

UDK: 347.736 (4-6 EU)
Original scientific paper

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"PURE PRE-PACK" – THE CURRENT TREND IN INSOLVENCY PROCEEDINGS*

ABSTRACT

The paper focuses on the monetisation of a debtor's business through pre-pack procedures, which represent the current European trend in insolvency proceedings first introduced by the Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law in 2022 (the "Proposal for a Directive"). The aim of this paper is to verify whether the Proposal for a Directive requires the completion of pre-pack sales with additional rules (i.e. their specification) ensuring the fulfilment of the purpose pursued by the introduction of pre-pack sales (achieving a higher yield from the monetisation of the assets through a pre-pack sale than the potential yield from the monetisation of the business in a standard insolvency proceedings). In the individual parts of the paper we analyse the process of monetisation of the debtor's business with an emphasis on the so-called "pure pre-pack" sale, pointing out the possible doubts raised in connection with this process, in particular with regard to the protection of creditors' property interests. Our paper also includes an assessment of the pre-pack sale in the author's own opinion, and suggestions for further development of the legislation presented by the Proposal for a Directive by the Member States. The final part is devoted to the inspiration of the regulation of the pre-pack sale of the debtor's business within the countries where this process is currently used. The author's contribution provides inspiration for embedding pre-pack sales in the national insolvency landscape (de lege ferenda proposals), highlights the potential risks and recommends the embedding of guarantees to strengthen the credibility of the process. In writing the paper, the author used several scientific methods, in particular the method of analysis and comparison, but also the method of induction, deduction, analogy.

Key words: "pure pre-pack", asset monetisation, insolvency proceedings

1. INTRODUCTION

Under Slovak law, monetization of the debtor's business in insolvency proceedings is perceived as one of the specific sales of the debtor's assets. The individual methods (procedures) of monetisation of assets are defined by Act No. 7/2005

Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Subsequent Acts, as amended,¹ in Section 92(1) as an option of the bankruptcy trustee:

- a) launch a public tender procedure;
- b) authorise an auctioneer to sell the assets;
- c) authorise a securities dealer to sell the assets;
- d) organise an auction, a bidding or other competitive process leading to the sale of the assets; or
- e) sell the assets by any other appropriate means.

The above list of ways of monetising assets is not exhaustive, i.e. other alternative ways of monetising assets are also possible, which is, after all, also declared by the above provision in point (e).

We would like to start by mentioning that the monetisation of the debtor's business² in the context of standard insolvency proceedings is not considered to be a special way of monetising the assets - also in this case the trustee makes use of monetisation mainly by public bidding, voluntary auction or any other appropriate procedure (e.g. electronic auction).³

The first and basic prerequisite for monetization of an enterprise is its functionality. Otherwise, movable or immovable property or rights or other assets (i.e. a set of assets)⁴ are included in the insolvency estate separately, not as assets belonging to the business. In fact, the prerequisite for the fulfilment of the criterion

*, „Funded by the EU NextGenerationEU through the Recovery and Resilience Plan for Slovakia under the project No. 09I03-03-V05-00008.”

¹ Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended, is the key legal regulation of insolvency proceedings in the Slovak Republic.

² The legal definition of an enterprise is contained in Section 5 of Act No. 513/1991 Coll. (Commercial Code): „*For the purposes of this Act, an enterprise shall be understood as a set of tangible as well as personal and intangible components of a business. An enterprise includes things, rights and other property belonging to the entrepreneur and serving the operation of the enterprise or, by their nature, intended to serve that purpose.*“. On the definition of the term "enterprise" in the context of the Slovak legal order, see, e.g. Ďurica, M.; Kubinec, M.; Ušiaková, L. et al., *Obchodné právo I. Všeobecné ustanovenia. Obchodné spoločnosti a družstvo. Výsokoškolská učebnica*, Belianum, Published by the University of Matej Bel in Banská Bystrica, Banská Bystrica, 2024, pp. 58-60.

³ In application practice, most often by direct sales (Dolný, J.; Cukerová, D., *O pre-pack postupoch v konkurznom práve: Ďalšia harmonizácia na obzore?*, In: KŠENŽIGHOVÁ, A., KUBINEC, M., DZIMKO, J., eds., *Neštandardné legislatívne zásahy štátu v neštandardných situáciách. Pocta profesorovi Milanovi Ďuricovi. Recenzovaný zborník vedeckých prác*, Belianum, Published by the University of Matej Bel in Banská Bystrica, Banská Bystrica, 2023, p. 138).

