



Registradores
DE ESPAÑA

Insolvency Directive

Update on the Council & European Parliament negotiations.
Special mention to Articles 18 and 34

BARCELONA, October 2025

Proposal for a Directive harmonising certain aspects of insolvency law – State of play

- ❖ Launched by the European Commission in 2022.
- ❖ The Council of the European Union and the European Parliament put forward their negotiating positions respectively in May 2025 and July 2025. The Council in particular, first reached a partial general approach, leaving aside some aspects of the proposal, and finally adopted a mandate on the whole legislative proposal.
- ❖ Trilogues kicked off in September 2025 and are expected to last until the Cypriot presidency that aims to conclude them and adopt the Directive according to its priorities in the field of justice and home affairs.



Relevant issues at stake for Land Registers within the proposal

- ❖ Tracing of assets (Article 18)
- ❖ Consent of the holder of the security interest or other encumbrances over assets belonging to the debtor's business (Article 34)
- ❖ Perfection of legal acts before their mandatory registration in a public register (EP Amendment number 305)



ARTICLE 18 – TRACING OF ASSETS

- ❖ Co-legislators have opted to guarantee access to such information without the intermediation of authorities or courts, and, specifically, the Council's position, clearly states that no different conditions should be imposed simply because the insolvency practitioner is from another Member State. (Recital 20, Title III, Articles 17, 18 and 18a)



ARTICLE 34 – PROTECTION OF CREDITORS' RIGHTS

- ❖ In line with Spanish legislation, paragraph 28d included in **Recital 41** by the Council of the European Union in its strengthening of the requirement to obtain the express consent of creditors in accordance with national law.
- ❖ We consider it necessary to include Article 3a in the wording proposed by the Council - **Article 3, National law and minimum harmonisation** - regarding the relationship between national law and the harmonisation carried out by the Directive, insofar as it incorporates the power of Member States to adopt or maintain their legislation in accordance with EU law that provides a higher level of protection for creditors.
- ❖ **Article 34**, the specific provision governing pre-pack procedures in relation to national law and the requirement to obtain the creditors' consent, we recommend that the wording set out in the position of the Council of the European Union to be adopted.

These amendments by the Council, combined with the provision introduced regarding national legislation and minimum harmonisation (Article 3a), could allow for the transposition of the Directive without any major changes to the current legislation in the Member States that provides greater protection to creditors.

EUROPEAN PARLIAMENT AMENDMENT 305



- ❖ *“Member States may adopt or maintain rules that establish that, where a legal act requires registration in a public register for its perfection, the point in time from which the legal act is considered perfected can exceptionally be before the date on which the registration takes place”.*



EUROPEAN PARLIAMENT AMENDMENT 305

- ❖ Legal acts and transactions affecting ownership and other rights in rem over immovable property are recorded in registers, not only in Spain but also in many other Member States of the European Union.
- ❖ Ownership is an exclusive competence of the Member States under Article 345 TFEU, so that, if this provision were to be accepted, it would encroach on an exclusive competence of the Member States and violate the EU Treaties.
- ❖ The provision as it is currently worded is extremely general and does not refer to the specific real right that would be perfected through registration in a legal register, which would make it not only an overreach, but also one of a general nature.
- ❖ It is stated that such a provision would only be applicable in exceptional cases and, as is well known, it is a general principle of law that exceptions must be interpreted strictly and applied restrictively. A rule that must be applied exceptionally without referring to the specific act to which it refers is not reconcilable.

Allowing the perfection of a real right against third parties, without registration in a public registry, would represent a breach in the preventive legal certainty provided by registries, as it would allow an unregistered right to be considered valid.

CONCLUSIONS

- ❖ European legislation increasingly affects Land registers (inheritance, money laundering, vulnerable adults, insolvency, etc.) and we must assert ourselves both in our own countries (and before our authorities) and in Brussels.
- ❖ The location of real estate in one country by a person in another country is good (it adds value to the registers) but should not lead to discrimination.
- ❖ In any insolvency procedure, there is always tension between the interests of the creditor (to get paid) and those of the debtor (to pay less and move on): a balance must be struck between the two interests at stake, and neither should be given more importance than the other. Otherwise, the market will be destabilised.
- ❖ The Parliament's proposal is very dangerous; it could constitute an attack on the exclusive competence of Member States in matters of property rights.

LET'S WORK TOGETHER TO IMPROVE EUROPEAN LEGISLATION

THANK YOU

