Linklaters

EU Insolvency Guide

2026



Introduction

The new EU framework harmonising certain aspects of insolvency law will bring important changes for businesses, creditors and investors operating across Europe. For in-house counsel, the period ahead will require close attention to both the common EU requirements and the choices made by individual Member States when implementing them.

This guide provides a practical overview of the current position **in eight EU jurisdictions** and considers how national insolvency laws may need to evolve.

The introductory EU chapter outlines the key features of the Directive, including the new rules on avoidance actions, asset tracing, pre-pack proceedings, directors' duties and creditors' committees.

Member States must implement the Directive by **22 January 2029**, with a later deadline of **10 July 2029** for the provisions concerning cross-border access to bank account information. We will continue to follow the process and publish further briefings and blog posts as national approaches take shape and the deadlines draw closer.

We wish you a useful and enriching read.

Linklaters teams

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European Union

On 1 April 2026, the Directive harmonising certain aspects of insolvency law was published in the Official Journal of the EU, marking the conclusion of a legislative process that began over three years ago. The Directive's primary goal is to address the legal uncertainty and commercial costs that arise from the fragmented national insolvency regimes. By establishing common minimum standards, the new framework is designed to make both domestic and cross-border insolvency proceedings more predictable, transparent, and efficient. For creditors and investors, this harmonisation aims to improve recovery rates and ultimately build greater confidence in the single market.

The Directive's key pillars

1. Avoidance actions

Title II of the Directive harmonises the rules for challenging legal acts perfected before the opening of insolvency proceedings that are detrimental to the general body of creditors, rendering them void, voidable, or unenforceable.

The final text establishes clear minimum "look-back" periods to create a more predictable framework for assessing transaction risk.

In principle, these are:

- Three months for preferential transactions.
- Twelve months for transactions made for no or a manifestly inadequate consideration.
- Two years for legal acts intentionally detrimental to the general body of creditors.

2. Asset tracing

To maximise the value of the insolvency estate, the Directive gives insolvency practitioners significantly enhanced tools to identify and trace a debtor's assets across borders.

A core innovation is the introduction of a framework for access to bank account information. Insolvency practitioners can request that a designated national court or authority in any Member State access and search national bank account registers through a new, centralised platform: the Bank Account Registers Interconnection System (BARIS).

In addition, insolvency practitioners must be given timely and direct access to:

- Beneficial ownership information held in interconnected central registers, without alerting the entity or beneficial owner concerned.
- A specified list of other national registers and databases (e.g., for real estate or vehicles), on a non-discriminatory basis, ensuring practitioners from other Member States face no less favourable conditions than domestic ones.

These measures are designed to make cross-border asset discovery and recovery more operationally effective and less reliant on cumbersome, ad-hoc court-to-court assistance.

3. Pre-pack proceedings

The Directive introduces a harmonised, two-phase framework for "pre-pack" sales. This was one of the most debated elements of the legislation. The process begins with a confidential "preparation phase" overseen by an independent monitor, followed by a "liquidation phase" where the sale is formally approved and executed after insolvency proceedings are opened.

Key features of the final framework include:

- Debtor control: The debtor remains in total or at least partial control of its assets and day-to-day operations during the preparation phase.
- Fair process: The sale process must be competitive, transparent, and fair, with the monitor documenting each step and confirming that the final bid satisfies the best-interest-of-creditors test.
- Transfer of contracts: In principle, essential executory contracts can be transferred to the buyer without the counterparty's consent, helping to preserve going-concern value. However, Member States may introduce safeguards and exceptions.



European Union

4. Directors' duties

The Directive requires Member States to impose a duty on the directors of a company to file for insolvency proceedings no later than three months after they became aware, or could reasonably be expected to have been aware, that the company is insolvent.

This duty can be discharged through other means, such as a public notification of insolvency, or suspended if directors take alternative measures that provide equivalent protection to creditors. Directors who fail to comply with this duty will be held civilly liable for any resulting damage to creditors in accordance with national law. A defence may be available if directors can demonstrate their alternative measures were reasonably likely to produce an equivalent or better outcome.

5. Creditors' committees

The Directive introduces harmonised rules for creditors' committees to ensure creditors can participate effectively in insolvency proceedings. Member States must provide for a committee to be established after insolvency proceedings open if requested by the general meeting of creditors or, where national law does not provide for such a general meeting, if so requested by creditors in accordance with national law. However, Member States may choose not to apply this requirement where the costs and burdens of a committee would outweigh its benefits, and can limit its mandatory application to proceedings concerning large undertakings.

The committee's harmonised functions include representing the collective interests of creditors and being regularly informed of the insolvency practitioner's activities. The rules also establish a clear liability standard, protecting committee members from personal liability for damages except in cases of intentional misconduct or gross negligence.

Next steps

Following the Directive's publication in the Official Journal of the European Union, attention turns to national implementation. Member States must transpose its provisions into national law by 22 January 2029. A later deadline of 10 July 2029 is set for implementing the specific provisions that enable cross-border access to bank account information through BARIS. The new avoidance actions regime will only affect legal acts perfected after the national implementing laws enter into force.

Although the final landscape will be shaped by the legislative choices made by each Member State, the fundamental requirements are already established. Creditors and investors are well advised to use the transposition period to familiarise themselves with the new framework and assess the potential impact on their activities.

Should you have any questions about the Guide, please feel free to reach out to the key contacts listed within each national chapter or get in touch with your usual Linklaters contact.

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Belgium

A. General

Q1 How would you describe the current state of insolvency law in your jurisdiction in the areas covered by the Directive (avoidance actions, pre-pack proceedings, creditors' committees, and directors' duties)? Is the regime generally considered efficient and well-developed, or are there recognised gaps or shortcomings?

Following the comprehensive reform of Belgian restructuring and insolvency law in 2023, the current framework (Book XX of the Belgian Code of Economic Law) is generally considered efficient and well-developed, though more debtor-friendly than its predecessor. The implementation of the Directive may partially rebalance this, given its overall thrust towards greater creditor protection.

Avoidance actions, pre-pack proceedings and directors' duties are already broadly aligned with the Directive. The main gaps are: (i) the absence of a formal statutory creditors' committee; and (ii) the lack of a more stringent avoidance regime for closely-related-party transactions.

Q2 Has the transposition process of the Directive in your jurisdiction been initiated?

No. As at the date of this response (September 2026), the Belgian legislature has not initiated a formal transposition process. No preliminary draft bill, advisory opinion or public consultation has been identified.

B. Avoidance actions

Q1 What are the current rules on avoidance actions in your jurisdiction? In particular:

- How long is the period preceding the submission of the request/resolution to commence proceedings for (i) preferences, (ii) transactions at no or manifestly inadequate consideration, and (iii) transactions intentionally detrimental to creditors?
- For each avoidance ground, preferences (whether or not the claim was satisfied as owed), transactions at no or manifestly inadequate consideration, and intentionally detrimental acts, does your national law require that the counterparty knew of the debtor's insolvency or detrimental intent? Where such knowledge is required, how is it established and where does the burden of proof lie? Does your national law provide for any presumptions of knowledge, for example in relation to parties connected or closely related to the debtor?

Under Belgian law, certain acts benefiting one or more creditors to the detriment of others ("preferences" in the Directive's terminology; see further detail below) and transactions at undervalue can be challenged if they occurred during the hardening period (*période suspecte/verdachte periode*). Under the current regime, the hardening period only applies at the request of the bankruptcy trustee where the bankruptcy court rules that the cessation of payment (cash-flow insolvency) preceded the opening of bankruptcy proceedings. It runs from the court-determined cessation-of-payments date to the date of the bankruptcy judgment, with a statutory cap of six months and is therefore not fixed. Transactions intentionally detrimental to creditors can be challenged regardless of when they took place. The Directive replaces this regime with three distinct fixed minimum periods (see further detail below).

The applicable knowledge requirements depend on the type of act targeted. For preferences, a distinction must be drawn between "congruent" and "incongruent" acts (in line with Recital 11 of the Directive):

- Incongruent preferences: (payments for debts not yet due, abnormal payment methods, security for pre-existing debts (Art. XX.111, 2° and 3° of the Code of Economic Law)): these may be clawed back without any counterparty knowledge requirement. Art. 7(1) of the Directive likewise imposes no such requirement.
- Congruent preferences: (payments for debts already due, acts for consideration (Art. XX.112 of the Code of Economic Law)): these may be declared unenforceable provided the counterparty knew of the debtor's cessation of payments, with the burden of proof on the claimant (in practice, the trustee). Art. 7(2) of the Directive similarly requires counterparty knowledge of the debtor's inability to pay, but also introduces a rebuttable presumption of knowledge for 'closely related parties' (Art. 3), which currently has no equivalent under Belgian law, although courts typically apply increased scrutiny in respect of related party transactions.
- Transactions at undervalue: gratuitous acts and acts at manifestly inadequate consideration (Art. XX.111, 1° of the Code of Economic Law) are unenforceable without any counterparty knowledge requirement. Art. 8 of the Directive is consistent on this point.
- Intentionally detrimental acts: under the Belgian regime of *actio pauliana/action paulienne* (Art. XX.114 of the Code of Economic Law), the claimant must demonstrate the debtor's fraudulent intent to prejudice creditors and the counterparty's knowledge of that prejudice (*wetenschap van benadeling/connaissance du préjudice*). The burden of proof lies with the claimant (in practice, the trustee). Art. 9 of the Directive goes further, requiring that the counterparty knew of the debtor's intent to cause prejudice, and introduces a rebuttable presumption of knowledge for closely related parties (Art. 3), which Belgian law does not currently provide for.

Q2 How do the Directive's rules on avoidance actions compare with existing national law? What changes, if any, would be required to bring your national law into compliance?

The Directive's tripartite structure maps reasonably well onto the Belgian avoidance rules, but diverges on several material points requiring legislative action.

First, the Directive replaces Belgium's variable hardening period (capped at six months, determined retroactively by reference to the cessation-of-payments date) with fixed periods of three months for preferences (Art. 7), twelve months for undervalue transactions (Art. 8) and two years for intentionally detrimental acts (Art. 9), each running from the request or resolution to open proceedings. Belgium will need to extend

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the look-back period for the first and second grounds and introduce a two-year period for intentionally detrimental acts.

Second, Art. 10(3) of the Directive imposes (through maximal harmonisation) a three-year limitation period for avoidance actions running from the opening of proceedings. Belgium will need to amend its limitation period regime accordingly.

Third, the Directive introduces a rebuttable presumption of knowledge for 'closely related parties', both for congruent preferences (knowledge of inability to pay) and for intentionally detrimental acts (knowledge of intent to prejudice creditors). Belgian law currently has no equivalent statutory presumption and will need to introduce one.

Q3 Are there any aspects of the Directive's avoidance framework that you consider particularly beneficial or problematic from the perspective of your national practice?

The shift to fixed look-back periods has mixed implications from a Belgian perspective. The automatically applicable fixed period is an important change: any relevant transaction within the window is exposed to challenge, although the claimant must generally still demonstrate that the debtor had, at the time of the transaction, ceased to pay its debts as they fell due, except for intentionally detrimental acts, undervalue transactions and related-party transactions. Under the current regime, by contrast, the opening of the hardening period is itself discretionary. That said, the fixed three-month period for preferences may benefit counterparties, since the current hardening period can extend up to six months. For undervalue transactions, however, the twelve-month period is materially longer than the current regime and would increase transactional risk.

The introduction of a (rebuttable) presumption of knowledge for related-party transactions is also significant. It could prove particularly onerous for intra-group cash pooling and cash-settlement arrangements occurring during the automatically applicable three-month hardening period, potentially exacerbating 'trapped cash' issues that often accelerate insolvency or hinder successful turnarounds. Although it is rebuttable, the absence of knowledge is difficult to prove in practice, especially in the case of cross-directorship within the company group.

C. Pre-pack proceedings

Q1 Does your jurisdiction currently have pre-pack proceedings (i.e. a mechanism for preparing the sale of the debtor's business ahead of formal insolvency proceedings)? If so, how do they work in practice?

Yes. Belgian law provides for the "private preparation for bankruptcy" (*préparation privée d'une faillite/besloten voorbereiding van het faillissement*) under the Code of Economic Law. A debtor that considers itself to be in a state of bankruptcy may apply for this non-public procedure, which aims to prepare the transfer of all or part of its assets and activities under the supervision of a pre-bankruptcy trustee (*curateur potentiel/beoogd curator*) and a pre-supervisory judge (*juge commissaire potentiel/beoogd rechter-commissaris*). The proceedings last up to 30 days, extendable once by a further 30 days, after which bankruptcy is formally declared and the prepared going-concern sale is immediately executed.

Q2 If pre-pack proceedings already exist in your jurisdiction, how do they compare with the framework introduced by the Directive? If they do not exist, what legislative reforms would be needed to introduce them? In particular, what changes would be required in your jurisdiction in relation to:

- the threshold for access to the preparation phase.
- the retainment of (total or partial) control of the debtor's assets and the day-to-day operation of its business during the preparation phase.
- the scope of any stay of individual enforcement actions during the preparation phase.
- the benchmark for the best-interest-of-creditors test.

i. Threshold for access

To be eligible, the debtor must demonstrate that the private preparation: (i) facilitates the liquidation of the business in a way that maximises value creation for creditors; and (ii) preserves employment as much as possible. Importantly, the current threshold requires that the debtor considers itself already in a state of bankruptcy.

Art. 21(1) of the Directive requires pre-pack proceedings to be available at least for debtors that are "likely to become insolvent", which is an earlier trigger. Belgium may therefore need to widen access to include debtors at the likelihood-of-insolvency stage, not only those already in a state of bankruptcy.

ii. Retainment of control

During the private preparation phase, the debtor remains in possession, assisted by the pre-insolvency trustee who oversees the process and protects creditors' interests. This is consistent with Art. 21(3) of the Directive, which requires debtors to retain total or at least partial control of their assets and day-to-day operations during the preparation phase.

iii. Stay of enforcement actions

Belgian law does not provide for a stay of individual enforcement actions during the private preparation for bankruptcy phase. In practice, however, a similar result can be achieved by combining a (private) judicial reorganisation with a subsequent pre-pack procedure.

Art. 25 of the Directive requires that debtors can benefit from a stay of individual enforcement actions during the preparation phase, in accordance with Arts. 6 and 7 of Directive (EU) 2019/1023. Belgium will therefore need to either extend such a stay to the preparation for the bankruptcy phase or ensure it is available through parallel proceedings in which the sale can be continued and concluded.

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iv. Best-interest-of-creditors test

Belgian law applies a best-interest-of-creditors test in judicial reorganisation proceedings by collective agreement, where a reorganisation plan is imposed on dissenting classes of creditors (cross-class cram-down). The benchmark is whether any dissenting creditor would be manifestly worse off under the plan than in ordinary bankruptcy proceedings. However, no equivalent statutory test exists within the pre-pack framework itself. Art. XX.97/1 of the Code of Economic Law requires the pre-bankruptcy trustee to verify that the going-concern sale maximises value for creditors and preserves employment, but this is not framed as a formal best-interest-of-creditors test with a defined benchmark, and a pre-pack deal could be successfully implemented through the proceedings if it maximises preservation of employment (and does not maximise value for creditors).

Art. 2(1)(h) of the Directive formalises an explicit test: the best-interest-of-creditors test is satisfied if no creditor would be worse off under a pre-pack liquidation than under a piecemeal liquidation applying the normal ranking of liquidation priorities or, where the Member State so provides, in the next-best-alternative scenario. This is similar to the benchmark used in Belgian judicial reorganisation proceedings by collective agreement, albeit without the 'manifest' threshold. The monitor must certify that the best bid does not breach this test (Art. 24(2)(c)), and the court may order a going-concern valuation where the best bid might not meet it (Art. 29(4)).

Belgium will therefore need to implement the best-interest-of-creditors test in the pre-pack proceedings and to make a legislative choice between the two benchmarks.

D. Creditors' committee

Q1 Is the concept of creditors' committee currently used in insolvency proceedings in your jurisdiction? If so, describe its typical composition, role, and powers.

No. Belgian insolvency law does not provide for a formal creditors' committee. The closest functional equivalent is the general meeting of creditors under Art. XX.167 of the Code of Economic Law, which may be convened by the supervising judge but is rarely used in practice. In addition, parties generally rely on contractual mechanisms such as intercreditor agreements or coordination committees.

Q2 What changes, if any, would be required in your jurisdiction to implement the Directive's rules on the creditors' committee?

Belgium would need to introduce a new statutory framework, as no creditors' committee regime currently exists.