⁴ Štofková, P., *Speňažovanie nehnuteľností v konkurze*, In: *Súkromné právo*, year 2015, 6-7/2015, <https://www.legalis.sk/sk/casopis/sukromne-pravo/spenazovanie-nehnutelnosti-v-konkurze.m-156.html>, 5 March, 2025.

of the functionality of the business is the continuation of the operation of the business after the debtor's assets have been declared bankrupt⁵ by the trustee in bankruptcy, which is, from our point of view, very demanding, especially from a personal and time perspective. We probably do not need to elaborate on the time aspect, as it is obvious that managing a company and organising its employees is indeed a time-consuming activity. As far as the personal aspect is concerned, we were referring to the necessary knowledge to run and manage a company. However, it is not excluded that the insolvency trustee may, for example, entrust the running of the business to an employee of his or her own or to a third party with the necessary knowledge and experience.⁶ Adamus states, in an amusing but at the same time very pertinent way, on the issue of the debtor's business being run by the trustee in bankruptcy, that as long as the business continues to be run after the bankruptcy has been declared, the trustee in bankruptcy should take all measures to ensure that the value of the business is at least not diminished.⁷

Recent innovations in European legislation seek to bring greater efficiency to the monetisation of debtors' assets - namely the monetisation of a business. The first intention to introduce a more innovative monetisation of the debtor's business was introduced by the Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law⁸ (hereinafter: Proposal for a Directive), which defines pre-pack procedures as „*expedited liquidation proceedings that allow for the sale of the business of the debtor, in whole or in part, as a going-concern to the best bidder, with a view to the liquidation of the assets of the debtor as a result of the established insolvency of the debtor*“.⁹ As pre-pack monetisation is already known in several foreign legislations, either in the form of its legislative grasp or only in its application, the Proposal for a Directive applies to all Member States that have to introduce a more efficient process of monetisation of the debtor's business.

The harmonisation process in the field of insolvency law and, more specifically, pre-pack procedures for the monetisation of assets was initiated by the judgment

⁵ On the continuity of the business after the bankruptcy of the debtor's assets, see for more details Ďurica, M., *Zákon o konkurze a reštrukturalizácii. Komentár*, 4th edition, C. H. Beck, Prague, 2021, pp. 720-730.

⁶ Section 11 of Act No. 8/2005 Coll. on Administrators and on Amendments and Additions to Certain Acts.

⁷ Adamus, R., *Liquidation of the bankruptcy estate in Poland*, In: Bratislava Law Review, year 4, 1/2020, p. 119, <https://blr.flaw.uniba.sk/index.php/BLR/article/view/156/155>, 5 March, 2025.

⁸ European Commission, 2022. Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law, Bruxelles, COM (2022) 702 final, 2022/0408 (COD).

⁹ Article 2(p) of the Proposal for a Directive.

of the Court of Justice of the European Union (CJEU) in the Heiploeg case (C-237/20) of 28 April 2022,¹⁰ which considered the monetization of assets by pre-pack procedures and concluded that the said procedural procedure of monetization must be included in the legal systems of the Member States for the sake of legal certainty - it must be legislated. This is confirmed by the Explanatory Memorandum to the Proposal for a Directive: „*Title IV on pre-pack proceedings aims to ensure that these proceedings, generally considered effective for value recovery for creditors, are available in a structured manner in the insolvency regimes of all Member States.*“

In the following sections of this paper we will analyze the methods of monetization of debtor's assets by pre-pack procedures as a novelty of the insolvency framework in order to test the following hypothesis: The proposal for a Directive introducing pre-pack sales inevitably requires further fine-tuning by Member States, in particular in order to fulfil the objective pursued (to achieve a higher yield from the monetisation of the business through a pre-pack sale than the potential yield from the monetisation of the business in a standard insolvency procedure) and to ensure that creditors' proprietary interests are not prejudiced.

