially for MSE).	Potential to manipulate the process.
Maximization of the business's value.	Risk of asset partitioning (for legal persons).

Empirical data on pre-pack sales to connected persons in the United Kingdom

- Graham Review (2014)

**63% connected
party sales**

**Lower returns for
unsecured
creditors**

**29% of
businesses failed
within 3 years**



Business continuity and value maximisation?

Information Asymmetry

Party closely related to
the debtor

Superior
Information

Competitive
Advantage

Risk of
undervaluation

Harm to
creditors

Main competing regulatory models

RESTRICTIVE MODEL	CONTROLLED PERMISSION MODEL
France	Germany
Spain	United Kingdom
	Directive 2026/799

Directive 2026/799 clearly rejects prohibition and embraces controlled permission.

Pre-pack sales to parties closely related to the debtor in Directive (EU) 2026/799

- Article 35
 - Member States must allow pre-pack sales to closely related parties.
 - Certain safeguards must be in place to mitigate information asymmetry, ensure that the sale is transparent and maximize the business's value.

Pre-pack sales to parties closely related to the debtor in Directive 2026/799

**Disclosure of the
relation**

**Valuation of the
business**

**Sufficient time for
other parties to
submit a bid**

**Member States
may provide for
additional
safeguards**

Pre-pack sales to parties closely related to the debtor in Directive 2026/799

- What Article 35 gets right:
 - Increased transparency;
 - Specific valuation of the business for the purpose of the best-interest-of-creditors test.

Pre-pack sales to parties closely related to the debtor in Directive 2026/799

- Remaining concerns:
 - The information asymmetry persists;
 - No specific requirement that the evaluation of the business is to be carried out by an external evaluator.

Pre-pack sales to parties closely related to the debtor in Directive 2026/799

- Possible additional safeguards:
 - Independent valuation by an external expert;
 - Specific commitments regarding the preservation of the business after the pre-pack sale is concluded.

Main takeaways

- Pre-pack sales to closely related parties should not be prohibited.
- Information asymmetry justifies specific safeguards.
- While Article 35 moves in the right direction, Member States should consider additional safeguards.

Closing thought

The central challenge is not whether pre-pack sales to closely related parties should be allowed, but whether any procedural safeguard can truly eliminate their informational advantage.

Thank you! Questions?

joao.pintoferreira@novalaw.unl.pt



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The Present and Future of Simplified Liquidation Regimes for Micro Enterprises

under Spanish Insolvency Law

José Gonçalves Machado

Of Counsel, RSA - Raposo Subtil

Professor, Lusófona University



Simplified liquidation

**What should a simplified liquidation procedure
for microenterprises look like?**

- What are we simplifying, and why?
- Does size tell us enough about the procedure needed?
- Can the judge adapt a common procedure to the case?

What are we simplifying?

- **A collective process:** identify assets, establish claims and inform creditors.
- **Liquidation:** sell assets, or the business as a going concern, and distribute value under legal priorities.
- **Checks and remedies:** investigate possible recoveries and resolve disputes.
- **Safeguards:** reliable information, participation and a fair opportunity to object.

Why simplify?

- **Access:** fixed procedural costs may be too high for a small estate.
- **Lower costs:** standard forms, electronic communication and fewer unnecessary hearings.
- **Necessary work:** information, checks and remedies must remain available.
- Limited visible assets may still justify investigation.

Microenterprise: which criteria?

Size criteria	2022 EU proposal	Spain: TRLC Art. 685
Staff	Fewer than 10 persons	Average < 10 workers (previous year)
AND either	Turnover $\leq$ €2m OR balance-sheet total $\leq$ €2m	Turnover < €700,000 OR liabilities < €350,000

Calculation and group rules also apply.

Size and liquidation work

Illustrative cases: 8 workers, turnover €650,000, liabilities €340,000

Case A	Case B
Clear accounts	Leased specialised machinery
A few local creditors	Contracts and creditors abroad
Equipment ownership undisputed	Transfer to the owner to investigate

The European position in 2026

- **2022 proposal:** a dedicated Title VI on winding-up microenterprises.
- **Directive (EU) 2026/799:** the detailed regime did not enter the final text.
- **Article 4(5):** Member States may adopt or maintain simplified winding-up procedures.
- Spain offers a national model for assessing these choices.

One-size-fits-all or tailor-made?

- Size, complexity and wider economic impact are distinct considerations.
- “Too big to fail” raises concerns beyond the administration of the estate.
- Separate procedures for every size category can create further boundaries and access disputes.
- A common framework could allow adjustments to the work each case requires.

Case management in existing law

- **Portugal, CPC Arts. 6 and 547:** a duty to manage proceedings and adapt procedural acts.
- **Spain, TRLC Art. 713(5):** court appointment of a practitioner on specified grounds.
- **Spain, TRLC Art. 714:** expert valuation of the business or productive units.
- These provisions illustrate distinct, legally defined powers of intervention.

Adapting the procedure

Early assessment of assets, contracts, creditors and records

Case assessment	Possible response (if authorised)
Reliable information, no dispute	Standard steps and electronic sale
Disputed value or recovery claim	Valuation or further investigation
Dispute over one asset	Other steps continue if law permits

Flexibility and safeguards

- **Legal limits:** shorten or dispense with steps only where the statute allows.
- **Protected rights:** participation, legal priorities and effective remedies.
- **Review:** distinguish routine directions from decisions affecting protected rights.
- **Judicial expertise:** specialist knowledge, time and access to technical assistance.

A common framework

- Size may justify a lower-cost starting route.
- Actual complexity should guide the steps and checks required.
- Case management should permit limited, reasoned adjustments with clear safeguards.

A tailor-made approach within a common procedure



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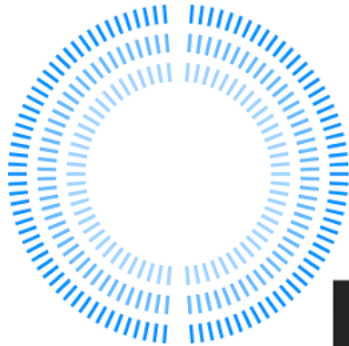
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