As a threshold matter, Belgium would need to define in national law the circumstances in which no committee need be established because the burden would outweigh the benefits (Art. 44(3)), taking into account factors such as the limited value of the estate, the small number of creditors, or the small size of the debtor. Belgium could also exercise the Directive's option to limit the regime to large undertakings, which would significantly narrow its practical footprint.

Where a committee is established, transposition would require rules on fair composition reflecting the various creditor interests (including cross-border and worker creditors), appointment and removal procedures, and working methods covering voting, quorum, conflicts of interest and confidentiality (Arts. 45 ff.). The committee would also need statutory rights to request information from, and to be heard by, the trustee or debtor-in-possession on key decisions. Belgium would further need to adopt a cost regime preventing disproportionate depletion of the estate and a liability framework for committee members.

E. Directors' duties – duty to submit a request for the opening of insolvency proceedings

Q1 What are the current rules in your jurisdiction governing a director's duty to submit a request for the opening of insolvency proceedings? Is there a prescribed time limit?

Under Art. XX.102 of the Code of Economic Law, a debtor (and, in practice, its board of directors) that has durably ceased paying its debts and is unable to obtain further credit must file for bankruptcy with the competent Enterprise Court within one month of that cessation of payment.

Q2 How does your national law compare with the Directive's maximum time limit for filing? Would any legislative amendment be required?

Belgium's one-month filing period under Art. XX.102 of the Code of Economic Law is stricter than the Directive's maximum three-month time limit (Art. 40(2)), which runs from the point at which directors become, or could reasonably be expected to have become, aware that the company is insolvent.

The trigger events also differ: under Belgian law, the period runs from actual cessation of payments (a more advanced stage of distress), whereas the Directive's trigger – the director's awareness of insolvency – could in principle start running earlier.

Whether and to what extent legislative amendments will be required to align these triggers remains to be seen.

Q3 Does your national law currently provide for a discharge of the filing duty through public notification of insolvency and/or suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests? If so, how are those exceptions defined and what safeguards exist to prevent abuse?

Belgian law does not currently provide for either mechanism contemplated by the Directive. There is no public-notification discharge of the filing duty (cf. Art. 41(2)), nor a suspension for proactive creditor-protective measures (cf. Art. 41(3)). Belgian law does allow the Art. XX.102 filing duty to be suspended during a pending judicial reorganisation and any resulting stay, but this serves a different purpose: it protects the debtor against its creditors, rather than constituting proactive measures

Belgium

by directors to safeguard creditors' interests as an alternative to filing. Both mechanisms may therefore need to be introduced upon transposition.

F. Overall assessment

Q1 Overall, which aspect of the Directive do you consider to have the most significant impact on insolvency practice in your jurisdiction, and why?

The concrete impact on Belgian insolvency law will ultimately depend on the transposition choices the Belgian legislature makes.

The avoidance-action reforms will likely have the most significant practical impact. The shift to fixed minimum look-back periods has mixed implications: the three-month period for preferences may be shorter than the current hardening period (up to six months), but any relevant transaction within that window is automatically exposed to potential challenge, increasing the volume of transactions subject to review. For undervalue transactions, the twelve-month period is materially longer than the current regime, further broadening that exposure. In addition, the rebuttable presumption of knowledge in relation to related-party transactions is likely to significantly broaden the scope of intra-group transactions potentially subject to clawback.

The pre-pack reforms will also have an important practical impact. Most notably, the introduction of a stay on enforcement during the preparation phase is a welcome improvement, as it removes the need to combine (private) judicial reorganisation proceedings with a subsequent pre-pack procedure to achieve a similar result.

The creditors' committee regime (Title VI) will require structural legislative change, as Belgian law has no formal equivalent. Its practical footprint will, however, depend on the transposition choices made (e.g. limiting the regime to large undertakings).

Q2 Are there any other aspects of your national insolvency law that you consider to be at risk of disruption by the Directive, beyond the four areas expressly covered?

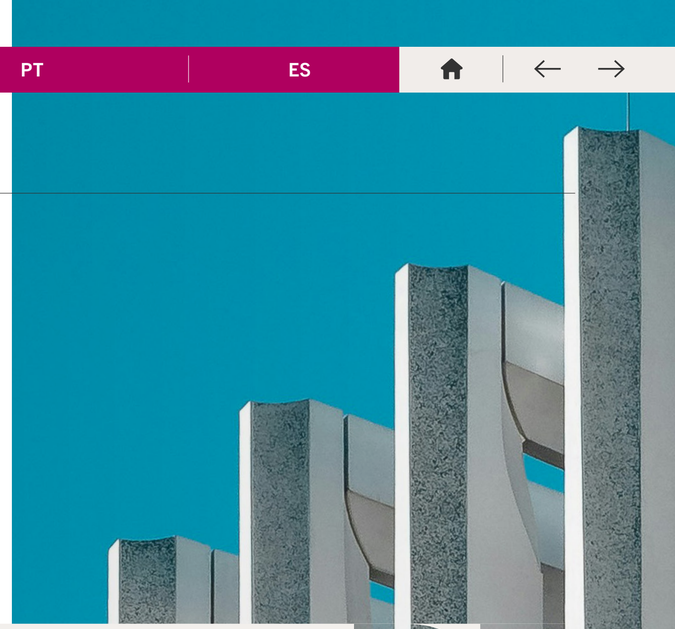
Title III (Tracing assets belonging to an insolvency estate) will require Belgium to designate competent courts or authorities to access the bank account register interconnection system ("BARIS"), which interconnects national bank account registers across Member States to enable insolvency practitioners to trace cross-border assets.

Belgium will also need to formalise insolvency practitioners' "direct and expeditious" access to national registers listed in the Annex (e.g. cadastral, land, mortgage, pledge and intellectual property registers), some of which are not currently centralised or easily accessible on a cross-border basis.

Q3 What practical recommendations would you make to businesses, creditors, or insolvency practitioners in your jurisdiction to prepare for the transposition of the Directive?

For directors: given Belgium's already strict one-month filing trigger, robust early-warning and board-documentation practices remain essential.

For creditors: secured lenders and related parties in particular should revisit security and intercompany/cash pooling arrangements in light of the longer avoidance look-back periods (up to twelve months for undervalue transactions) and prepare for possible participation in creditors' committees, including internal governance on representation and conflict management.



Contacts



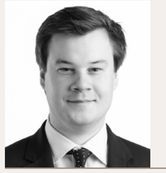
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France



France

A. General

Q1 How would you describe the current state of insolvency law in your jurisdiction in the areas covered by the Directive (avoidance actions, pre-pack proceedings, creditors' committees, and directors' duties)? Is the regime generally considered efficient and well-developed, or are there recognised gaps or shortcomings?

French insolvency law is generally regarded as one of the most comprehensive frameworks in Europe across the four areas covered by the Directive and should not be fundamentally disrupted by it.

The transposition of certain aspects, such as the rules on the duty of directors to file for the opening of insolvency proceedings, should not entail major changes in French law. Similarly, pre-pack proceedings have existed since 2014 and the French pre-pack sale model is broadly regarded as having inspired the Directive's framework on pre-pack proceedings. Other aspects of the Directive, however, are a source of more significant questions and challenges for the French legislator. This is particularly the case for the rules on avoidance actions, where the current claw-back regime operates through a variable-length hardening period (*période suspecte*) tied to the judicially determined date of cash-flow insolvency (*cessation des paiements*), with no statutory presumption of knowledge for related parties. It is also the case for the introduction of creditors' committees, an institution that will need to be reconciled with the existing contrôleurs system, whose role is currently limited to "assisting" the creditors' representative (*mandataire judiciaire*), with no autonomous scrutiny or decision-making powers, except where the creditors' representative fails to act in the collective interest of creditors.

Q2 Has the transposition process of the Directive in your jurisdiction been initiated?

The transposition process has not yet formally commenced and no draft legislation has been published to date.

That said, preparatory work appears to be under way. In May 2025, the French government established a working group to consider a comprehensive reform of Book VI of the Commercial Code, which sets out the statutory framework governing French insolvency and pre-insolvency proceedings. Co-chaired by Justice A.-S. Texier and Professor Ph. Roussel Galle and comprising nine other experts, including judges, lawyers, insolvency practitioners and academics, the group suggests that France may use the transposition process as an opportunity to review its insolvency regime more broadly, rather than confining itself to a narrow implementation exercise.

B. Avoidance actions

Q1 What are the current rules on avoidance actions in your jurisdiction? In particular:

- How long is the period preceding the submission of the request/resolution to commence proceedings for (i) preferences, (ii) transactions at no or manifestly inadequate consideration, and (iii) transactions intentionally detrimental to creditors?
- For each avoidance ground, preferences (whether or not the claim was satisfied as owed), transactions at no or manifestly inadequate consideration, and intentionally detrimental acts, does your national law require that the counterparty knew of the debtor's insolvency or detrimental intent? Where such knowledge is required, how is it established and where does the burden of proof lie? Does your national law provide for any presumptions of knowledge, for example in relation to parties connected or closely related to the debtor?

French law provides for a hardening period (*période suspecte*) of variable duration, running from the date on which the debtor is judicially determined to have been cash-flow insolvent (*cessation des paiements*) to the judgment opening judicial reorganisation or judicial liquidation proceedings. That date may not be set earlier than eighteen months before the opening judgment.

Unlike the Directive, French law applies a single hardening period to all avoidable transactions entered into after the date of cash-flow insolvency, regardless of their nature. Transactions entered into during that period fall into two categories. Certain transactions are automatically void, including transfers for no consideration, contracts under which the debtor's obligations substantially exceed those of the counterparty, payments of debts not yet due, and security interests granted for previously incurred debts (unless they replace prior security of at least equivalent nature and scope). In such cases, the court must set the transaction aside, irrespective of the counterparty's knowledge of the debtor's cash-flow insolvency.

Other transactions, including payments of due debts, may be set aside only if the counterparty knew of the debtor's cash-flow insolvency, with the burden of proof resting entirely on the insolvency practitioner and no presumption of knowledge, even for related parties.

Separately, the *action paulienne* allows a creditor to have acts carried out in fraud of its rights declared unenforceable against it. Where the impugned act was entered into for value, the creditor must also prove that the counterparty had knowledge of the fraud.

Q2 How do the Directive's rules on avoidance actions compare with existing national law? What changes, if any, would be required to bring your national law into compliance?

The avoidance regime under the Directive differs significantly from the French approach, in particular in that it provides for a regime of automatic nullity that is independent from any actual finding that the debtor was in a state of cash-flow insolvency at the date of the impugned act. French law relies on a single hardening period of variable duration, running from the judicially

France

backdated date of cash-flow insolvency. By contrast, the Directive provides for three fixed claw-back periods of three, twelve and twenty-four months, calculated from the filing date. This allows potentially avoidable transactions to be identified as soon as proceedings are opened, without the uncertainty inherent in backdating the date of insolvency.

The Directive also departs from the French list-based system by defining three broad categories of avoidable acts: preferences, legal acts in exchange for no or manifestly inadequate consideration, and legal acts intentionally detrimental to creditors.

Transposition would also require the introduction of the concept of a closely related party, defined broadly to include, for example, directors, controlling shareholders and family members, together with a rebuttable presumption of knowledge that reverses the burden of proof. Under French law, including under the *action paulienne*, such knowledge may be inferred from circumstantial evidence, but it is not the subject of a statutory presumption.

Significant amendments to the French hardening period regime would therefore be necessary, although their scope will remain for the French legislature to determine.

Q3 Are there any aspects of the Directive's avoidance framework that you consider particularly beneficial or problematic from the perspective of your national practice?

The most beneficial aspect is the shift to fixed look-back periods computed from the filing date, which will significantly enhance predictability. Under the current French system, the hardening period depends on a retroactively adjusted date of cash-flow insolvency, generating considerable uncertainty. The Directive confines cash-flow insolvency to its proper role of triggering insolvency proceedings and eliminates costly backdating litigation.

On the other side, while transactions at undervalue and intentionally detrimental acts are relatively straightforward concepts, the notion of preferences is arguably the most difficult to transpose into French law. The Directive defines them as acts benefiting a creditor through "satisfaction or collateralisation", a terminology that is far from clear and has no direct equivalent in French law, which operates through exhaustive lists of avoidable acts rather than broad categories. Should the legislator choose to replace those lists with the Directive's three categories, it will need to define this concept with care.

Finally, the closely related party concept, carrying a rebuttable presumption of knowledge covering directors, controlling shareholders, family members and persons with access to non-public information about the debtor, will need to be incorporated into French law, which currently has no equivalent statutory category.

The Directive also introduces a three-year limitation period applicable to actions seeking the annulment of avoidable acts, running from the opening of insolvency proceedings, whereas French law does not provide for any equivalent limitation period specific to avoidance actions. In practice, however, insolvency practitioners rarely bring such actions more than three years after the opening judgment, so that the absence of a statutory limitation period is unlikely to have a significant practical impact.

C. Pre-pack proceedings

Q1 Does your jurisdiction currently have pre-pack proceedings (i.e. a mechanism for preparing the sale of the debtor's business ahead of formal insolvency proceedings)? If so, how do they work in practice?

France introduced the pre-pack sale in 2014, making it one of the first European jurisdictions to formalise such proceedings. The mechanism operates in two phases.

The first is a confidential preparation phase conducted in the course of pre-insolvency proceedings, namely *mandat ad hoc* or conciliation, both of which may be opened only at the debtor's initiative and during which the debtor remains entirely under the control of its management. In that phase, the insolvency practitioner identifies potential buyers and opens a confidential bidding process.

The second is a relatively short implementation phase, usually lasting between three and six weeks, during which the sale plan is endorsed by the court in the context of judicial reorganisation or judicial liquidation proceedings. This phase is not confidential and the court retains full discretion to reopen the bidding process at this stage if it considers that the search for buyers conducted during the confidential phase was not sufficiently competitive (even if confidential). The court's approval of the sale plan results in the transfer of selected assets and contracts, together with the automatic transfer of employees assigned to the transferred business, but without the debtor's liabilities (subject to limited exceptions).

Q2 If pre-pack proceedings already exist in your jurisdiction, how do they compare with the framework introduced by the Directive? If they do not exist, what legislative reforms would be needed to introduce them? In particular, what changes would be required in your jurisdiction in relation to:

- the threshold for access to the preparation phase;
- retainment of (total or partial) control of the debtor's assets and the day-to-day operation of its business during the preparation phase;
- the scope of any stay of individual enforcement actions during the preparation phase; and
- the benchmark for the best-interest-of-creditors test.

France

While the Directive's pre-pack framework is largely inspired by the French model, several adjustments would be required, including as regards the justification of compliance with the competitive process during the pre-insolvency preparation phase, since French law currently requires only a formal verification that sufficient publicity was given to the sale process.

As regards the access threshold and debtor control, French law is broadly consistent with the Directive and no change is expected.

The most significant gap concerns the stay of enforcement actions as the Directive requires a mandatory stay during the preparation phase, whereas under French law stays are only available on a case-by-case basis through court orders.

On the best-interest-of-creditors test, the Directive requires the monitor to certify that the best offer does not violate this standard, i.e. that creditors would not receive less than in a piecemeal liquidation. This would be a notable shift on the French market, as French courts are under no obligation to cross check the sale price offered against the liquidation value of the debtor's assets, and may give precedence to other criteria, such as the preservation of employment, over the price offered.

Finally, the Directive introduces a stalking horse mechanism under which the bid obtained during the preparation phase serves as a floor price if the court reopens the sale process through a public auction. The initial bidder, if ultimately outbid, must be afforded adequate protection, most likely in the form of a break fee. This mechanism, which is intended to encourage early bids while preserving competitive tension, is unknown in French law.

D. Creditors' committee

Q1 Is the concept of creditors' committee currently used in insolvency proceedings in your jurisdiction? If so, describe its typical composition, role, and powers.

French law does not provide for creditors' committees in the sense contemplated by the Directive. Its closest functional equivalent is the controllers' (*contrôleurs*) regime, under which up to five creditors may be appointed by the bankruptcy judge (*juge-commissaire*), subject to certain conditions, in particular the absence of any affiliation with the debtor, to assist the creditors' representative (*mandataire judiciaire*) and the bankruptcy judge in supervising the insolvency proceedings.

Their powers are essentially consultative. They may review documents transmitted to the insolvency practitioners, must be consulted before certain key decisions, such as the endorsement of a continuation plan or sale plan, and may submit observations at any stage of the proceedings. Where the creditors' representative fails to act in the collective interest of creditors, the controllers may act on a subsidiary basis and bring claims, provided that a formal notice to act in the collective interest of creditors has remained unanswered for two months.