2. MONETISATION OF THE DEBTOR'S BUSINESS BY PRE-PACK PROCEDURES

The basic essence of monetisation of the debtor's assets by pre-pack procedures is to carry out a rapid process of monetisation of the assets with the aim of maintaining the continuous running of the business (i.e. an economically productive unit is monetised), which implies a higher yield from the monetisation

¹⁰ Judgement of the Court, 2022. Heiploeg judgement (C-237/20), ECLI:EU:C:2022:321: „53. It is necessary in that respect to verify, in each situa-tion, whether the pre-pack procedure and the insolvency proceedings at issue were carried out with a view to the liquidation of the undertaking as a result of the established insolvency of the transferor and not with a view to the mere reorganisation of that undertaking. In addition, it is necessary to establish not only that those proceedings have as their primary objective to satisfy to the greatest extent possible the claims of all the creditors, but also that the implementation of the liquidation through the transfer of the undertaking or a part thereof as a going concern, as prepared in the pre-pack procedure and carried out following the insolvency proceedings, enables the achievement of that primary objective. Accordingly, the aim of the use of the pre-pack procedure, for the purposes of liquidating a company, is to enable the insolvency adminis-trator and the supervisory judge appointed by the court after the declaration of that company's insolvency to increase the chances of satisfying the creditors' claims.“ (Thery, A., *The pre-pack regulation in the EU Commission proposal for a second insolvency directive*, In: European Insolvency and Restructuring Journal, year 4, 2023, pp. 3-4, <https://eirjournal.com/article/view/18096/20135>, 5 March, 2025.).

and thus a higher satisfaction of the claims of the insolvency creditors. The whole idea is thus based on an efficient liquidation process of the debtor's business.

By comparison, the monetisation of (any) debtor's assets in insolvency proceedings is only carried out after the first meeting of creditors,¹¹ which is held sometime between 105 and 120 days after the date of the declaration of bankruptcy on the debtor's assets. In our opinion, such a long period (more than 3 months) may have a significant impact on the economic value of a business which is registered as an asset subject to bankruptcy and whose business activity is stagnating.

The Proposal for a Directive establishes a clear line of implementation of the procedural aspect of monetisation of assets by pre-pack procedures. In principle, it speaks of two options from which a Member State has the option to choose. Both options foresee two implementation phases, which differ in content depending on the further setting of the procedural procedure.

- (i) The first phase - the preparation phase - involves the selection of an acquirer of the debtor's business.¹² The aim of this phase is to select the most suitable buyer (investor)¹³ before the insolvency proceedings are opened.
- (ii) The second phase - the liquidation phase - involves monetising the business and redistributing the proceeds to the bankrupt's creditors.¹⁴ As we have indicated, depending on the model of pre-pack practices, each of the above phases is modified in content. The Member State has the choice of a "pure pre-pack" model or an "imperfect pre-pack" model.
- (i) The "pure pre-pack" model is the monetisation of a business in the liquidation phase, based on the results achieved in the preparation phase without any further competitive process. That is - the preparation phase ensures (ideally through a competitive process) the selection of the most suitable buyer, this being subject to the

¹¹ Sudzina, M., *Právna úprava konkurzného konania v Slovenskej republike po zmenách vykonaných zákonom č. 309/2023 Z. z.*, In: ACTA IURIDICA RESOVIENSIA, year 43, 4/2023, p. 138, <https://repozytorium.ur.edu.pl/server/api/core/bitstreams/3aba704d-232a-4698-ab90-34a02c03a66c/content>, 5 March, 2025.

¹² Article 19(1)(a) of the Proposal for a Directive.

¹³ Cioroiu, C. G.; Lipara, D., *Pre-Pack Proceeding - A Hybrid and Derogatory Safeguard Tool. Member States' Future Obligation of Integrating a New Mechanism in Their National Insolvency Law.*, In: Ovidius University Annals. Economic Sciences Series, year 23, 1/2023, pp. 305 – 306, <https://stec.univ-ovidius.ro/html/anale/RO/2023-i1/Section%203/8.pdf>, 5 March, 2025.

