

New EU Directive “Insolvency III”: Greater Efficiency and Better Creditor Protection

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On March 30, 2026, the European Parliament and the Council adopted the new Directive (EU) 2026/799 (“**Insolvency III**”), which is intended to ensure greater efficiency and better protection for creditors in insolvency proceedings involving European companies. The Directive must be transposed into the domestic legal systems of the Member States by the end of 2029. The key aspects affected are outlined below

Enhanced protection for creditors against the dissipation of the debtor's assets

Clawback actions are already a constant feature of insolvency proceedings, as debtors regularly attempt to remove their assets from liquidation in insolvency proceedings through apparently lawful transactions, such as sales, set-offs, donations, and similar operations.

The new directive eases the burden of proof for plaintiffs seeking recovery. For example, it provides that the (retroactive) time windows for transactions detrimental to creditors may also be calculated from the date the debtor decided to file for insolvency. Typically, these time windows were calculated from the opening of the insolvency proceedings; however, this moment could also occur months after the decision to file for insolvency. Where the time window is only three months, this change plays a significant role.

Additional safeguards concern the nullity or invalidity of transactions in favor of creditors who received payments or collateral for their claims during the suspect period prior to insolvency. This is also intended to apply to other persons, even if they do not act as creditors (e.g., beneficiaries of a donation). These measures are intended to deter creditors (or persons involved in the transactions) from engaging in such transactions if they are aware of the debtor’s (potentially imminent) insolvency.

If a clawback action successfully establishes the invalidity of the transactions, Member States must ensure that the rights arising from the invalid transactions do not affect the insolvency estate.

Easier identification of assets

The directive also aims to simplify insolvency administrators’ access to information about debtors’ assets. Insolvency administrators should be able to obtain information regarding the debtor’s bank accounts even abroad (within the EU). This is to be facilitated by a centralized authority in each Member State.

In addition, national authorities should make it easier for insolvency administrators to access information regarding debtors’ assets and their beneficial owners.

Pre-pack procedure

The term “pre-packaged insolvency proceedings” has long been used in this field but had not previously been legally defined. It refers to proceedings in which the liquidation measures are known from the outset or are negotiated and prepared in advance. In most cases, a takeover or sale (asset deal or share deal) is negotiated before the insolvency proceedings are opened. Creditors, who would have significant decision-making authority in the insolvency proceedings, often participate in these negotiations as well.

The petition to open insolvency proceedings is filed after a preliminary agreement has been reached, and the measures discussed are implemented as part of the insolvency proceedings. This approach already results in shorter insolvency proceedings and higher returns for creditors. At the same time, the rights of all creditors are respected, as all creditors are to be granted access to information during the insolvency proceedings and are generally entitled to file objections.

The new directive focuses pre-pack insolvency proceedings on the full or partial sale of the debtor company as a going concern and sets out specific conditions that must be met for the preparation and execution of the sale.

Additional measures to improve procedural efficiency

To improve the efficiency of the proceedings, additional measures in the area of insolvency are also being considered and regulated. These include, among others, a requirement for managing directors to file for insolvency, the use of creditors' committees, and increased transparency in the proceedings.

Conclusion

Insolvency III addresses real weaknesses in current insolvency proceedings. Its provisions are a step in the right direction, but ultimately it will be the implementation into the national law of each Member State that determines its practical usefulness. We are closely monitoring developments in Romania.

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