However, controllers have no decision-making or approval powers, act without remuneration, incur liability only for gross negligence, and, crucially, are subject to strict confidentiality obligations preventing them from sharing information with the creditors they represent. French law also suffers from a practical difficulty relating to the procedure for appointing controllers. Controllers are appointed by order of the bankruptcy judge (*juge-commissaire*), and such orders can take several months to be issued. The transposition of the Directive could be an opportunity to improve the appointment procedure for controllers by subjecting it to a short statutory time limit.

Q2 What changes, if any, would be required in your jurisdiction to implement the Directive's rules on the creditors' committee?

The transposition would require a fundamental rethinking of the controllers' regime. The Directive's creditors' committees are conceived as independent bodies with a scrutiny function over the insolvency practitioners' activities, whereas controllers are merely tasked with assisting the creditors' representative and the bankruptcy judge. This shift would entail conferring enforceable rights currently unknown in French law, including the right to hear the insolvency practitioners, the right to demand and receive information directly from the debtor, and the right to share that information with represented creditors (a significant departure from the strict confidentiality currently imposed on controllers).

The Directive also opens the possibility for Member States to grant the committee approval powers over certain decisions, including the authorisation of asset sales, which would represent a major incursion into the court's exclusive jurisdiction under French law and would need to be coordinated with the classes of affected parties, already empowered to vote on restructuring plans. The coexistence of both institutions in larger insolvency proceedings could raise questions of delineation.

E. Directors' duties – duty to submit a request for the opening of insolvency proceedings

Q1 What are the current rules in your jurisdiction governing a director's duty to submit a request for the opening of insolvency proceedings? Is there a prescribed time limit?

French insolvency law imposes an express statutory duty to file for insolvency at a defined point in time.

The legal representative of a debtor company must file for judicial reorganisation or judicial liquidation within forty-five days of the company becoming cash-flow insolvent (*cessation des paiements*), that is, when it is unable to meet its debts as they fall due out of available assets, taking into account any debt moratoria and available credit facilities, unless they have filed for conciliation proceedings in the meantime.

The relevant test is one of present cash-flow insolvency only: it is a snapshot assessment made at a given point in time, rather than a forward-looking assessment of future solvency.

Failure to file within this statutory period exposes the defaulting director to tort liability, including a management ban (*interdiction de gérer*), and may be treated as mismanagement giving rise to personal disqualification. It may also constitute one factor, among other instances of mismanagement, on which the courts rely to establish other forms of liability, including liability for shortfall of assets in judicial liquidation.

In practice, the longer the delay after the forty-five-day period, the greater the risk of liability.

France

Q2 How does your national law compare with the Directive's maximum time limit for filing? Would any legislative amendment be required?

The French forty-five-day deadline is already shorter than the Directive's three-month maximum and may therefore be maintained under the principle of minimum harmonisation, which allows Member States to retain stricter national rules.

The genuine challenge lies not in the deadline itself but in the liability regime attached to its breach. The Directive treats any failure to file within the prescribed period, whether intentional or merely negligent, as a basis for civil liability, whereas French law expressly excludes simple negligence as a ground for liability for shortfall of assets. This carve-out will need to be removed or significantly narrowed, provided that such failure has caused harm to creditors, so that exceeding the three-month European ceiling automatically engages the director's liability.

A further amendment could be implemented since liability for shortfall of assets is currently confined to judicial liquidation, whereas the Directive requires equivalent liability across all Annex A insolvency proceedings, including judicial reorganisation. This might necessitate introducing a complementary liability mechanism, possibly dedicated specifically to sanctioning the breach of the duty to file, alongside the existing regime governing liability for shortfall of assets.

That said, the Directive nonetheless provides for an alternative to the filing obligation where it can be established that the delay and the measures taken by the director did not have a detrimental effect on creditors. This alternative would operate a reversal of the burden of proof under French law, as the director would then have to demonstrate that the failure to file did not have a negative effect on creditors.

Q3 Does your national law currently provide for a discharge of the filing duty through public notification of insolvency and/or suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests? If so, how are those exceptions defined and what safeguards exist to prevent abuse?

French law does not provide for a discharge of the filing duty through public notification of insolvency, as the Directive permits. This option is unlikely to be transposed, as it would fundamentally conflict with the confidential architecture of French pre-insolvency proceedings.

French law does, however, provide for a de facto suspension of the filing duty, since a debtor that has been cash-flow insolvent for less than forty-five days may instead apply to open conciliation, a confidential pre-insolvency proceeding. The filing obligation is suspended for the duration of conciliation, provided the debtor files without delay upon its expiry if the conciliation does not result in an agreement bringing the debtor's cash-flow insolvency to an end. This aligns with the Directive's provision permitting suspension where directors take measures offering equivalent creditor protection.

Critically, however, the Directive specifies that such suspension does not fully exonerate directors, who remain liable for damages that would not have occurred had insolvency proceedings been opened in time. This residual liability could create a chilling effect on the use of conciliation, since directors may still face claims after a successful conciliation if judicial liquidation subsequently occurs.

F. Overall assessment

Q1 Overall, which aspect of the Directive do you consider to have the most significant impact on insolvency practice in your jurisdiction, and why?

The most significant impact is likely to be on avoidance actions. Although French law already deals with directors' duties and provides for pre-pack proceedings, the proposed avoidance framework would require a genuine paradigm shift in France.

In particular, replacing the variable hardening period, which is linked to the debtor's cash-flow insolvency and may be backdated by the court, with fixed claw-back periods calculated by reference to the filing date would amount to a fundamental structural change to a regime that has been in place in France since 1985.

A close second would be the introduction of creditors' committees. This would in practice require the controllers' regime to be replaced by a more empowered body, able to scrutinise insolvency practitioners, obtain information independently and potentially approve key decisions. That would represent a significant cultural shift in a jurisdiction traditionally characterised by limited creditor involvement in insolvency proceedings. In the most significant cases, the introduction of creditors' committees would be of particular interest in that it would allow the creditors as a whole, rather than only a subset of them gathered within a co-com (*comité des creanciers*), to meet and organise themselves.

The introduction of creditors' committees, in particular where they are granted a power to approve asset sales, will nonetheless raise questions in light of the principles of impartiality that exist under French law. It remains to be seen, for instance, whether a member of a creditors' committee would be permitted to acquire an asset of the debtor, which is something that French law currently prohibits controllers from doing.

Q2 Are there any other aspects of your national insolvency law that you consider to be at risk of disruption by the Directive, beyond the four areas expressly covered?

Beyond the four areas expressly covered, Title III on locating assets belonging to the insolvency estate is likely to prove disruptive for French law.

The Directive requires Member States to grant insolvency practitioners a harmonised minimum set of powers to identify and locate estate assets and assets subject to avoidance actions, including direct access to beneficial-ownership registers and, at least indirectly through a designated national authority, to bank account registers, both domestically and cross-border.

France

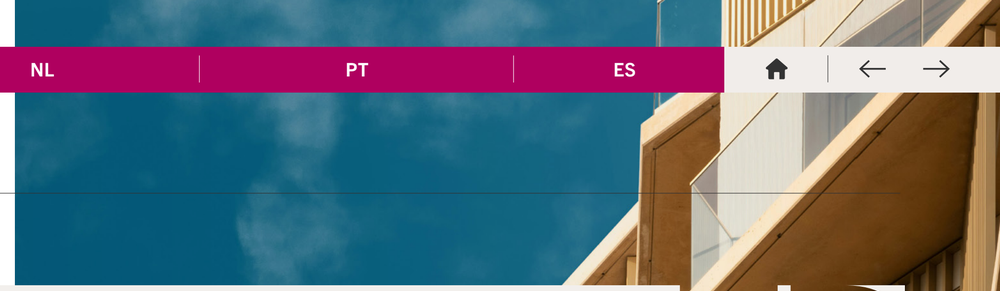
This may not sit easily alongside the current French regime, where access to the beneficial-ownership register is confined to listed authorities. It will be for the French legislator to determine how this is reconciled with the Directive's requirements, including as regards the designation of a competent authority, confidentiality safeguards and the extension of equivalent powers to insolvency practitioners appointed in other Member States.

Q3 What practical recommendations would you make to businesses, creditors, or insolvency practitioners in your jurisdiction to prepare for the transposition of the Directive?

The Directive leaves Member States with significant latitude in how they transpose its provisions, and the French government's decision to integrate the transposition into a broader reform of its insolvency legislation adds a further layer of uncertainty as to the shape that these rules will ultimately take in French law.

In these circumstances, the most important practical recommendation is for all stakeholders, debtors and their directors, creditors, banks, insolvency practitioners and investors, to follow very closely the progress of the legislative work that will give effect to the Directive in French law, as it will provide the first concrete indication of how the French legislator intends to exercise the many options that the Directive leaves open.

This is particularly the case for avoidance actions, where the choice between retaining the current list-based system or adopting the Directive's category-based approach will have a direct impact on the legal certainty of pre-insolvency transactions, and for the creditors' committee, where the extent of the powers conferred and the articulation with the existing *classes de parties affectées* will determine whether the reform represents an incremental adjustment or a more fundamental shift in the balance of power between debtors and creditors within French insolvency proceedings.



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Germany



Germany

A. General

Q1 How would you describe the current state of insolvency law in your jurisdiction in the areas covered by the Directive (avoidance actions, pre-pack proceedings, creditors' committees, and directors' duties)? Is the regime generally considered efficient and well-developed, or are there recognised gaps or shortcomings?

The subject areas of avoidance actions, creditors' committees and directors' duties are already comprehensively governed by German insolvency law and have been substantially developed through an extensive body of case law. A considerable degree of legal certainty has been established. This is particularly so in respect of transaction avoidance, for which sections 129 et seq. of the German Insolvency Code (*Insolvenzordnung*, hereafter "InsO") establish a sophisticated and differentiated regulatory framework.

With regard to directors' duties, German law likewise exceeds the minimum standard prescribed by EU law, notably by virtue of the strict filing deadlines set out in section 15a InsO.

German practice already possesses a functionally comparable instrument to pre-pack proceedings in the form of a transfer-based restructuring (*übertragende Sanierung*). The German legislature will therefore only be required to make limited adjustments.

Q2 Has the transposition process of the Directive in your jurisdiction been initiated?

As far as is publicly known, the transposition process has not yet been initiated.

B. Avoidance actions

Q1 What are the current rules on avoidance actions in your jurisdiction? In particular:

> How long is the period preceding the submission of the request/resolution to commence proceedings for (i) preferences, (ii) transactions at no or manifestly inadequate consideration, and (iii) transactions intentionally detrimental to creditors?

> For each avoidance ground, preferences (whether or not the claim was satisfied as owed), transactions at no or manifestly inadequate consideration, and intentionally detrimental acts, does your national law require that the counterparty knew of the debtor's insolvency or detrimental intent? Where such knowledge is required, how is it established and where does the burden of proof lie? Does your national law provide for any presumptions of knowledge, for example in relation to parties connected or closely related to the debtor?

The general requirements for the avoidance of legal acts detrimental to creditors (*Gläubigerbenachteiligung*) are set out in sections 129 et seq. InsO.

The insolvency administrator may challenge the relevant leg al act if it took place during certain hardening periods before the filing of the insolvency petition (or, in certain circumstances, thereafter):

i. Congruent transactions (section 130 InsO): taking security on granting a loan, receiving a scheduled repayment or otherwise taking security or being repaid consistently with an agreement between the parties: three months, provided the debtor was illiquid at the time and the beneficiary knew of this (where (a) such knowledge may be deemed to exist if the beneficiary had knowledge of circumstances pointing to this conclusion, and (b) a party closely related to the debtor is generally presumed to have had such knowledge);

ii. Incongruent transactions (section 131 InsO): taking security that was agreed subsequent to the disbursement of a loan, receiving an unscheduled repayment or otherwise taking security or being repaid outside the terms of any agreement: one month, although this may be extended to up to three months if the debtor was illiquid at the time or the beneficiary knew that the act would be detrimental to the other creditors (where (a) a party is deemed to have knowledge that the legal act would be detrimental if it was aware of circumstances from which such detriment follows, and (b) a party closely related to the debtor is presumed to have had such knowledge);

iii. Gratuitous transactions (section 134 InsO): taking security or receiving any other benefit for no consideration provided by the beneficiary (e.g. third-party security where the loan repayment claim against the original debtor is already impaired): four years;

iv. Directly harmful transactions (section 132 InsO): taking security or receiving payment in circumstances where it is directly detrimental to creditors: three months, provided the debtor was illiquid at the time and the beneficiary knew of this (where (a) such knowledge may be deemed to exist if the beneficiary had knowledge of circumstances pointing to this conclusion, and (b) a party closely related to the debtor is generally presumed to have had such knowledge); and

v. Intentionally harmful transactions (section 133 InsO): transactions in circumstances where the debtor is conscious that its actions will cause harm to its creditors: ten years, provided the beneficiary was aware thereof at the time of the transaction (such knowledge may be deemed to exist if the beneficiary knew of the debtor's impending illiquidity), or four years where the transaction consists in granting security or satisfaction (in which case, if such transaction is congruent, knowledge is only deemed to exist if the beneficiary knew of the debtor's illiquidity).

It needs to be noted that German insolvency law also encompasses the avoidance of shareholder loans (section 135 InsO). However, this is not addressed by the Directive.

Germany

Q2 How do the Directive's rules on avoidance actions compare with existing national law? What changes, if any, would be required to bring your national law into compliance?

The avoidance provisions in Chapter 2 of the Directive are modelled largely on German insolvency avoidance law, which therefore already satisfies the Directive's minimum standards. Amendments are required only in certain specific respects.

For example, the Directive stipulates that detrimental legal acts should be voidable within three months, provided that the debtor was unable to pay its debts as they fell due, without imposing any further subjective requirement. Section 132 InsO likewise provides for a hardening period of three months where the debtor was illiquid at the time; however, it additionally requires the beneficiary to have had knowledge of that illiquidity. Because avoidance under German law is thus contingent on the beneficiary's knowledge, the German provision is less strict than the Directive's objective standard. The German legislator will therefore need to align section 132 InsO with the Directive by removing the knowledge requirement.

Furthermore, in the context of intent-based avoidance (*Vorsatzanfechtung*), section 133(4) InsO presumes knowledge of the debtor's intent to disadvantage creditors only for related parties (*nahestehende Person*) who entered into the transaction for consideration (*entgeltlicher Vertrag*). The Directive, by contrast, presumes such knowledge for all related parties (Article 9). The German legislature will need to make an adjustment in this regard.

Q3 Are there any aspects of the Directive's avoidance framework that you consider particularly beneficial or problematic from the perspective of your national practice?

Overall, minimum harmonisation that reduces legal uncertainty in cross-border transactions within Europe is to be welcomed. German avoidance law will be tightened marginally through narrower presumptions and fewer exceptions. In substance, however, the Directive is not expected to produce significant changes.

C. Pre-pack proceedings

Q1 Does your jurisdiction currently have pre-pack proceedings (i.e. a mechanism for preparing the sale of the debtor's business ahead of formal insolvency proceedings)? If so, how do they work in practice?

There is no reference to a specified pre-pack procedure in the German InsO. Nevertheless, German insolvency proceedings bear all the hallmarks of a framework capable of producing the outcome envisaged by the Directive. The existing procedural structure comprises two distinct stages, preliminary proceedings and formally opened insolvency proceedings, which correspond broadly to the preparation and liquidation phases contemplated by the Directive. In practice, pre-packaged asset deals are achieved through a transfer-based restructuring (*übertragende Sanierung*), under which the sale is prepared during preliminary proceedings and executed once the proceedings are formally opened. The substantive requirements of the Directive are therefore largely met by existing law, and only limited adjustments will be required.

Q2 If pre-pack proceedings already exist in your jurisdiction, how do they compare with the framework introduced by the Directive? If they do not exist, what legislative reforms would be needed to introduce them? In particular, what changes would be required in your jurisdiction in relation to:

- the threshold for access to the preparation phase;
- retainment of (total or partial) control of the debtor's assets and the day-to-day operation of its business during the preparation phase;
- the scope of any stay of individual enforcement actions during the preparation phase; and
- the benchmark for the best-interest-of-creditors test.

The Directive requires the assignment of executory contracts to the acquirer without the counterparty's consent, a rule unfamiliar to German law that would interfere with freedom of contract. Germany is therefore expected to rely on some of the Directive's exceptions.

