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Date: 2 October 2023

Re: **CERIL Statement 2023-2**

Reporters: Prof. Reinout
Vriesendorp, Prof. Stephan Madaus
and Prof. Ignacio Tirado¹

CERIL Statement 2023-2 on the

**European Commission
Proposal for a Directive
Harmonising Certain
Aspects of Insolvency Law**

CERIL presents a first empirical impression by its European-wide community assessing the benefits and shortcomings of the EC Proposal on harmonising certain aspects of insolvency law (EC Proposal). Drawing on over 60 responses, mainly CERIL's members as well as other experts in the field of restructuring and insolvency law, this study highlights that, although opinions differ on aspects of the EC Proposal, there is general agreement that the Commission is moving in the right direction.

¹ This Statement is prepared by CERIL Working Party (WP) 20 on Harmonisation of EU Insolvency Law. The WP that discussed and contributed to this Statement consisted, in addition to Reporters, of the conferees participating in this [WP](#). The reporters would like to express their gratitude for their extensive contributions to the participants to the CERIL Survey.

We would also like to express our sincere gratitude to the Research Associates Gert-Jan Boon, PhD Researcher and Lecturer at Leiden University (the Netherlands), and Defne Taşman, PhD Researcher at University of Antwerp (Belgium) for preparing a preliminary study, conducting the survey, and for their assistance with drafting the text of this Statement.

The EC Proposal focuses on the harmonisation of substantive insolvency law and has three main objectives: (1) the recovery of assets for the insolvency estate in liquidation, (2) the efficiency of insolvency procedures, and (3) the predictable and fair distribution of recovered value among the creditors. Within those objectives, the EC Proposal touches upon seven topics: (i) avoidance actions; (ii) asset tracing; (iii) pre-pack proceedings; (iv) directors' liability; (v) simplified winding-up proceedings for microenterprises; (vi) creditor's committees; and (vii) a standard factsheet of national insolvency proceedings.

The EC Proposal prompted CERIL to organise an international conference on these topics, which took place at Leiden University on 20-21 April 2023. When preparing the conference, CERIL conducted a survey (Survey; see Annex to this Statement) which was circulated among its Conferees from all over Europe, and across various sectors involved in restructuring and insolvency law, such as insolvency practitioners, judges, policy makers, academics etc. The Survey aimed to gauge the awareness, the level of knowledge as well as the appetite for reform in respect of the topics covered by the EC Proposal within the CERIL community in each of the conferees' jurisdictions. In particular, the following was asked:

1. the need for harmonising each of the topics in the EC Proposal;
2. the further process for each such topic in the domestic environment;
3. the foreseeable complexity of domestic implementation of the topics;
4. whether there might be a reason to expand the topics;
5. any envisaged inconsistency between the EC Proposal and the European Insolvency Regulation (EIR) Recast and the Preventive Restructuring Directive, respectively; and, finally,
6. the initial domestic reception of the EC Proposal.

It is noteworthy that there was a large turnout and that many CERIL Conferees (65% of total respondents) enthusiastically analysed the EC Proposal and completed the Survey between 18 March and 7 May 2023. There were no noticeable differences between the responses before and after the CERIL conference took place.

The widely dispersed domestic backgrounds of the participants provide a rich variety of responses to the Survey. Although one might have expected that the Conferees would assess the EC Proposal mainly based on their own domestic experiences, to the surprise of the reporters, it turned out that the Survey reflects a variety of opinions across Europe with varying appreciations of the EC Proposal. Save for some responses indicating disapproval of certain topics of the EC Proposal which were deemed 'red buttons'

in certain Member States, the Conferees generally expressed appreciation and support.

It is worth noting that the results indicate that there is no expectation for drastic changes, particularly in jurisdictions where the EC Proposal provisions are already in existence within the domestic legal system. In addition, some of the new provisions introduced by the EC Proposal are predicted to be implemented without (serious) difficulties. Although responses are generally positive, opinions tend to differ where the EC Proposal brings significant alterations to (parts of) the domestic legal systems of some Member States, for the sake of EU harmonization in the field of insolvency and restructuring. Some Conferees clearly express a need for further refinement of the proposed rules as highlighted in the Annex. Nonetheless, most CERIL Conferees acknowledge the 'greater good' of further harmonization.

With the Survey and its international conference in April this year, and with its unique independent perspective, CERIL expects to contribute to a deeper empirical assessment of the EC Proposal for harmonizing certain aspects of insolvency law. Notwithstanding the need for further refinement of the proposed rules as highlighted in more detail in the Annex, CERIL, as a non-profit, non-partisan, self-supporting organization with the geographical spread of its Conferees representing over 30 jurisdictions (see attached list of Conferees) and committed to the improvement of restructuring and insolvency laws and practices in Europe, the European Union, and its Member States, broadly supports the initiative taken by the European Commission.

Concluding note

The full Statement 2023-2 with Annex is available on CERIL's website www.ceril.eu. This site also provides information about the organisation of CERIL and its activities.

In the interim, Professor Stephan Madaus, Professor Ignacio Tirado, and Professor Reinout Vriesendorp, reporters of this CERIL Statement by Working Party 20 welcome the opportunity to provide further information about CERIL and the contents of this Statement (info@ceril.eu).

On behalf of the CERIL Executive,

Bob Wessels
Chair

ANNEX:

- CERIL Survey on the European Commission Proposal for a Directive Harmonising Certain Aspects of Insolvency Law

CERIL Conferees

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