¹⁴ Article 19(1)(b) of the Proposal for a Directive.

approval of the court,¹⁵ and the liquidation phase carries out the sale. At the same time, under the guarantees given by the Proposal for a Directive, this model is intended to represent a process of asset monetisation characterised by competitiveness, transparency and fairness.¹⁶ The whole process is to take place before the formal opening of the insolvency proceedings.¹⁷

- (ii) The "imperfect pre-pack" model, as opposed to the "pure pre-pack" model, assumes that a competitive process (auction)¹⁸ is carried out in the liquidation phase, making effective use of the results achieved in the preparation phase, on the basis of which a floor for the lowest bid (initial bid)¹⁹ is set. The purpose of using the results of the preparation phase is to prevent the monetisation of assets in the liquidation phase at a lower purchase price than that offered in the preparation phase.²⁰ Another difference of this model from the "pure pre-pack" model is that the public auction (liquidation phase) is carried out only after the formal opening of the insolvency proceedings.²¹

Evaluating the above-described models of pre-pack procedures for monetization of the debtor's business, we conclude that the "pure pre-pack" model represents a procedurally faster procedure. However, this procedure also raises doubts about the possibility of undervaluing the business (i.e. selling it below market value), whereby the efficiency of the process would take a back seat to the interest in obtaining the highest possible yield from the monetisation. On the other hand, the "imperfect pre-pack" model, on the basis of the above, applies the rule: „Measure twice and cut once“. The competition process is carried out twice in total, both in the preparation phase and then in the liquidation phase (by auction), which, from our point of view, can contribute positively to achieving the highest possible yield from monetisation. However, as we have already mentioned, the sale is time-limited - a prerequisite is the formal opening of the insolvency proceedings, which detracts from the speed of the proceedings.

¹⁵ Article 26(1) of the Proposal for a Directive.

¹⁶ Explanatory Memorandum to the Proposal for a Directive.

¹⁷ Plomp, J., *Revival of the Dutch pre-pack by the CJEU*, In: *leidenlawblog*, 2022, <https://www.leidenlawblog.nl/articles/revival-of-the-dutch-pre-pack-by-the-cjeu>, 7 March, 2025.

¹⁸ The auction is to take place within 2 weeks of the commencement of the liquidation phase, with a total duration of no more than 4 weeks (Article 26(2) of the Proposal for a Directive).

¹⁹ Article 26(2) of the Proposal for a Directive.

²⁰ Also referred to as the 'stalking horse' bid (Explanatory Memorandum to the Proposal for a Directive).

²¹ This is also the reason why the Proposal for a Directive explicitly provides that the winding-up phase is to be considered as insolvency proceedings (Article 20(1) of the Proposal for a Directive).

Since more questions have been raised by the "pure pre-pack" model and the Proposal for a Directive provides for certain guarantees ensuring the credibility of this process, we will focus this paper in the next section on a more detailed analysis of the process of monetisation of the debtor's assets by the "pure pre-pack" model - i.e. on the process of monetisation of the debtor's business in the liquidation phase on the basis of the most advantageous offer for the purchase of the assets.

3. THE ESSENCE OF THE "PURE PRE-PACK"

In order to maintain credibility in the "pure pre-pack" monetisation process, the Proposal for a Directive, as we have already announced, enshrines certain guarantees. One of the guarantees is the monitor as the entity overseeing the whole process of monetisation of the company. Interestingly, Article 22(1) of the Proposal for a Directive automatically provides for the appointment of a monitor if the debtor so requests. We can see that the court has a really insignificant position in pre-pack procedures - as long as the debtor makes the request, the court appoints the monitor and does not investigate further. In our view, it is difficult to answer the question whether this is an appropriate solution or not. In principle, we are of the view that if it is the intention of the legislature to effect a monetisation without more substantial judicial intervention, it should be the court-appointed monitor who should be empowered to assess the appropriateness/inappropriateness of monetising the debtor's business in this way. However, it will be up to the national legislation of the Member State concerned to finalise the Proposal for a Directive.

The position of the monitor is governed by Article 22 of the Proposal for a Directive. The explanatory memorandum to the Draft Directive refers to the monitor as the main actor in the preparation phase.²² According to the Proposal for the Directive, a person meeting the criteria of a bankruptcy trustee may be appointed to the function of a monitor²³ if it is also possible to appoint him as a

²² With the appointment of the monitor, the preparatory phase begins (Article 22(1) of the Proposal for a Directive).