Under the Directive, Member States are required to provide for a sale process that is competitive, transparent and consistent with fair market standards. The German legislator will have to implement provisions to ensure compliance with these requirements.

The role of the custodian (*Sachwalter*) will also need to be defined in detail, in particular regarding the duties directed at safeguarding the interests of creditors.

Regarding bridge financing (*Zwischenfinanzierungen*), legislative amendments will be required in order to meet the minimum standard prescribed by the Directive. Whether the legislature will implement the optional provisions, for example concerning the ranking and the granting of security over sale proceeds, remains to be seen.

It likewise remains to be seen whether the legislature will avail itself of the option to dispense with the requirement of consent for the release of security.

Threshold for access

The Directive's threshold corresponds, at a minimum, to the concept of imminent illiquidity (*drohende Zahlungsunfähigkeit*) under section 18 InsO. It is expected that the legislature will, as with the implementation of the EU Preventive Restructuring Directive through the StaRUG, adopt imminent illiquidity as the relevant threshold.

Under the Directive, Member States may provide that the preparation phase cannot be initiated if the debtor is illiquid. Consideration might be given to the German legislature adopting this approach and, consistent with the access requirements for protective shield proceedings (*Schutzschirmverfahren*) under section 270d InsO and for pre-insolvency restructuring proceedings under the *Gesetz über den Stabilisierungs-*

Germany

und Restrukturierungsrahmen für Unternehmen (StaRUG), barring illiquid companies from access to the pre-pack procedure. Similarly, it could be provided that any illiquidity arising after the opening of the pre-pack procedure must be notified to the court.

Retainment of control

In German preliminary insolvency proceedings, the debtor's control over its business depends on the nature and intensity of the protective measures ordered by the court under section 21 InsO. Where a strong preliminary insolvency administrator is appointed, the debtor largely loses control, whereas where the administrator has merely a supervisory role, the debtor retains substantial control. If the preparation phase were embedded in the preliminary insolvency proceedings, the legislature would accordingly need to preclude the possibility of appointing a strong insolvency administrator. Alternatively, the legislature could provide for the appointment of a preliminary custodian (*vorläufiger Sachwalter*), as is the case in debtor-in-possession proceedings (*Eigenverwaltung*).

Stay of enforcement actions

In preliminary insolvency proceedings, the court may order a stay of individual enforcement actions in accordance with section 21 InsO. If the preparation phase were embedded in preliminary insolvency proceedings, the legislature could draw on that provision in order to satisfy the requirements of the Directive.

Best-interest-of-creditors test

The German legislator will have to implement the best-interest-of-creditors test. As a benchmark, Member States may refer not only to a scenario involving individual liquidation but also to the next-best alternative scenario. A corresponding formulation is found in the StaRUG, and it is not unlikely that the German legislature will apply it in this context as well. That alternative scenario could then also be a restructuring.

D. Creditors' committee

Q1 Is the concept of creditors' committee currently used in insolvency proceedings in your jurisdiction? If so, describe its typical composition, role, and powers.

The establishment of a creditors' committee (*Gläubigerausschuss*) is already provided for under the InsO as an independent body separate from the court, the insolvency administrator and the creditors' assembly. The court may appoint a preliminary creditors' committee under section 21 InsO during preliminary proceedings, and must do so in proceedings with an estate above a certain threshold. In open proceedings, the court may appoint a creditors' committee under section 67 InsO before the first creditors' assembly. At the first creditors' assembly, a resolution is passed under section 68 InsO on whether a creditors' committee should be established or, if already in existence, retained. Its core task is to support and supervise the administrator, including inspecting the administrator's books and reviewing cash and book-money holdings. The insolvency administrator must obtain the consent of the creditors' committee before carrying out legal acts of particular significance for the insolvency proceedings. Members bear duties of care and are subject to liability under section 71 InsO. The preliminary committee may participate in the selection of the administrator and has influence over the ordering of debtor-in-possession proceedings.

Q2 What changes, if any, would be required in your jurisdiction to implement the Directive's rules on the creditors' committee?

No fundamental amendment to the German rules on the creditors' committee is required. The existing system of preliminary and final creditors' committees is compatible with the Directive. Only moderate adjustments are needed in certain specific areas, such as clarifying working methods (for example, a statutory guarantee of each member's right to participate electronically) or rules on the possibility of representation. The liability of committee members may also need to be aligned with that of the insolvency administrator.

E. Directors' duties – duty to submit a request for the opening of insolvency proceedings

Q1 What are the current rules in your jurisdiction governing a director's duty to submit a request for the opening of insolvency proceedings? Is there a prescribed time limit?

The duty to file for the opening of insolvency proceedings is set out in section 15a InsO. Managing directors are obliged to file without undue delay once the company is either illiquid or over-indebted. A company is illiquid (*Zahlungsunfähigkeit*, section 17 InsO) where it is unable to meet its payment obligations as they fall due. Over-indebtedness (*Überschuldung*, section 19 InsO) arises where a company's liabilities exceed its assets and it lacks a positive going-concern forecast. Managing directors may make use of an additional grace period of three weeks following illiquidity or up to six weeks following over-indebtedness. This grace period may, however, only be utilised if a diligent director, following an objectively verifiable assessment of the circumstances, comes to the conclusion that a timely restructuring is reasonably likely to take place. Non-compliance with these filing obligations exposes managing directors to liability under both German criminal and civil law.

Q2 How does your national law compare with the Directive's maximum time limit for filing? Would any legislative amendment be required?

The Directive's requirements regarding the filing of insolvency petitions are broadly consistent with, but less stringent than, the existing German standard, whose maximum three- and six-week deadlines (see above) are each shorter than the Directive's maximum filing deadline of three months.

Germany

Q3 Does your national law currently provide for a discharge of the filing duty through public notification of insolvency and/or suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests? If so, how are those exceptions defined and what safeguards exist to prevent abuse?

Filing duties are not discharged by public notification. Managing directors must file for insolvency with the competent court.

Furthermore, the obligation to file for insolvency cannot be avoided simply by proactively pursuing steps to safeguard creditors' interests. However, such measures may be relevant in the following circumstances:

i. where the company is over-indebted, a robust restructuring concept may, within the six-week window, establish a credible going-concern forecast under section 19(2) InsO and thereby eliminate the over-indebtedness ground; or

ii. where the company is illiquid, the filing obligation falls away if liquidity is restored by these measures within the three-week window.

In either case, the filing deadline does not extend merely because restructuring efforts are ongoing.

F. Overall assessment

Q1 Overall, which aspect of the Directive do you consider to have the most significant impact on insolvency practice in your jurisdiction, and why?

The provisions concerning the pre-pack procedure will have the most significant impact, given that no such procedure has yet been explicitly codified under German law. Whether the German legislature will take the opportunity presented by the discretionary provisions in relation to pre-pack proceedings, in particular regarding the ranking of bridge finance (*Zwischenfinanzierungen*) and the provision of security, to establish or further expand relevant regulations in Germany remains to be seen.

Q2 Are there any other aspects of your national insolvency law that you consider to be at risk of disruption by the Directive, beyond the four areas expressly covered?

No.

Q3 What practical recommendations would you make to businesses, creditors, or insolvency practitioners in your jurisdiction to prepare for the transposition of the Directive?

At this stage, it is primarily important to monitor the legislative transposition process so as to enable a timely assessment of where practical steps may be required.

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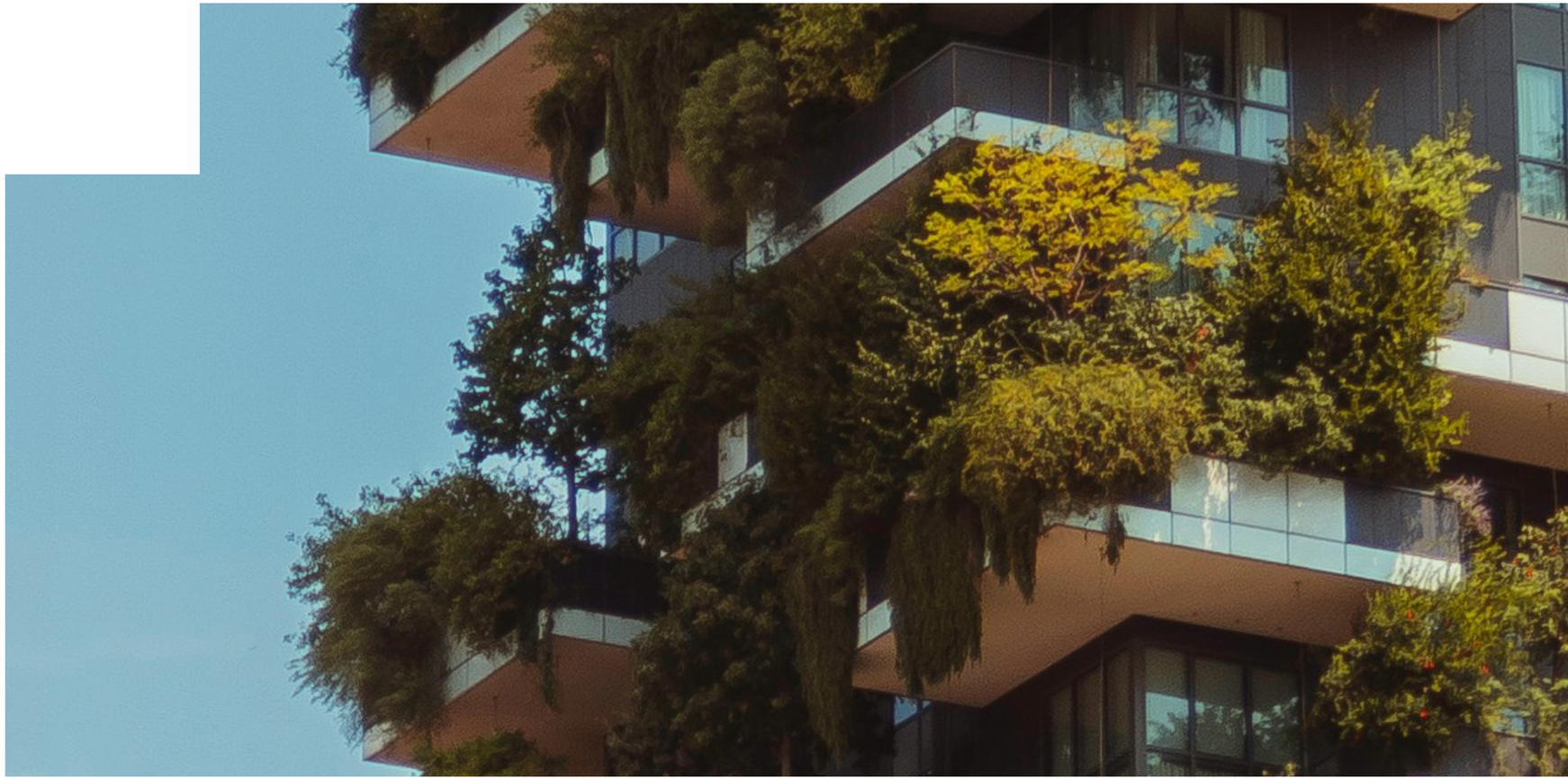


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Italy



Italy

A. General

Q1 How would you describe the current state of insolvency law in your jurisdiction in the areas covered by the Directive (avoidance actions, pre-pack proceedings, creditors' committees, and directors' duties)? Is the regime generally considered efficient and well-developed, or are there recognised gaps or shortcomings?

Italy's insolvency framework is governed mainly by the Crisis and Insolvency Code ("CCII", Legislative Decree No. 14/2019). The CCII regulates avoidance actions under Articles 163-171 CCII. By comparison with other jurisdictions, the Italian avoidance actions regime is often described as expansive, owing to its relatively long suspect periods and wide range of covered transactions.

The creditors' committee is provided for in the context of judicial liquidation proceedings (*liquidazione giudiziale*) under Articles 138-141 CCII.

Going-concern transfers are generally available in several Italian law procedures. However, no formalised 'pre-pack' mechanism like the one contemplated by the Directive currently exists.

As regards directors' duties to submit a request for the opening of judicial liquidation proceedings, the law mandates adequate organisational structures for early crisis detection, leaving it to the directors' exclusive competence and responsibility to decide if and when to petition for judicial liquidation. No obligation to file for insolvency within a prescribed fixed time limit is imposed.

Over time, a number of shortcomings and gaps have emerged across the above-mentioned areas of insolvency law, which have been progressively addressed through successive rounds of statutory improvement, including Legislative Decree No. 83/2022 (transposing Directive (EU) 2019/1023), Legislative Decree No. 224/2023, and Legislative Decree No. 136/2024 (amending CCII).

Q2 Has the transposition process of the Directive in your jurisdiction been initiated?

As of the date hereof, the transposition process of the Directive has not been formally initiated in Italy. Italy typically transposes EU directives through a so-called "European delegation law" (*legge di delegazione europea*), authorising the Government to adopt implementing legislative decrees. No such delegation law has been enacted or tabled with respect to this Directive. The Directive's provisions are expected to be transposed primarily through amendments to the CCII.

B. Avoidance actions

Q1 What are the current rules on avoidance actions in your jurisdiction? In particular:

> How long is the period preceding the submission of the request/resolution to commence proceedings for (i) preferences, (ii) transactions at no or manifestly inadequate consideration, and (iii) transactions intentionally detrimental to creditors?

> For each avoidance ground, preferences (whether or not the claim was satisfied as owed), transactions at no or manifestly inadequate consideration, and intentionally detrimental acts, does your national law require that the counterparty knew of the debtor's insolvency or detrimental intent? Where such knowledge is required, how is it established and where does the burden of proof lie? Does your national law provide for any presumptions of knowledge, for example in relation to parties connected or closely related to the debtor?

Under Articles 163-171 CCII, all suspect periods run backwards from the date of submission of the application for opening of judicial liquidation, but Italian avoidance actions are structured differently from the Directive's categories. As regards their length: (i) for cases closest to preferences under the Directive, ordinary payments of due debts can be clawed back if carried out within six months of submission, while payments by abnormal means and collateral for pre-existing debts can be clawed back within one year; (ii) for transactions at no or disproportionate consideration (concept similar to, but not coinciding with, the Directive's "manifestly inadequate consideration"), gratuitous acts are automatically ineffective if carried out within two years, while transactions at an undervalue exceeding one quarter can be clawed back if carried out within one year; and (iii) for intentionally detrimental acts, the general avoidance action under Article 2901 of the Civil Code applies, with no fixed suspect period but a five-year limitation period from the date of the act and, in any case, three years from the date of the judicial liquidation application's submission.

With regard to gratuitous acts, knowledge is not required. In all other cases, CCII requires proof of the counterparty's awareness of the debtor's insolvency but allocates the burden of proof differently: (i) for abnormal and undervalued transactions, it is reversed, meaning that the party that received the payment must demonstrate lack of knowledge; and (ii) for ordinary payments, the burden lies with the insolvency practitioner. The Italian Supreme Court has clarified that such knowledge must be actual, not merely potential (decision No. 13169/2020), but may be established through presumptions and assessed through individual and collective analysis of circumstantial evidence too, also in light of the counterparty's professional qualifications (decisions No. 10240/2025 and No. 86/2026). Article 169 CCII reverses the burden of proof for certain qualified persons (including spouses, civil partners and cohabitants), but no general statutory presumption of knowledge applies to all closely related parties.

Q2 How do the Directive's rules on avoidance actions compare with existing national law? What changes, if any, would be required to bring your national law into compliance?

Italy's suspect periods already meet or exceed the Directive's minimums of three months, twelve months

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and two years. With regard to time limitations, Article 170(1) CCII sets a dual time limit system: a three-year time bar (*decadenza*) running from the opening of judicial liquidation proceedings and applicable to all avoidance actions provided for under Articles 163-169 CCII, which is consistent with the three-year maximum set by the Directive, and an outer five-year limitation period (*prescrizione*) running from the date of the act itself. Since Member States shall ensure that the relevant limitation period is no longer than the above-mentioned three-year maximum, all interactions between such Directive's mandatory ceiling and the general Italian law five-year limitation period (applicable even in case the three-year time bar does not) should be checked on transposition to avoid any interpretation or application leading to non-compliance with the Directive's cap.

An area requiring legislative amendment concerns closely related parties. The Directive introduces a general rebuttable presumption of knowledge for all parties closely related to the debtor, based on a broad definition encompassing directors, controlling shareholders and connected persons. Italian law currently provides express enhanced rules only for spouses, civil partners and cohabitants (Article 169 CCII), so the statutory presumption framework will need to be extended to a significantly broader category of related parties.

