

Newsletter



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The EU's New Insolvency Framework: EU Directive

The EU has adopted Directive (EU) 2026/799, introducing significant reforms aimed at harmonising insolvency laws across Member States, including harmonised pre-pack proceedings, new directors' duties to initiate insolvency proceedings, common rules on avoidance actions, enhanced asset tracing and recovery mechanisms, greater access to beneficial ownership and financial information, and a more structured framework for creditors' committees and cross-border insolvency administration.



Key Changes Introduced by the Directive

Pre-Pack Proceedings: The Directive requires Member States to establish a formal **pre-pack framework**, allowing the sale of all or part of a business to be prepared before insolvency proceedings formally commence. The objective is to facilitate swift transfers of viable businesses, preserve jobs and maximise value for creditors.

Key features include:

- Appointment of a court-supervised monitor to oversee the sale process.
- Competitive, transparent and market-based bidding procedures.
- Confidentiality during the preparation phase to minimise market disruption.
- Court approval of the sale following the opening of insolvency proceedings.
- The possibility for purchasers to acquire the business free from most historic liabilities and to continue certain essential contracts.

New Duties for Directors

The Directive also introduces a duty for directors to take timely action when insolvency arises. In particular:



- Directors must apply for the opening of insolvency proceedings within three months of becoming aware, or reasonably being expected to become aware, of the company's insolvency.
- Failure to do so may expose directors to liability for losses suffered by creditors as a result of delayed action.
- The reforms encourage earlier intervention and greater board oversight during periods of financial distress.
- The concepts of “**insolvency**” and “**director**” will continue to be defined under national law.

While the Directive introduces a common EU framework, Member States retain significant discretion regarding implementation.

Enhanced Asset Tracing Framework

- Broader cross-border asset-tracing powers for insolvency practitioners.
- Access to bank account and beneficial ownership registers across the EU.
- Faster identification and recovery of assets in insolvency proceedings.
- Improved cross-border cooperation between authorities and insolvency practitioners.
- Greater transparency regarding asset ownership and control structures

Implementation Challenges and Market Concerns

The new framework is expected to have a significant impact on restructurings and distressed M&A transactions across Europe. Potential benefits include:

- Improved value preservation for distressed businesses.
- Faster and more efficient sale processes.
- Increased recovery prospects for creditors.
- Greater legal certainty for investors and acquirers.
- A more consistent insolvency landscape across EU Member States.



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