²³ In the Slovak legal order, pursuant to Section 21(1) and Section 22(1-2) of Act No. 8/2005 Coll. on Administrators and on Amendments and Additions to Certain Acts, as amended: „A natural person may be entered in the list of trustees who (i) is a citizen of the Slovak Republic, another Member State of the European Union or another Contracting State to the Agreement on the European Economic Area (hereinafter referred to as "another Member State"), (ii) has full legal capacity may be entered in the list of trustees, (iii) has permanent residence in the territory of the Slovak Republic or in the territory of another Member State, (iv) is of good repute and trustworthy, (v) is professionally qualified, (vi) has had at least three years of professional practice in the field of law or economics, (vii) has not been struck off the list of trustees pursuant to Section 26(1)(a) of the Act on

trustee in the liquidation phase, which in our opinion is a positive element - it contributes to ensuring the professional aspect of the monitoring entity.

The main mission of the monitor is to oversee the monetisation of the enterprise, in the following way:

- (i) Administration - the monitor is required to document in detail the monetisation of the business;
- (ii) Verification - the monitor is to verify the competitiveness, transparency, fairness of the process, and justify that the sale meets market standards;²⁴
- (iii) Selecting an acquirer - the monitor is to recommend the most suitable offer for the purchase of the business;
- (iv) Protecting the interests of creditors - the monitor is to ensure that the best interests of creditors test is considered in relation to the most advantageous offer.²⁵

The Proposal for a Directive is silent on the selection of the "most appropriate" offer, leaving the choice to the Member States' legislation, which is characteristic of the selection from among competing offers in standard insolvency proceedings.²⁶ In the context of the legal regulation of insolvency proceedings in the Slovak Republic, the implementation of a public bidding procedure would perhaps be the most effective way of achieving the foregoing. The public bidding procedure is a relatively quick and formally simple process in which the bankruptcy trustee addresses an invitation to submit bids (which is published in

Trusteeship of the Slovak Republic or of another Member State in the last five years, (viii) has not been struck off the list of trustees pursuant to Section 26(1) of the Act on Trusteeship of the Slovak Republic or of another Member State. 1 or 35(1)(b). A public company may be entered in the list of trustees if (i) its members are only natural person trustees, (ii) its member is not a member of another legal person entered in the list of trustees, (iii) all members are authorised to act on its behalf individually and without limitation, (iv) it has its registered office in the territory of the Slovak Republic, (v) it is of good repute and trustworthy and its members are of good repute and trustworthy, and (vi) it has not been struck off the list of trustees pursuant to section 26(1) of the Act on the protection of the rights of the trustees in the last five years. 2 or 35(1)(b). A limited partnership may be entered in the list of trustees if (i) its general partners are only natural person trustees, (ii) its general partner is not a partner of another legal person entered in the list of trustees, (iii) all general partners are authorised to act on its behalf individually and without limitation, (iv) it has its registered office in the territory of the Slovak Republic, (v) it is of good repute and trustworthy and its partners are of good repute and trustworthy, and (vi) it has not been struck off the list of trustees pursuant to section 26(1) of the Act on the protection of the rights of the trustees within the last five years. 2 or § 35(1)(b). "

²⁴ Competitiveness, transparency and fairness of the process are seen as elementary principles of pre-pack monetisation (Article 24(1) of the Proposal for a Directive).

²⁵ Article 22(2) of the Proposal for a Directive.

²⁶ Article 30 of the Proposal for a Directive.

the Commercial Gazette) to an undetermined number of entities, the subject of which is the purchase of the monetised assets of the debtor.²⁷ In doing so, he shall specify all the conditions that the bidder must fulfil in order to be considered as a bidder or as a potential acquirer of the debtor's assets. These include, in most cases, the condition of payment of at least part of the price offered by the bidder ('deposit') by the expiry of the deadline for the submission of bids,²⁸ the conditions relating to the bid itself - form, deadline for submission, method of submission, etc., whereas the bid received may be considered only if it complies with the predefined conditions. The administrator shall evaluate as successful the offer with the highest price offered for the disposal of the property. Multiple bids with the same offered consideration shall determine the winning bid by lot.²⁹ In our view, if the abovementioned tender process were to be applied in the preparatory phase, it would need to be adapted to the requirement of speed of the procedure. Traditionally, public bidding is carried out in up to three rounds. This would obviously not be sustainable in the case of pre-pack monetisation, and we would therefore propose to provide for a maximum of two rounds for the submission of bids to the insolvency administrator, if not one round. The number of rounds would, in our view, depend on the circumstances of the particular case (e.g. the number of entities known to the administrator that the administrator is able to approach for a bid within the time limit).