A further gap concerns the Directive's broad notion of 'legal act' and its express extension of avoidance to omissions. Italian law currently does not allow the undoing of extinctive or similar effects that have already crystallised, and that seem to be covered by the Directive's rules on avoidance of omissive acts. This will require new legislative treatment, and Italy will probably also need to decide how an omission should be classified for suspect-period purposes (e.g. as a gratuitous act or as an intentional act) under the transposing rules.

Additional changes would likely include: (i) for transactions at inadequate consideration, rules coordinating the Directive's 'manifestly inadequate' test with the one-quarter disproportion-based test currently applicable under Italian law; (ii) for transactions intentionally detrimental to creditors, a broadening of the concept of 'knowledge' relevant thereto; and (iii) the codification of the prohibition to offset under Article 10(5) of the Directive, *de facto* already banned by Italian courts (see Supreme Court decisions No. 30759/2025; No. 82/2026; No. 27518/2008; No. 30824/2018).

Q3 Are there any aspects of the Directive's avoidance framework that you consider particularly beneficial or problematic from the perspective of your national practice?

The Directive adopts a restitutionary/indemnity model to avoidance actions, using the concepts of voidness, voidability and unenforceability that seem to presuppose an intrinsic legal disvalue in the targeted legal act itself, and providing, as consequence of a successful action, an obligation on the benefiting party to compensate/make good the estate for the detriment caused by the act.

Conversely, Italian law currently follows an effect-based model, which leads to the mere relative ineffectiveness (*inefficacia relativa*) of the targeted legal act: the underlying asset disposition remains fully valid inter partes and only its effects vis-à-vis the insolvency estate is removed. In essence, this remedy is contemplated as a purely redistributive sanction tied to the opening of the relevant collective insolvency proceedings.

In light of the above, should Italy be considered obligated to implement in full the model underlying the Directive, a paradigm shift would be needed and, irrespective of alignment with the specific rules included in the Directive, the roots of the whole Italian avoidance actions' system (including consolidated case-law precedents) would have to be reformed.

Aside from the above, Italy's framework is structurally anchored to predefined categories of avoidable transactions or acts, which deeply diverge from the Directive's approach. This divergence can potentially give rise to misalignment and create obstacles to a full and effective transposition of the Directive.

C. Pre-pack proceedings

Q1 Does your jurisdiction currently have pre-pack proceedings (i.e. a mechanism for preparing the sale of the debtor's business ahead of formal insolvency proceedings)? If so, how do they work in practice?

Italy has no standalone, two-phase, judicially supervised pre-pack procedure of the kind the Directive mandates.

The principal reference point for the sale of a debtor's business within formal insolvency proceedings is Article 214 CCII, which governs the disposal by the insolvency practitioner (*curatore*) of the business, its branches, or assets and legal relationships in the context of judicial liquidation, on the basis of a liquidation programme. This regime provides for a preference for whole going-concern sales, rather than a liquidation through separate disposals of assets, unless a fragmented liquidation appears more advantageous for the creditors.

Alongside this general regime, several instruments within the CCII share certain functional features with the pre-pack model, though none replicates its structured two-phase architecture. The negotiated crisis resolution procedure (*composizione negoziata della crisi*) allows the debtor, under the supervision of an independent expert, to negotiate with creditors and pursue a going-concern transfer of the business (Article 22 CCII). However, the process is primarily conducted by the debtor: the selection of the buyer is largely left to the debtor, with the court's role limited to verifying compliance with the principle of competitiveness. The sale is to occur during the procedure itself, rather than in a separate liquidation phase, as in pre-pack proceedings.

Another similar procedure, the simplified liquidation arrangement (*concordato semplificato liquidatorio*) is available only following an unsuccessful negotiated crisis resolution and is therefore not an autonomous mechanism.

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Finally, competitive bidding in a preventive arrangement with creditors (*concordato preventivo*) provides for court-supervised competitive offers when a bid for the business is received during the proceedings.

Nevertheless, none of these instruments features the monitor-led preparation phase, the structured competitive sale process, or the distinct liquidation phase envisaged by the Directive.

Q2 If pre-pack proceedings already exist in your jurisdiction, how do they compare with the framework introduced by the Directive? If they do not exist, what legislative reforms would be needed to introduce them? In particular, what changes would be required in your jurisdiction in relation to:

- the threshold for access to the preparation phase;
- retainment of (total or partial) control of the debtor's assets and the day-to-day operation of its business during the preparation phase;
- the scope of any stay of individual enforcement actions during the preparation phase; and
- the benchmark for the best-interest-of-creditors test.

Since Italy does not currently have pre-pack proceedings, the legislator will face a preliminary choice: either adapt existing instruments, such as the ones provided for in relation to the negotiated crisis resolution and/or the preventive arrangement with creditors, or introduce an entirely new standalone procedure within the CCII, replicating the Directive's two-phase architecture. In either case, reforms will be needed across the four areas identified. As to the threshold for access, CCII already provides a comparable standard for the negotiated crisis resolution, available when the debtor faces a financial imbalance making crisis or insolvency likely (Article 12(1) CCII). This threshold is broadly consistent with Article 21(1) of the Directive but would require specific adaptation to the preparation phase. As to debtor control, the negotiated crisis resolution, in which the debtor retains full management under expert supervision, offers an option. However, the monitor under Article 23 of the Directive, with distinct supervisory powers over the sale process and independence requirements, has no direct equivalent in CCII and would represent a structural novelty. As to the stay, the protective measures framework under Article 18 CCII already mirrors Articles 6-7 of Directive (EU) 2019/1023 and could be extended/adapted to the preparation phase without major changes. Finally, with regard to the best-interest-of-creditors test, Article 84(1) CCII, which governs preventive arrangements with creditors and requires that each creditor be satisfied in a measure no lower than that achievable in judicial liquidation, already applies a comparable benchmark. This test would need specific adaptation to the pre-pack context.

D. Creditors' committee

Q1 Is the concept of creditors' committee currently used in insolvency proceedings in your jurisdiction? If so, describe its typical composition, role, and powers.

The creditors' committee is a well-established feature of Italian insolvency law, which operates within judicial liquidation proceedings and is generally governed by Articles 138-141 CCII. As to its composition, the committee is appointed by the delegated judge within thirty days of the opening of judicial liquidation. It consists of three or five members selected among creditors, ensuring a balanced representation of the quantity and quality of claims (Article 138(2) CCII). The committee elects its own president by majority. With regard to its role, the committee performs three core functions (Article 140 CCII): (i) it supervises the insolvency practitioner's (*curatore*) conduct; (ii) it authorises specific acts of the practitioner as required by law; and (iii) it issues opinions when requested by the court or the delegated judge. In addition, committee members may at any time inspect the accounting records and documents of the proceedings and request information from the practitioner and the debtor (Article 140(5) CCII). As to liability, committee members are subject only to certain standards applicable to statutory auditors (*sindaci*) of joint-stock companies (Article 140(7) CCII), and are liable for damages resulting from failure to discharge their supervisory duties.

Q2 What changes, if any, would be required in your jurisdiction to implement the Directive's rules on the creditors' committee?

Italy's creditors' committee framework is broadly compatible with the Directive, though adjustments will be needed in several areas. In particular, the current Italian system, under which the committee is automatically appointed by the delegated judge, exceeds the Directive's minimum requirement of establishment upon creditor request (Article 44(1)). It might be appropriate for the legislature to introduce the cost-benefit opt-out permitted by Article 44(3), allowing exclusion where burdens outweigh benefits.

Article 138(2) CCII requires a balanced representation of claims but does not specifically provide for the eligibility of workers or cross-border creditors, both required by Articles 45(2)-(3) of the Directive, which shall be implemented accordingly.

With reference to the liability of committee members, Article 140(7) CCII cross-refers only to some of the Civil Code rules on statutory auditors' professionalism, diligence duty and liability-action procedure, expressly excluding application of the provision imposing quantitative caps on fault-based liability. At least one of the options on exclusion or insurance coverage of personal liability under Article 50(1) of the Directive shall thus be implemented. As to working methods, CCII already provides for electronic participation (Article 140(3)) and conflict-of-interest rules (Article 138(6)), but express confidentiality obligations as required by Article 48(4) are not currently codified.

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Finally, doubts have been raised on the compatibility of the delegated judge substitution powers (in case of committee's inertia) with the Directive's committee-centred model.

E. Directors' duties – duty to submit a request for the opening of insolvency proceedings

Q1 What are the current rules in your jurisdiction governing a director's duty to submit a request for the opening of insolvency proceedings? Is there a prescribed time limit?

Italian law does not prescribe a fixed time limit for directors to request the opening of insolvency proceedings. Instead, it imposes qualitative duties to promptly act, enforced through civil and criminal liability. Article 3 CCII and Article 2086 of the Civil Code require all entrepreneurs to adopt adequate measures for the early detection of crisis and to take the necessary initiatives without delay. For corporate entities, Article 3(2) CCII requires the establishment of adequate organisational, administrative and accounting structures for the timely detection of crises and the adoption of appropriate initiatives. Article 3, paras (3)-(4), CCII identify warning signals that such structures must be capable of detecting, including overdue debts to employees, suppliers and financial institutions. The decision to petition for judicial liquidation falls within the directors' exclusive competence and responsibility. An unjustified delay in filing may trigger both civil liability (including damages caused by a failure to manage the company conservatively once a cause of dissolution has arisen) and criminal liability (e.g. where directors have contributed to causing or aggravating the company's negative financial situation by failing to observe their statutory obligations, including the duty to seek the timely opening of judicial liquidation).

Q2 How does your national law compare with the Directive's maximum time limit for filing? Would any legislative amendment be required?

The three-month hard deadline provided by the Directive has no equivalent in the current qualitative framework, so legislative amendment will be required to introduce a fixed time limit. A literal transposition would also need to be coordinated with Italy's existing rescue rules architecture: Italian law permits directors facing reversible insolvency, not only mere crisis, to pursue restructuring tools, rather than filing immediately for judicial liquidation, and a rigid three-month clock could otherwise be read as foreclosing recourse to those tools. It seems therefore appropriate that transposing legislation makes clear that the filing duty does not apply, or is suspended, where directors have instead availed themselves of such a restructuring instrument (as already contemplated, among others, by Article 41(3) of the Directive).

Q3 Does your national law currently provide for a discharge of the filing duty through public notification of insolvency and/or suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests? If so, how are those exceptions defined and what safeguards exist to prevent abuse?

Italian law does not formally provide for a discharge of the filing duty through public notification. A suspension operates through the interaction between access to alternative crisis-resolution/restructuring procedures and the associated protective measures. For instance, from the date of publication in the Companies' Register of the debtor's application for a negotiated crisis resolution procedure accompanied by a request for protective measures, the court is precluded from opening judicial liquidation proceedings until the negotiations conclude, the application is archived, or the protective measures are judicially revoked (see also Supreme Court decision No. 31856/2025). An equivalent staying effect arises upon filing for preventive arrangements with creditors.

In practice, directors frequently access these procedures to pursue restructuring alternatives while benefiting from a stay of their duty to file for judicial liquidation, achieving a result functionally comparable to the suspension envisaged by Article 41(3) of the Directive. Safeguards against abuse include judicial power to revoke protective measures (Article 18(4) CCII) and a four-month cooling-off period following withdrawal from a different procedure, during which an application for negotiated crisis resolution cannot be filed (Article 25-*quinquies* CCII).

F. Overall assessment

Q1 Overall, which aspect of the Directive do you consider to have the most significant impact on insolvency practice in your jurisdiction, and why?

The Directive's impact on the Italian insolvency framework is significant but uneven across the areas covered. Italy has undergone extensive insolvency reform in recent years and in several areas the existing framework already meets or exceeds the Directive's minimum harmonisation standards. The most significant practical impact will be felt in two areas: the introduction of a formalised pre-pack mechanism, which has no equivalent in the current CCII, and the mandatory three-month filing deadline for directors, which replaces the existing qualitative standard of promptness with a fixed quantitative threshold. A further, more structural, potential impact concerns avoidance actions: to the extent Italy is considered obliged to align fully with the Directive's restitutionary/indemnity model rather than treating its own rules merely as more protective minimum-harmonisation variants, this could require a broader conceptual reform of the effect-based framework (centred on "relative ineffectiveness") that currently underpins Italian avoidance law.

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Q2 Are there any other aspects of your national insolvency law that you consider to be at risk of disruption by the Directive, beyond the four areas expressly covered?

A further, distinct area of disruption beyond the four covered topics above is the Directive's asset-tracing regime (Articles 14-20). Currently, Italian law affords insolvency practitioners only ad hoc access to selected databases where the debtor's records are unreliable or the debtor does not comply with obligations to deliver certain financial documents, subject to specific judicial authorisation. There is no standing, general right of access to the Directive's Annex registers, nor any designated-court mechanism for cross-border bank account searches. Transposition will thus require Italy to implement a number of changes in its domestic rules.

Q3 What practical recommendations would you make to businesses, creditors, or insolvency practitioners in your jurisdiction to prepare for the transposition of the Directive?

Businesses and directors should strengthen their financial monitoring and early-warning systems, particularly cash-flow forecasting and internal crisis detection structures. Under the current CCII, Article 3 already requires adequate organisational arrangements; the Directive's three-month filing deadline will raise the stakes significantly, as the adequacy of those structures may be put to the test and be decisive in correctly determining the moment from which awareness of insolvency is deemed to have arisen, and thus the starting point of the filing period. Directors should not wait for the Italian implementing legislation: the Directive's standards will define the benchmark against which their conduct will be assessed. Creditors, especially those closely related to the debtor, should enhance their transaction documentation practices, as the Directive extends the existing statutory presumption of knowledge to a considerably broader category of closely related parties, including directors, controlling shareholders and other connected persons. Cross-border creditors should take note of the new right to participate in creditors' committees. Insolvency practitioners should begin familiarising themselves with the pre-pack mechanism and the role of the monitor, a figure with no direct equivalent in the CCII, as well as with the forthcoming asset-tracing infrastructure, including the extended register and bank-account-search powers described above. They should also prepare for the dual-regime period on avoidance actions under Article 55(2) CCII, which will require identifying the applicable rules on a transaction-by-transaction basis depending on the date of each act.

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A. General

Q1 How would you describe the current state of insolvency law in your jurisdiction in the areas covered by the Directive (avoidance actions, pre-pack proceedings, creditors' committees, and directors' duties)? Is the regime generally considered efficient and well-developed, or are there recognised gaps or shortcomings?

Despite punctual legal reforms, Luxembourg insolvency law remained largely unchanged for more than a century. A reform was introduced by the Law of 7 August 2023 on business preservation and the modernisation of insolvency law (the "2023 Law"), which established new restructuring tools, including judicial reorganisation (*réorganisation judiciaire*), the out-of-court amicable agreement (accord amiable), and the transfer of all or part of the business by court order, while abolishing the former preventive composition procedure and the controlled management regime.

That said, some areas covered by the Directive provide a mixed picture.

- As regards avoidance actions, the traditional framework set out in Articles 445 to 449 of the Commercial Code is based on a relatively short suspect period, limited to a maximum of six months and 10 days, although the general avoidance action under Article 448 of the Commercial Code is not subject to any specific time limit. Moreover, Luxembourg law does not provide for any statutory presumptions of knowledge in relation to parties closely related to the debtor, nor does it set a specific limitation period for bringing avoidance actions.
- As regards pre-pack proceedings, Luxembourg law now contains an early form of such a mechanism through the transfer by court order procedure as set out in the 2023 Law. However, it does not provide for a confidential preparatory phase of the kind envisaged by the Directive.
- As for creditors' committees, a legal framework exists under the Law of 30 June 1930 on the creation of a creditors' committee, but it has fallen into disuse in practice.
- As regards directors' duties, Luxembourg already requires a declaration of bankruptcy to be made within one month of cessation of payments, which is stricter than the Directive's maximum time limit of three months.

Overall, although the 2023 reform modernised several aspects of Luxembourg insolvency law, the regime will still need to be adjusted in order to comply with the Directive.

Q2 Has the transposition process of the Directive in your jurisdiction been initiated?

As at the date of writing, no bill transposing Directive (EU) 2026/799 has been introduced before the Luxembourg Chamber of Deputies.

B. Avoidance actions

Q1 What are the current rules on avoidance actions in your jurisdiction? In particular:

- How long is the period preceding the submission of the request/resolution to commence proceedings for (i) preferences, (ii) transactions at no or manifestly inadequate consideration, and (iii) transactions intentionally detrimental to creditors?
- For each avoidance ground, preferences (whether or not the claim was satisfied as owed), transactions at no or manifestly inadequate consideration, and intentionally detrimental acts, does your national law require that the counterparty knew of the debtor's insolvency or detrimental intent? Where such knowledge is required, how is it established and where does the burden of proof lie? Does your national law provide for any presumptions of knowledge, for example in relation to parties connected or closely related to the debtor?

Luxembourg law distinguishes three types of avoidance actions.

Under Article 445 of the Commercial Code, certain acts entered into during the suspect period, or during the 10 days preceding it, are automatically void: (i) gratuitous transfers and commutative transactions in which the debtor's obligations manifestly exceed those of the counterparty; (ii) payments of debts not yet due, or due debts paid otherwise than in cash or by negotiable instruments; and (iii) security granted for pre-existing debts. No proof of the counterparty's knowledge is required.

Secondly, under Article 446, other transactions for value entered into during the suspect period may be avoided, provided the counterparty knew of the cessation of payments. The burden of proof lies with the party seeking avoidance.

Thirdly, under Article 448, acts or payments carried out in fraud of creditors are annulled regardless of when they were performed.

As regards timing, under Article 442 of the Commercial Code, the date of cessation of payments cannot be set more than six months before the bankruptcy judgment. The suspect period may therefore extend to a maximum of six months and ten days for the purposes of Article 445.

Luxembourg law does not provide for any specific statutory presumptions of knowledge.

Q2 How do the Directive's rules on avoidance actions compare with existing national law? What changes, if any, would be required to bring your national law into compliance?

The Directive's avoidance rules are broadly compatible with Luxembourg law in principle, but several amendments would be needed to ensure full compliance.

The main divergence concerns the applicable look-back periods. Contrary to the periods provided for by the Directive, Article 442(3) of the Commercial Code ties avoidance to the suspect period, which cannot begin more than six months before the bankruptcy judgment, except in the case of fraud. For preferences

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and legal acts in exchange for no or manifestly inadequate consideration, the relevant periods would therefore need to be extended.

Secondly, the Directive requires presumptions of knowledge in certain cases involving closely related parties. Luxembourg law does not currently provide for statutory presumptions of this kind. Such presumptions would therefore need to be introduced.

In addition, the Directive provides for a three-year limitation period for bringing avoidance actions, which Luxembourg law does not provide as it stands.

Q3 Are there any aspects of the Directive's avoidance framework that you consider particularly beneficial or problematic from the perspective of your national practice?

The presumptions of knowledge for closely related parties are a noteworthy development. As noted above, Luxembourg law does not currently provide for any statutory presumptions of knowledge, which means that the insolvency practitioner bears the burden of proving the counterparty's awareness of the debtor's financial position. The introduction of such presumptions would shift avoidance claims in practice.

On the contrary, the extension to twelve months for transactions at no or manifestly inadequate consideration and to two years for intentionally detrimental acts increases the exposure of counterparties dealing with a debtor in financial difficulty.

C. Pre-pack proceedings

Q1 Does your jurisdiction currently have pre-pack proceedings (i.e. a mechanism for preparing the sale of the debtor's business ahead of formal insolvency proceedings)? If so, how do they work in practice?

Luxembourg does not currently have pre-pack proceedings per se in the sense contemplated by the Directive. However, the recent 2023 Law introduced a related mechanism: judicial reorganisation by transfer by court order (see Articles 55 to 64 of the 2023 Law).

Under this regime, the court may, with the debtor's consent or at the request of a third party, carry out the transfer of all or part of the business in the debtor's name and on the debtor's behalf. In practice, the judicial representative (*mandataire de justice*) seeks out and invites offers, determines the sale process and bidding timetable, and may proceed either by public sale or private sale. They must give priority to preserving the business and employment, while also taking creditors' rights into account.

That said, this mechanism differs in several important respects from the pre-pack model under the Directive. There is no distinct confidential preparatory phase before the opening of formal proceedings, no separately appointed independent monitor tasked with reviewing the proposed sale in advance, and no genuinely pre-negotiated sale process outside court.

Q2 If pre-pack proceedings already exist in your jurisdiction, how do they compare with the framework introduced by the Directive? If they do not exist, what legislative reforms would be needed to introduce them? In particular, what changes would be required in your jurisdiction in relation to:

- the threshold for access to the preparation phase;
- retainment of (total or partial) control of the debtor's assets and the day-to-day operation of its business during the preparation phase;
- the scope of any stay of individual enforcement actions during the preparation phase; and
- the benchmark for the best-interest-of-creditors test.

The existing legal framework regarding judicial reorganisation will need to be adapted on several aspects to comply with the new Directive and become the pre-pack proceeding as intended by the Directive. The main changes would be the following.

As regards access to the preparation phase, the Directive appears to contemplate entry at an earlier stage, namely where insolvency is likely. This may require Luxembourg law to permit access before the current threshold of "*financial difficulty endangering the business in the short or longer term*" (Article 19 of the 2023 Law).

As regards the retention of control by the debtor, the 2023 Law contains only debtor in possession proceedings in the filing and preparatory phase; this is thereafter subject to the control of the court and positive vote by the relevant majority of creditors as provided for therein.

As regards the scope of any stay and the best-interest-of-creditors test, Luxembourg law already contains relevant provisions in each case (detailed stay rules in the context of judicial reorganisation under Articles 28 to 34 of the 2023 Law and a creditor-protection safeguard for collective agreements under Article 43 of the 2023 Law) but neither regime is currently attached to a dedicated pre-pack preparation phase. Both would therefore need to be extended or adapted to cover transfers by court order within any future pre-pack regime introduced under the Directive.

D. Creditors' committee

Q1 Is the concept of creditors' committee currently used in insolvency proceedings in your jurisdiction? If so, describe its typical composition, role, and powers.

Luxembourg law does recognise the concept of a creditors' committee, established under the law of 30 June 1930 on the creation of a creditors' committee (the "**1930 Law**"), which was enacted to safeguard creditors' interests in bankruptcy and composition proceedings.

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Under this law, the supervising judge is empowered to appoint the committee's members, convene meetings, and replace or remove members as needed; the court also retains discretion not to constitute a committee at all.

In practice, however, creditors' committees are rarely set up in Luxembourg insolvency proceedings.

Q2 What changes, if any, would be required in your jurisdiction to implement the Directive's rules on the creditors' committee?

The 1930 Law governing creditors' committees is a short nine-article statute that has remained unchanged since its adoption and was not revisited by the Law of 7 August 2023. It applies only to unsecured creditors and establishes a purely voluntary, optional mechanism, rather than a mandatory one covering all classes of creditors.

Transposing the Directive will therefore require substantive legislative work to reshape the existing framework: extending its scope beyond unsecured creditors, and aligning the creditors' committee establishment, composition, working methods, powers, expenses and liability rules with the Directive's more detailed requirements.

E. Directors' duties – duty to submit a request for the opening of insolvency proceedings

Q1 What are the current rules in your jurisdiction governing a director's duty to submit a request for the opening of insolvency proceedings? Is there a prescribed time limit?

Under Luxembourg law, there is a statutory duty to file for the opening of bankruptcy proceedings once the conditions for bankruptcy are met, and that duty is subject to a one-month time limit. Article 440 of the Commercial Code requires any entrepreneur and any commercial company that has ceased payments to make a declaration of bankruptcy at the registry of the District Court sitting in commercial matters at the place of its domicile or registered office within one month.

As to when that period starts, the relevant trigger is the material existence of cessation of payments. Under Luxembourg bankruptcy law, this is assessed together with the inability to raise further credit (*ébranlement du credit*).

In practical terms, directors are expected to monitor the company's financial position on an ongoing basis so that they can identify when the bankruptcy conditions have been met.

The director failing to file for bankruptcy within the one-month time limit may face criminal and civil consequences.

Q2 How does your national law compare with the Directive's maximum time limit for filing? Would any legislative amendment be required?

Under Luxembourg law, the declaration of bankruptcy must be made within one month from the cessation of payments (see Article 440 of the Commercial Code), which is stricter than the Directive's maximum time limit of three months (see Article 40(2)). Since this is consistent with a minimum harmonisation approach, no legislative amendment appears necessary in relation to the duration of the filing period.

Q3 Does your national law currently provide for a discharge of the filing duty through public notification of insolvency and/or suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests? If so, how are those exceptions defined and what safeguards exist to prevent abuse?

Luxembourg law does not currently provide for a discharge of the filing duty through public notification of insolvency. The exception contemplated by Article 41(2) of the Directive is therefore not recognised under Luxembourg law.

As regards suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests, Luxembourg law does provide for such an exception. Under Article 18 of the 2023 Law, the filing of a request for judicial reorganisation lifts the obligation to file for bankruptcy. Once the judicial reorganisation proceedings are opened, the same suspension continues to apply pursuant to Article 25 of that 2023 Law.

This is reflected in Article 440 of the Commercial Code, which provides that, for as long as the court has not ruled on the application for judicial reorganisation, the debtor may not be declared bankrupt, offering a further layer of protection to directors who have proactively applied for judicial reorganisation during that interim period.

F. Overall assessment

Q1 Overall, which aspect of the Directive do you consider to have the most significant impact on insolvency practice in your jurisdiction, and why?

One of the aspects of the Directive likely to have the most significant impact on insolvency practice in Luxembourg is the introduction of a creditors' committee which would modernise the unused creditors' committee existing under Luxembourg law.

The introduction of a creditors' committee with defined rights to information and to be heard, together with codified rules on its functioning and liability, could influence and potentially affect the conduct of proceedings, particularly in larger bankruptcies involving investment vehicles and holding structures.

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The pre-pack mechanism may also have a notable impact, although this may be moderated by the recent Luxembourg mechanism permitting transfers by court order.

The provisions on avoidance actions are more technical, but they may also prove significant, as they could require adjustments to the current approach to the suspect period under Luxembourg law.

Q2 Are there any other aspects of your national insolvency law that you consider to be at risk of disruption by the Directive, beyond the four areas expressly covered?

None identified.

It should be noted that the Law of 5 August 2005 on financial collateral arrangements provides broad protection for financial collateral against avoidance and will not be impacted by any adjustments required by the Directive.

Q3 What practical recommendations would you make to businesses, creditors, or insolvency practitioners in your jurisdiction to prepare for the transposition of the Directive?

Businesses should review transactions that may be exposed to challenge in insolvency, particularly if look-back periods are extended to twelve months or two years. This is especially relevant for intra-group financing, internal reorganisation and asset movements: corporate groups should assess their structure and internal transactions in light of the Directive's broad definition of parties closely related to the debtor, which may affect the scrutiny of intra-group dealings.

Companies should prepare earlier for restructuring scenarios, including considering whether pre-negotiated sales could become a useful tool.

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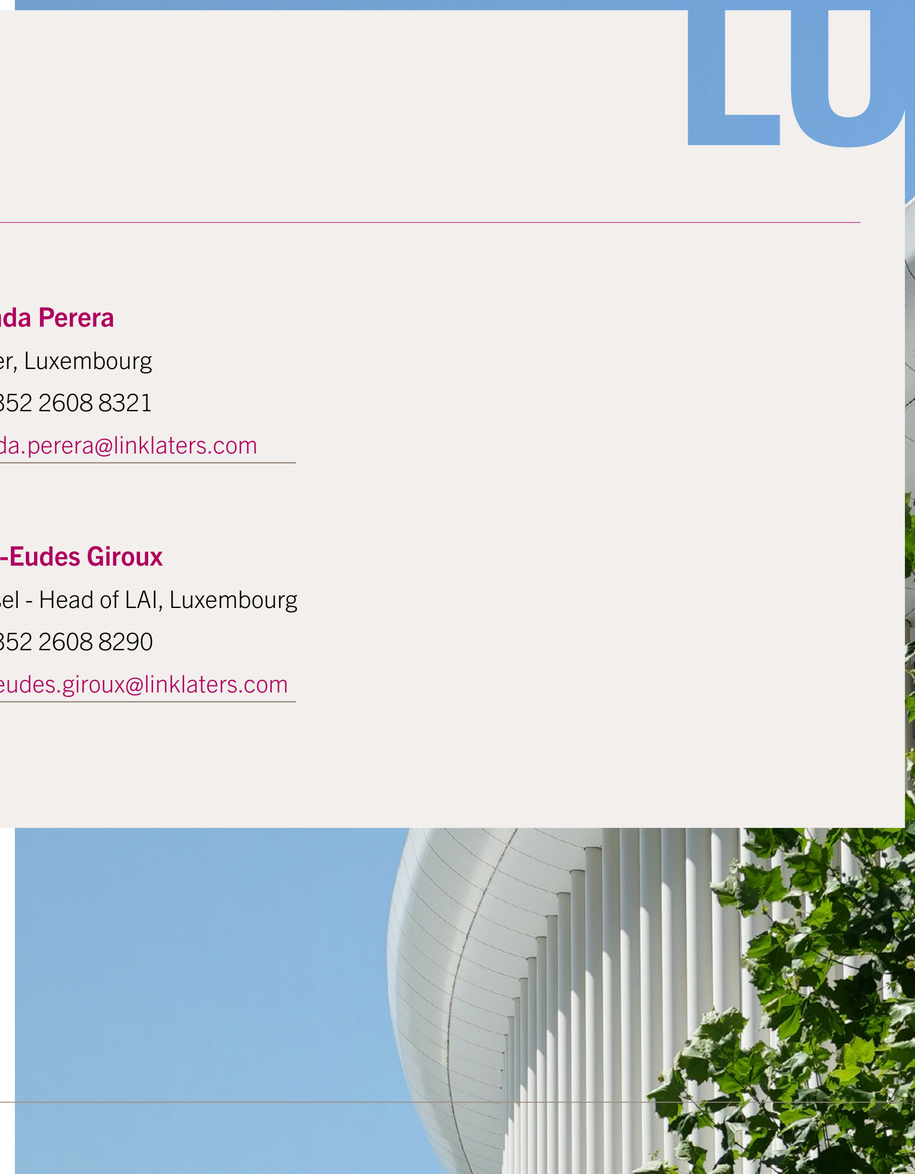
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The Netherlands



The Netherlands

A. General

Q1 How would you describe the current state of insolvency law in your jurisdiction in the areas covered by the Directive (avoidance actions, pre-pack proceedings, creditors' committees, and directors' duties)? Is the regime generally considered efficient and well-developed, or are there recognised gaps or shortcomings?

Dutch insolvency law is generally regarded as mature and well developed but shows specific gaps relative to the Directive. Avoidance actions (*faillissementspauliana*) rest on a legislative framework that is well-developed in case law but structurally different from the Directive. The current Dutch law framework for avoidance actions is built around the distinction between "*verplichte*" (obligatory) and "*onverplichte*" (non-obligatory) legal acts, rather than the Directive's three-category system. Furthermore, there is no general statutory duty imposed on directors to file for insolvency (albeit that liability exposure in certain cases may incentivise directors to file).

Q2 Has the transposition process of the Directive in your jurisdiction been initiated?

No implementing legislation has yet been drafted; the process will begin with a public internet consultation of a draft implementation bill and explanatory memorandum, expected in autumn 2026. This is followed by Council of State advice and parliamentary approval. Formal domestic transposition has therefore not started.

B. Avoidance actions

Q1 What are the current rules on avoidance actions in your jurisdiction? In particular:

> How long is the period preceding the submission of the request/resolution to commence proceedings for (i) preferences, (ii) transactions at no or manifestly inadequate consideration, and (iii) transactions intentionally detrimental to creditors?

> For each avoidance ground, preferences (whether or not the claim was satisfied as owed), transactions at no or manifestly inadequate consideration, and intentionally detrimental acts, does your national law require that the counterparty knew of the debtor's insolvency or detrimental intent? Where such knowledge is required, how is it established and where does the burden of proof lie? Does your national law provide for any presumptions of knowledge, for example in relation to parties connected or closely related to the debtor?

In bankruptcy, the bankruptcy trustee is exclusively entitled to invoke the *actio pauliana* (voidable preference), under which prejudicial transactions that occurred before the opening of the bankruptcy proceedings may be challenged in certain circumstances. A successful challenge of a transaction pursuant to the *actio pauliana* first requires that the transaction was prejudicial (*benadelend*).

If the transaction was prejudicial, further requirements depend on whether the transaction concerns (i) obligatory (*verplichte*) legal acts, which are acts based on a pre-existing obligation, or (ii) voluntary (*onverplichte*) legal acts, which are not based on a pre-existing obligation.