If the monitor certifies the selection of the most suitable bid, the judicial authority (as a further guarantee of the credibility of the process) enters the proceedings and authorises the sale of the business in relation to the selected acquirer. It is important to note that the court here, similarly to the inspector, enters into the monetisation process as the entity certifying the appropriateness of the sale of the business in a pre-pack procedure and thus that the monetisation in question actually fulfils the pre-determined purpose - the efficiency of the monetisation, while achieving a higher yield from the monetisation of the debtor's assets than would be the case with the traditional methods of monetisation of assets in insolvency proceedings. We view the entry of the judicial authority into the procedural aspect of the proceedings positively in the context of pre-pack procedures, as the process itself already has two relatively trustworthy entities with sufficient expertise overseeing

²⁷ Pospíšil B, In: Pospíšil, B. *et. al., Zákon o konkurze a reštrukturalizácii. Komentár*, 2nd supplemented and revised edition, Wolters Kluwer, Bratislava, 2016, p. 524.

²⁸ Here, the legislator sets a floor for the deadline for submitting offers, which is 10 calendar days, with the beginning of the deadline being determined by the publication of the offer to purchase the assets in the Commercial Gazette (Section 167p(1) of Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended).

²⁹ ĎURICA, M. *op. cit.* note 5, pp. 1215-1216.

the process. This increases the credibility of third parties (creditors but also the public) in divesting the business in this way.

However, the following wording of Article 24(2) of the Proposal for a Directive may raise doubts: „*If only one binding offer is made in the sale process, this offer shall be deemed to be the offer corresponding to the market price.*“. In our view, this fiction raises a few questions. Applying the above:

- *Is it possible to monetise the debtor's business by the pre-pack procedure for any amount offered and therefore below market value?*
- *Is the monitor still obliged to verify (i) competitiveness, (ii) transparency and (iii) fairness of the process?*
- *Will the purpose pursued by introducing pre-pack realisation procedures into the laws of the Member States be achieved, namely that a higher yield from realisation is to be achieved than would potentially be achieved in the case of realisation by other typical insolvency procedures?*

Regarding the first question:

Thus, the Proposal for a Directive specifies that the single bid submitted will not be further verified as to whether the value offered for the purchase of the business corresponds to the market value.³⁰

First of all, it is necessary to take a closer look at the concept of 'market value'. T. Krabec speaks of a 'normal market' when defining market value, where market value could be seen as an estimate of the price achievable in this normal market. In defining a 'normal market', where 'normal conditions' could be examined in the context of valuing a business (as a mass thing), he works with (i) a hypothetical market, which he understands as a capital market in which he sees the business as an asset yielding the owner a cash flow of a certain riskiness, alternatively with (ii) the comparable businesses method, where real data is worked with and the value of a comparable business in the relevant market is used as a starting point. He also points to International Valuation Standards (hereinafter: IVS),³¹ which define market value as: „(...) *an estimate of the amount for which an asset should be exchanged at its valuation date between a willing buyer and a willing seller in*

³⁰ Market value is a concept relevant in relation to the valuation of assets and corporate finance. In corporate finance, market value is seen as the objective of the business - maximising market value represents maximising value for the owners of the business. (Krabec, T., *Oceňování podniku a standardy hodnoty*, Grada Publishing, Prague, 2009, p. 118). In the field of valuation, some authors identify market value with exchange value, by which they mean the so-called "market price", which is determined by the relationship between supply and demand (Mařik, M. In: Marek, P. et. al., *Studijní průvodce financemi podniku*, Ekopress, Prague, 2006, p. 523).

³¹ International Valuation Standards. IVSC, London, 2007.

a transaction between separate and independent parties after careful marketing in which both parties have acted knowledgeably, reasonably and without coercion."³² As we can see, the definition of the market value of a business is not entirely straightforward. We are inclined towards the definition given by the IVS, with some modification, namely that the market value of an undertaking is given by the relationship between supply and demand in the relevant market under ideal conditions.