Obligatory legal acts may only be challenged if:

i. the debtor's counterparty knew at the moment of performance that a petition for the debtor's bankruptcy had been filed with the court; or

ii. the transaction resulted from concerted action of the debtor and its counterparty with an aim to defraud the debtor's other creditors.

Voluntary legal acts can be challenged if:

i. the debtor received consideration: if both the debtor and its counterparty were aware or should have been aware at the time of the transaction that the prejudicial effect would arise; or

ii. if the debtor did not receive consideration: if the debtor was aware or should have been aware at the time of the transaction that the prejudicial effect would arise.

Dutch law has no fixed statutory look-back period. However, duration generally affects the degree to which the debtor/counterparty had actual or constructive knowledge of prejudice, though specific presumptions exist. For gratuitous transactions, no knowledge of the counterparty is required, only knowledge of prejudice by the debtor; a rebuttable presumption of knowledge exists for gratuitous acts and for acts where the debtor's obligation clearly exceeded the counterparty's. For obligatory acts, the required knowledge is of an actual bankruptcy petition or collusion; mere knowledge of impending insolvency is insufficient. Burden of proof generally lies with the trustee (curator), subject to the presumptions above.

Q2 How do the Directive's rules on avoidance actions compare with existing national law? What changes, if any, would be required to bring your national law into compliance?

The Directive introduces three fixed avoidance categories with defined look-back periods. This meaningfully differs from Dutch law: the Dutch law dichotomy between obligatory and voluntary legal acts does not map cleanly onto the Directive's three categories. Furthermore, Dutch law will need to introduce a prescribed look-back period. Other legislative choices are required regarding the extension of Dutch avoidance rules to the suspension of payments (*surseance van betaling*) regime and the legal effects of avoided transactions.

Q3 Are there any aspects of the Directive's avoidance framework that you consider particularly beneficial or problematic from the perspective of your national practice?

From a creditors' perspective, the fixed look-back

The Netherlands

periods introduce a degree of predictability compared to Dutch case-by-case assessment of whether knowledge of prejudice existed. A key challenge, however, is that the Directive aims to achieve minimum harmonisation only, which will likely impede meaningful convergence across Member States and undermine the Directive's stated cross-border investment objective.

C. Pre-pack proceedings

Q1 Does your jurisdiction currently have pre-pack proceedings (i.e. a mechanism for preparing the sale of the debtor's business ahead of formal insolvency proceedings)? If so, how do they work in practice?

In the Dutch legal order, pre-pack proceedings operate as an informal court practice developed since 2012 and only in a select number of district courts. There is no statutory basis; a court appoints a *beoogd curator* (prospective trustee) and *beoogd rechter-commissaris* (prospective supervisory judge) to oversee the confidential preparation of a going-concern sale, effected upon subsequent bankruptcy. Legislative attempts (namely, the WCO I) stalled after the *Smallsteps* judgment by the CJEU created uncertainty over whether the TUPE bankruptcy exception applied; the *Heiploeg* judgment by the CJEU later confirmed that a statutory basis is essential for the exception to apply.

Q2 If pre-pack proceedings already exist in your jurisdiction, how do they compare with the framework introduced by the Directive? If they do not exist, what legislative reforms would be needed to introduce them? In particular, what changes would be required in your jurisdiction in relation to:

- the threshold for access to the preparation phase;
- retainment of (total or partial) control of the debtor's assets and the day-to-day operation of its business during the preparation phase;
- the scope of any stay of individual enforcement actions during the preparation phase; and
- the benchmark for the best-interest-of-creditors test.

The Directive requires a two-phase structure (confidential preparation phase and liquidation phase) with an independent monitor; Dutch practice already broadly mirrors this via the *beoogd curator*, but lacks statutory basis. Changes are likely required in the following areas:

i. The Directive requires availability at least where the debtor is "likely to become insolvent" under national law. This threshold would require further specification into Dutch law and/or Dutch case law.

ii. The Directive requires debtors to retain full or partial control during preparation; Dutch practice already achieves this informally via debtor-in-possession-style pre-pack, but will require codification into Dutch law.

iii. The Directive links the preparation-phase stay to Articles 6-7 of the Restructuring Directive. Dutch law would need to include moratorium-style mechanics into the pre-pack context specifically, potentially borrowing from the existing mechanics in the recently introduced Act on Court Confirmation of Extrajudicial Restructuring Plan (known as "WHOA"), which is in part an implementation of the Restructuring Directive.

iv. Dutch law has no codified benchmark equivalent to a "best interest of creditors" test for pre-pack sales, although the (few) pre-packs applied in practice do require that the going concern pre-pack sale generates higher proceeds than a piecemeal sale during bankruptcy proceedings.

D. Creditors' committee

Q1 Is the concept of creditors' committee currently used in insolvency proceedings in your jurisdiction? If so, describe its typical composition, role, and powers.

The concept of a creditors' meeting (*schuldeisersvergadering*) and a creditors' committee (*schuldeiserscommissie*) exist in bankruptcy proceedings. A creditors' meeting can be formed at a request by five creditors holding one-fifth of admitted/provisionally admitted claims. The creditors' meeting can resolve to form a creditors' committee. Except for the voting hearing on a possible insolvency plan submitted by a debtor, both institutions have solely advisory and consultation rights. However, it is rarely applied in practice, in part due to (a) the large majority of Dutch bankruptcies having insufficient estate funds to cover all estate expenses, and (b) the creditors' committee having no power to bindingly instruct or veto actions by the trustee. A more effective variant exists in suspension-of-payments (*surseance van betaling*) proceedings: where a debtor has over 5,000 creditors, the court may appoint a nine-member "committee of representation" with exclusive plan-voting rights, replacing individual votes. This mechanism was successfully used in the Steinhoff and DSB restructurings to manage mass-claim creditor bases.

Q2 What changes, if any, would be required in your jurisdiction to implement the Directive's rules on the creditors' committee?

The Directive requires committee formation upon request of the creditors' assembly/creditors after bankruptcy proceedings open, subject to *inter alia* a proportionality carve-out for small estates (Article 44). Dutch law's current provisions are broadly compatible in structure (low creditor threshold, advisory role) but would need to codify further aspects, such as information rights, voting procedures/quorum, and a statutory liability shield for committee members, none of which are currently spelled out to the Directive's level of detail. Member States may also extend deeper participation rights than the Directive requires (Article 4(2)), so the Netherlands retains discretion on scope.

The Netherlands

E. Directors' duties – duty to submit a request for the opening of insolvency proceedings

Q1 What are the current rules in your jurisdiction governing a director's duty to submit a request for the opening of insolvency proceedings? Is there a prescribed time limit?

No statutory duty to file for insolvency exists under Dutch law and there is no prescribed time limit. Dutch law instead relies principally on civil law liability concepts for director liability. However, a director's liability risk is likely to increase the longer the director continues trading during financial distress, incentivising a director to timely file for opening of insolvency proceedings.

Q2 How does your national law compare with the Directive's maximum time limit for filing? Would any legislative amendment be required?

The Directive's filing deadline represents a break with Dutch law, which currently has no such duty at all. This will require legislative amendment. A related open question is which compliance route the legislator will prioritise: the Directive permits Member States to allow discharge of the duty via public notification in an official register (Article 41(2)) or suspension where directors take alternative creditor-protective measures (Article 41(3)). The Dutch government has already indicated in EU-level negotiations a preference for preserving flexibility for such alternatives over a (more rigid) filing obligation, which will shape how disruptive the new duty proves in practice. In any event, the practical application will meaningfully depend on how the Dutch legislator defines "insolvency" for this purpose. In general, a strict definition tied to cash flow insolvency (comparable to the current Dutch bankruptcy criterion) would trigger the duty relatively late, preserving current legislative space, whereas a broader economic/balance-sheet definition would trigger it much earlier.

Q3 Does your national law currently provide for a discharge of the filing duty through public notification of insolvency and/or suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests? If so, how are those exceptions defined and what safeguards exist to prevent abuse?

N/A, as there is no filing duty under Dutch law currently.

F. Overall assessment

Q1 Overall, which aspect of the Directive do you consider to have the most significant impact on insolvency practice in your jurisdiction, and why?

The directors' duty-to-file (Title V) is one of the more significant elements for Dutch practice, because the Netherlands currently has no equivalent duty at all. The avoidance-action and pre-pack changes will also have a major impact on the Dutch legal framework, but can in principle build on existing (if differently structured) Dutch concepts.

Q2 Are there any other aspects of your national insolvency law that you consider to be at risk of disruption by the Directive, beyond the four areas expressly covered?

The pending legislation on employee transfer in pre-packs (Wovof) may need to be reconciled with (or may conflict with) the Directive's treatment of the TUPE bankruptcy exception. This is left to future CJEU interpretation and Dutch implementation of the Directive.

Q3 What practical recommendations would you make to businesses, creditors, or insolvency practitioners in your jurisdiction to prepare for the transposition of the Directive?

Businesses and practitioners should monitor the forthcoming public consultation on the Dutch implementation bill, with a particular focus on key concepts/definitions. The definition of "insolvency" for the purposes of the filing duty, for example, chosen by the legislator will materially determine the practical reach of the new duty-to-file regime. Creditors and lenders relying on existing *pauliana* defences should reassess transaction structuring (e.g. related-party financing, security granted during ongoing credit facilities) against the Directive's fixed look-back periods well before the 2029 deadline.

The Netherlands

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Portugal





Portugal

A. General

Q1 How would you describe the current state of insolvency law in your jurisdiction in the areas covered by the Directive (avoidance actions, pre-pack proceedings, creditors' committees, and directors' duties)? Is the regime generally considered efficient and well-developed, or are there recognised gaps or shortcomings?

In Portugal, insolvency law is governed by the Insolvency and Corporate Recovery Code (hereinafter the "CIRE"), which already provides solutions in several areas that are similar to those required by the Directive. Nevertheless, the following key points are remarkable:

i. Avoidance actions: the CIRE provides for avoidance of transactions for the benefit of the insolvency estate. Although there are certain differences, the CIRE is broadly aligned with the Directive in this area.

ii. Pre-pack proceedings: this is, by far, the most significant gap in the Portuguese insolvency law, as the CIRE does not provide for pre-pack proceedings as defined in the Directive.

iii. Creditors' committees: the CIRE provides for this body, but it is optional. The court may decide not to appoint a creditors' committee, considering factors such as the reduced dimension of the insolvency estate, the simplicity of the liquidation or the small number of creditors in the insolvency proceedings.

iv. Directors' duties: Article 18 of the CIRE imposes a duty to request the opening of insolvency proceedings. According to the CIRE, the time for requesting the opening of insolvency proceedings is shorter than the period established by the Directive, but the transposition may require legislative intervention, particularly in relation to legal persons and the liability of directors.

Q2 Has the transposition process of the Directive in your jurisdiction been initiated?

As far as is publicly known, there are no ongoing works for the transposition of the Directive.

B. Avoidance actions

Q1 What are the current rules on avoidance actions in your jurisdiction? In particular:

> How long is the period preceding the submission of the request/resolution to commence proceedings for (i) preferences, (ii) transactions at no or manifestly inadequate consideration, and (iii) transactions intentionally detrimental to creditors?

> For each avoidance ground, preferences (whether or not the claim was satisfied as owed), transactions at no or manifestly inadequate consideration, and intentionally detrimental acts, does your national law require that the counterparty knew of the debtor's insolvency or detrimental intent?

> Where such knowledge is required, how is it established and where does the burden of proof lie? Does your national law provide for any presumptions of knowledge, for example in relation to parties connected or closely related to the debtor?

In Portuguese insolvency law, there are essentially two types of avoidance of transactions for the benefit of the insolvency estate: conditional and unconditional avoidance. In conditional avoidance, the avoidance of a transaction for the benefit of the insolvency estate depends on the satisfaction of several cumulative requirements, including a time requirement: the transaction must have been carried out within the two years preceding the commencement of the insolvency proceedings. In addition, the transaction must be prejudicial to the insolvency estate, meaning that it must diminish, frustrate, hinder, endanger or delay the satisfaction of the insolvency creditors. Finally, the bad faith of the counterparty must be established. In unconditional avoidance, none of these requirements is relevant. In this regard, Article 121 of the CIRE sets out acts which may be avoided for the benefit of the insolvency estate irrespective of the satisfaction of any such requirements, including, in transactions for consideration entered into by the insolvent debtor within the year preceding the date of commencement of the insolvency proceedings in which the obligations assumed by the debtor manifestly exceed those of the counterparty.

In conditional avoidance, one of the requirements is the bad faith of the counterparty, which exists where the counterparty has knowledge of any of the following circumstances: (i) the debtor's state of insolvency; (ii) the detrimental nature of the transaction; or (iii) the commencement of the insolvency proceedings (Article 120 (5) of the CIRE). In relation to the burden of proof, the insolvency administrator must demonstrate that the counterparty was aware of one of the circumstances identified above. There is a presumption of knowledge in respect of transactions the performance or omission of which occurred within the two years preceding the commencement of the insolvency proceedings and in which a person with a special relationship to the insolvent debtor participated or from which such person benefited, even where that special relationship did not exist at the relevant date.

Q2 How do the Directive's rules on avoidance actions compare with existing national law? What changes, if any, would be required to bring your national law into compliance?

Regarding avoidance actions, Portuguese insolvency law is broadly aligned with the Directive's framework. However, there are some differences that must be highlighted.

Under the CIRE, transactions which are detrimental to the insolvency estate, or which fall within any of the categories set out in Article 121, may be avoided for the benefit of the insolvency estate. In contrast, the Directive introduces three distinct categories of avoidance actions: (i) preferential transactions; (ii) transactions at no or manifestly inadequate consideration; and (iii) transactions carried out with the intention of prejudicing creditors.

Portugal

The CIRE establishes a general avoidance period for conditional avoidance of two years, meaning that transactions which are prejudicial to the insolvent estate may be avoided for the benefit of the insolvency estate where they were carried out within the two years preceding the commencement of the insolvency proceedings. There are then different avoidance periods for the specific cases of unconditional avoidance (always lower than two years).

Although the CIRE is aligned with the Directive in avoidance actions, its transposition requires a systematic review of Articles 120 to 127 of the CIRE.

Q3 Are there any aspects of the Directive's avoidance framework that you consider particularly beneficial or problematic from the perspective of your national practice?

The Directive introduces several aspects that are considered particularly beneficial, including that: (i) it establishes different look-back periods; and (ii) it strengthens rebuttable presumptions of knowledge in transactions involving parties closely related to the debtor.

C. Pre-pack proceedings

Q1 Does your jurisdiction currently have pre-pack proceedings (i.e. a mechanism for preparing the sale of the debtor's business ahead of formal insolvency proceedings)? If so, how do they work in practice?

In this area, there is a significant gap in Portuguese insolvency law, as pre-pack proceedings, as defined in the Directive, do not exist.

Q2 If pre-pack proceedings already exist in your jurisdiction, how do they compare with the framework introduced by the Directive? If they do not exist, what legislative reforms would be needed to introduce them? In particular, what changes would be required in your jurisdiction in relation to:

- the threshold for access to the preparation phase;
- retainment of (total or partial) control of the debtor's assets and the day-to-day operation of its business during the preparation phase;
- the scope of any stay of individual enforcement actions during the preparation phase; and
- the benchmark for the best-interest-of-creditors test.

The introduction of pre-pack proceedings will require substantive legislative reform in Portuguese insolvency law. First, on the threshold for access, Article 21(1) of the Directive requires Member States to make pre-pack proceedings available at least for debtors "likely to become insolvent", while Article 21(1) allows Member States to preclude access where the debtor is already unable to pay its debts as they fall due. Second, Article 21(3) requires that the debtor remain totally, or at least partially, in control of its assets and day-to-day operations during the preparation phase, in a debtor-in-possession model uncommon in Portuguese insolvency practice. In summary, pre-pack procedures represent a significant cultural shift in Portuguese insolvency practice.

D. Creditors' committee

Q1 Is the concept of creditors' committee currently used in insolvency proceedings in your jurisdiction? If so, describe its typical composition, role, and powers.

The creditors' committee is a body of the insolvency proceedings that may be appointed by the court at any procedural stage prior to the first creditors' meeting. Where appointed by the court, the creditors' committee may consist of either three or five members, together with two alternate members. One of the members must represent employees holding claims against the insolvent party and the company's largest creditor should be appointed as chair. The remaining members must ensure proper representation of the classes of non-subordinated creditors. The creditors' committee is an optional body in insolvency proceedings, since the court may dispense the appointment considering factors such as the limited size of the insolvency estate, the simplicity of the liquidation or the small number of insolvency creditors. The creditors' committee is responsible for supervising the activity of the insolvency administrator and assisting them in the performance of their duties. In addition, it may freely examine the debtor's accounting records and request from the insolvency administrator such information and documents as it considers necessary.

Q2 What changes, if any, would be required in your jurisdiction to implement the Directive's rules on the creditors' committee?

The Directive contains several provisions on the creditors' committee, specifying that this body must have rights to safeguard its involvement in insolvency proceedings and enable it to examine the activities of insolvency practitioners or, where the debtor remains in possession, of the debtor. These rights include the right to be heard by, and to address representations to, insolvency practitioners on matters of interest to the general body of creditors, including major decisions such as the sale of assets outside the ordinary course of business. To implement the Directive, the Portuguese legislator may need to adjust the creditors' committee regime, in particular, as regards its composition, the representativeness of the various creditors, the participation of cross-border creditors and its functioning in complex proceedings.

Portugal

E. Directors' duties – duty to submit a request for the opening of insolvency proceedings

Q1 What are the current rules in your jurisdiction governing a director's duty to submit a request for the opening of insolvency proceedings? Is there a prescribed time limit?

Pursuant to Article 18 of the CIRE, the debtor is required to submit a request for the opening of insolvency proceedings within thirty days of becoming aware of the state of insolvency, or of the date on which it ought to have become aware of it. According to Article 18(3) of the CIRE, where the debtor is a legal person, the obligation to request the opening of insolvency proceedings rests with the corporate body responsible for its management or, if that is not the case, with any of its directors.

Q2 How does your national law compare with the Directive's maximum time limit for filing? Would any legislative amendment be required?

The CIRE is stricter than the Directive: as outlined above, it requires the debtor to submit a request for the opening of insolvency proceedings within thirty days of becoming aware of the state of insolvency, or of the date on which it ought to have become aware of it.

Q3 Does your national law currently provide for a discharge of the filing duty through public notification of insolvency and/or suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests? If so, how are those exceptions defined and what safeguards exist to prevent abuse?

Portuguese insolvency law does not provide for a discharge of the filing duty through public notification of insolvency, nor for a suspension of that duty where directors have taken steps to safeguard creditors' interests. Under Article 18 of the CIRE, the duty to submit a request for the opening of insolvency proceedings applies within the thirty-day period mentioned above, and its breach may give rise to civil and, in certain cases, criminal liability. The transposition of the Directive will require the Portuguese legislator to decide whether to enshrine the options set out in Article 41 of the Directive, including the discharge of the duty to inform the public of the company's insolvency through a notification in a public register and the suspension of the duty where the directors take measures aimed at avoiding damage to the creditors of the insolvent company and ensuring a level of protection for the general body of creditors.

F. Overall assessment

Q1 Overall, which aspect of the Directive do you consider to have the most significant impact on insolvency practice in your jurisdiction, and why?

The most significant impact of the Directive on insolvency practice in Portugal is the introduction of pre-pack proceedings, given the absence of any equivalent mechanism under the CIRE. In addition, the Directive's provisions on asset tracing, through direct and cross-border access to bank account information and beneficial ownership registers, are expected to have a material impact on the recovery of assets, an area in which the CIRE's existing powers of seizure, administration and information for the insolvency administrator have no equivalent regime.

Q2 Are there any other aspects of your national insolvency law that you consider to be at risk of disruption by the Directive, beyond the four areas expressly covered?

Beyond the four areas expressly covered in this questionnaire, the Directive contains several provisions on asset tracing, which provide insolvency practitioners with several tools to identify and trace a debtor's assets across borders. As mentioned before, the CIRE does not provide for a regime designed for access to bank account registers, beneficial ownership registers and asset databases in the terms now required by the new Directive. Consequently, the transposition of the Directive will necessarily require coordination between the CIRE and legislation on registers, data protection and access to asset information, failing which this topic of the new Directive will be left without practical effect.

Q3 What practical recommendations would you make to businesses, creditors, or insolvency practitioners in your jurisdiction to prepare for the transposition of the Directive?

Given that the Directive must be transposed into the Portuguese legal system by 22 January 2029, businesses, creditors and insolvency practitioners in Portugal should familiarise themselves with its main features. In particular, directors should be aware of the rules on the duty to request the opening of insolvency proceedings and the liability they may face if they breach that duty. Creditors should pay attention to rules on the creditors' committee, which establish its composition and functions in detail.

Portugal

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Spain



Spain

A. General

Q1 How would you describe the current state of insolvency law in your jurisdiction in the areas covered by the Directive (avoidance actions, pre-pack proceedings, creditors' committees, and directors' duties)? Is the regime generally considered efficient and well-developed, or are there recognised gaps or shortcomings?

Spain's insolvency framework is governed by the *Texto Refundido de la Ley Concursal* (TRLC), which consolidated and substantially reformed the prior legislation. The TRLC is a comprehensive statute which covers avoidance actions, pre-pack proceedings and directors' duties. Although the regime is generally regarded as mature, its shortcomings include the absence of legal recognition of creditors' committees and gaps in the pre-pack framework relative to the Directive.

Q2 Has the transposition process of the Directive in your jurisdiction been initiated?

Spain has not yet formally initiated a legislative transposition process for the Directive.

B. Avoidance actions

Q1 What are the current rules on avoidance actions in your jurisdiction? In particular:

> How long is the period preceding the submission of the request/resolution to commence proceedings for (i) preferences, (ii) transactions at no or manifestly inadequate consideration, and (iii) transactions intentionally detrimental to creditors?

> For each avoidance ground, preferences (whether or not the claim was satisfied as owed), transactions at no or manifestly inadequate consideration, and intentionally detrimental acts, does your national law require that the counterparty knew of the debtor's insolvency or detrimental intent? Where such knowledge is required, how is it established and where does the burden of proof lie? Does your national law provide for any presumptions of knowledge, for example in relation to parties connected or closely related to the debtor?

Under Articles 226-238 TRLC, the Spanish claw-back action (acción rescisoria concursal) targets acts harmful to the insolvency estate within two years prior to the date of filing of the insolvency petition (or within two years of the communication of restructuring negotiations):

i. Suspect period: uniform two-year period for all grounds. No knowledge of insolvency is required in accordance with Article 226 TRLC.

ii. Presumptions of harm: irrebuttable for transactions at no consideration and early payment of future unsecured obligations; and rebuttable for acts with connected persons, creation of security for pre-existing debts, and early payment of secured future obligations. For all other acts, harm must be proven by the claimant.

iii. Knowledge of insolvency/detrimental intent: not required for the claw-back claim. However, if the judgment finds detrimental intent in the party that contracted with the debtor, that party shall be ordered to pay damages.

iv. Burden of proof: lies on the claimant (the insolvency administrator and, alternatively, the creditor) save where a presumption applies.

Q2 How do the Directive's rules on avoidance actions compare with existing national law? What changes, if any, would be required to bring your national law into compliance?

The Directive introduces harmonised suspect periods whereas Spanish law applies a single two-year suspect period across all categories. The Directive also sets out knowledge-of-insolvency requirements for specific grounds (preferences and intentionally detrimental acts) which Spanish law does not use.

The Directive imposes a maximum three-year limitation period for all claims arising from an avoided act, running from the opening of insolvency proceedings. Under Spanish law, the avoidance action is not subject to any independent limitation or lapse period and may be brought at any time while the insolvency proceedings remains open. Transposition will therefore require the introduction of a time limit that does not currently exist.

Q3 Are there any aspects of the Directive's avoidance framework that you consider particularly beneficial or problematic from the perspective of your national practice?

The most significant changes that the Directive will introduce to the Spanish avoidance-action regime are twofold. First, the maximum three-year limitation period for bringing avoidance claims and the preference regime requiring that payments made within the three months preceding the opening of proceedings be susceptible to avoidance.

Beyond these two major reforms, the adjustments required to align Spanish law with the Directive are relatively minor. For instance, the Directive's definition of closely related persons does not fully coincide with the Spanish concept of *persona especialmente relacionada* under the TRLC, and will require recalibration. Similarly, the restitution obligations arising from a successful avoidance action differ in certain respects: under Spanish law, unless bad faith is established, the restitution obligation falls on the insolvency estate, whereas the Directive's framework does not uniformly impose this treatment in all cases.

Spain

C. Pre-pack proceedings

Q1 Does your jurisdiction currently have pre-pack proceedings (i.e. a mechanism for preparing the sale of the debtor's business ahead of formal insolvency proceedings)? If so, how do they work in practice?

Spain does not have a fully-fledged statutory pre-pack regime equivalent to the Directive's model. However, the TRLC has two pre-pack mechanisms:

i. A debtor facing probability of insolvency, imminent insolvency, or actual insolvency may apply for court appointment of an expert to solicit binding offers for business units prior to formal insolvency. The appointment is confidential. The expert's role is to gather and evaluate offers. Upon subsequent insolvency filing, the judge may ratify the expert as insolvency administrator, and the acquisition may proceed under the standard business-unit transmission rules.

ii. A debtor filing for insolvency may simultaneously submit a binding offer from a creditor or third party for one or more business units, triggering an accelerated judicial process for its approval.

In practice, these mechanisms function as partial pre-packs: the sale process is prepared pre-insolvency but the transfer of assets legally occurs within formal proceedings.

Q2 If pre-pack proceedings already exist in your jurisdiction, how do they compare with the framework introduced by the Directive? If they do not exist, what legislative reforms would be needed to introduce them? In particular, what changes would be required in your jurisdiction in relation to:

> the threshold for access to the preparation phase;

> retainment of (total or partial) control of the debtor's assets and the day-to-day operation of its business during the preparation phase;

> the scope of any stay of individual enforcement actions during the preparation phase; and

> the benchmark for the best-interest-of-creditors test.

The transposition of the Directive's pre-pack proceedings will not entail significant practical consequences in Spain, but it will serve to complete the current existing regulations, which are the following:

i. Access threshold: Article 224 ter TRLC permits access from probability of insolvency, which is broadly aligned with the Directive.

ii. Control during preparation phase: Spanish law provides no express regime governing the debtor's management powers during the pre-pack expert's mandate. The debtor retains full control unless insolvency is declared.

iii. Stay of enforcement: no specific stay applies during the pre-pack expert appointment phase under Articles 224 ter–224 septies TRLC. A targeted stay mechanism for the preparation phase would need to be introduced.

iv. Best-interest-of-creditors test: No specific test applies during the pre-pack expert appointment phase under Articles 224 ter–224 septies TRLC. The Spanish expert has no statutory obligation to issue a best-interest-of-creditors statement, which is mandatory for the monitor under the Directive.

D. Creditors' committee

Q1 Is the concept of creditors' committee currently used in insolvency proceedings in your jurisdiction? If so, describe its typical composition, role, and powers.

Spanish insolvency law does not provide for a mandatory standing creditors' committee in ordinary insolvency proceedings. A precursor to a creditors' committee existed in the prior legislation (*junta de acreedores*), but this was abolished and replaced by the current written-adhesion system for voting in a creditors' scheme.

Furthermore, Spain has made a statement included in the Council minutes stating that it believes creditors' committees are inefficient and very expensive. Therefore, it is expected that Spain will only apply this mechanism to debtors that are large undertakings in accordance with Article 1.6 of the Directive.

Q2 What changes, if any, would be required in your jurisdiction to implement the Directive's rules on the creditors' committee?

Implementing the Directive's creditors' committee provisions would require significant new legislation, as Spain has no equivalent institution. Key reforms needed include:

i. Creation of a statutory creditors' committee: introducing the body into the TRLC with defined composition rules (representation of different creditor classes), appointment process, and quorum requirements.

ii. Powers and role: the TRLC would need to confer information-access rights, consultation rights on major decisions, and rights to challenge insolvency administrator acts.

iii. Interface with existing mechanisms: the new committee would need to be integrated with existing creditor participation tools to avoid duplication or conflict.

iv. Procedural safeguards: rules on conflicts of interest and liability of committee members would need to be introduced, as Spain has no existing framework for member-level accountability in this context.

Spain

E. Directors' duties – duty to submit a request for the opening of insolvency proceedings

Q1 What are the current rules in your jurisdiction governing a director's duty to submit a request for the opening of insolvency proceedings? Is there a prescribed time limit?

The debtor (and in the case of legal persons, its directors acting through the administrative body) must file for insolvency within two months of the date on which it knew or should have known of the state of current insolvency (*insolvencia actual*). There is a statutory presumption that the debtor knew of insolvency when any of the objective indicators listed in Article 2.4 TRLC occurred (general attachment of assets, general cessation of payments, etc.).

Failure to comply with the filing duty creates a presumption that the insolvency was due to fault, potentially exposing directors to liability for the insolvency deficit and disqualification for two to fifteen years.

Q2 How does your national law compare with the Directive's maximum time limit for filing? Would any legislative amendment be required?

The Directive harmonises a maximum three-month filing period from the moment directors knew or should have known of insolvency. Spain's two-month period is shorter and is therefore already compliant in this respect; no amendment to the filing deadline itself would be required.

Our understanding is that the civil liability action against directors who fail to file in time envisioned in the Directive does not require any legislative amendment as the TRLC already provides for directors' civil liability.

Q3 Does your national law currently provide for a discharge of the filing duty through public notification of insolvency and/or suspension of the filing duty where directors have proactively taken steps to safeguard creditors' interests? If so, how are those exceptions defined and what safeguards exist to prevent abuse?

Spanish law does not provide for a general discharge of the filing duty through public notification of insolvency. However, a suspension mechanism exists: commencement of negotiations with creditors. Upon formally communicating to the court the opening of negotiations with creditors to reach a restructuring plan, the director's filing duty is suspended for the duration of those communications and any extensions granted by the court (up to limits set by the TRLC).

F. Overall assessment

Q1 Overall, which aspect of the Directive do you consider to have the most significant impact on insolvency practice in your jurisdiction, and why?

The most significant impact will be the formal pre-pack framework. Spain's practice of selling business units in liquidation will need to adapt to a new pre-filing paradigm with defined timelines, monitor-supervised marketing processes and a best-interest-of-creditors test formally applied ex ante. The Directive's aim is to recover a higher value by selling a business as a going concern rather than through piecemeal liquidation.

Also, the creditors' committee framework will have an impact. Spain has no equivalent institution in ordinary insolvency proceedings since collective creditor participation currently operates through written adhesion to restructuring plans or sporadic individual rights.

Q2 Are there any other aspects of your national insolvency law that you consider to be at risk of disruption by the Directive, beyond the four areas expressly covered?

Beyond the four expressly covered areas, the Directive's asset-tracing provisions will require Spain to designate the courts or administrative authorities authorised to access national and cross-border bank account registers. The key question is whether insolvency administrators will be able to access these registries directly or will need prior court approval; the latter seems more likely given data protection concerns.

As regards the protection of creditors' interests in the context of pre-pack proceedings, it is our understanding that Article 38 of the Directive allows Spain to maintain the current framework under Article 214 TRLC. The sole exception concerns credit bidding: the Directive provides that beneficiaries of security interests encumbering the business subject to the pre-pack proceedings may offset their secured claims against the purchase price only up to an amount not exceeding the market value of the assets over which the security interest is held. This limitation does not currently exist under Spanish law.

Q3 What practical recommendations would you make to businesses, creditors, or insolvency practitioners in your jurisdiction to prepare for the transposition of the Directive?

For businesses: Review corporate governance documents and directors' liability insurance to ensure coverage extends to the duty to file.

For creditors: Monitor the Spanish transposition process closely. The new statutory creditors' committee will grant organised creditor groups formal standing and information rights in insolvency proceedings.

Spain

For insolvency practitioners:

- Reconciliation of the role of the pre-pack monitor with that of the restructuring expert and the insolvency practitioner. Under the Directive, the pre-pack monitor must meet the same eligibility criteria as an insolvency practitioner. Spanish law already contemplates that the pre-pack expert may be ratified as insolvency administrator in any ensuing insolvency proceedings. However, the emerging legislative trend in Spain points towards requiring that the pre-pack expert be appointed as the insolvency administrator, rather than merely allowing such appointment. By contrast, under Spanish law, the restructuring expert cannot subsequently be appointed as insolvency administrator. This divergence is a source of concern among insolvency practitioners, as it will effectively compel them to choose between specialising as pre-pack experts or as restructuring experts in order to avoid incompatibilities between the two roles.
- Practitioners should also review their processes for avoidance action limitation periods, as the new three-year cap from the date of opening will create new deadline management obligations.

ES

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CD693_X/09.26