But to bring us back to the question posed, whether it is possible to monetise a business by the pre-pack procedure at a price that does not correspond to the market value. In our view, the Proposal for a Directive, by formulating the fiction that the single bid submitted corresponds to the market value, makes it possible to monetise a business even below the market value, which we derive from the fact that the other provisions of the Proposal for a Directive do not regulate the minimum bid amount (and thus also the single bid) in any way, which makes it possible to submit essentially any bid. From the point of view of the interests of creditors, this clearly does not have a positive effect on the pre-pack procedure - the speed of the procedure here takes a backseat to the originally pursued purpose of obtaining a higher yield from the monetisation of the business as an economically functioning unit (i.e. assuming the continued operation of the business).

This also creates room for speculative behaviour by the debtor. The preparation phase is a non-public phase - there is no obligation to inform any entities that may be affected by the monetisation process or to publish a notice of the commencement³² of the pre-pack monetisation of the debtor's assets.³³ This gives the possibility to carry out the monetisation process in a narrow circle of subjects and thus, for example, to buy out the company at a price not corresponding to the market value to the person preferred by the debtor.

³² For example, in the information register concentrating detailed information on insolvency proceedings - the register of bankrupts (the register of bankrupts will be replaced by the insolvency register from September 2025, as of the effective date of the amendment to Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts).

³³ Creditors (especially unsecured creditors) become aware of pre-pack procedures only at the liquidation stage, i.e. only at the moment of commencement of the insolvency proceedings (Dolný, J.; Cukerová, D., *op cit.* note 3, p. 138; Lund, A., *Cooperative Difference in Insolvency Proceedings: Pre-Pack Sales, Fiduciary Duty and the Oppression Remedy*, In: McGill Law Journal. Revue de droit de McGill, year 68, 2/2023, p. 135, <https://id.erudit.org/iderudit/1110112ar>, 5 March, 2025).

For example, a person related to the debtor may be such a preferred entity.³⁴ The question of the close relationship between the debtor and the entity potentially acquiring the business is also addressed in the Proposal for a Directive itself in Article 32, where additional guarantees are provided for this case. It is not precluded that a person closely related³⁵ to the debtor acquires the business through a pre-pack procedure, even if the only offer is made by such a person, as long as the monitor verifies that the sale satisfies the best interest of creditors test. The draft Directive also foresees that Member States will impose additional guarantees (conditions) in the context of the sale of a business to a person closely linked to the debtor, the fulfilment of which will be conditional upon the sale of the business being authorised.

When incorporating the pre-pack procedure into the legal systems of the Member States, due to the facts described above, it would be recommended that Member States include safeguards to strengthen the prevention of divestment of a business for less than market value (e.g. by submitting an expert's report, or the possibility of selling the business to a related entity only on the condition of submitting an expert's report certifying the value of the business, etc.).

Regarding the second question:

The second question posed examines whether the monitor remains obliged to verify the competitiveness, transparency and fairness of the process³⁶ in

³⁴ Related persons are defined in Section 9 of Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended.

³⁵ The parties closely linked to the debtor are explicitly defined in Article 2(q) of the Proposal for a Directive: „*'party closely related to the debtor'* means persons, including legal persons, with preferential access to non-public information on the affairs of the debtor. Where the debtor is a natural person, closely related parties shall include in particular: (i) the spouse or partner of the debtor; (ii) ascendants, descendants, and siblings of the debtor, or of the spouse or partner, and the spouses or partners of these persons; (iii) persons living in the household of the debtor; (iv) persons who are working for the debtor under a contract of employment with access to non-public information on the affairs of the debtor, or otherwise performing tasks through which they have access to non-public information on the affairs of the debtor, including advisers, accountants or notaries; (v) legal entities in which the debtor or one of the persons referred to in points (i) to (iv) of this subparagraph is a member of the administrative, management or supervisory bodies or performs duties which provide for access to non-public information on the affairs of the debtor. Where the debtor is a legal entity, closely related parties shall include in particular: (i) any member of the administrative, management or supervisory bodies of the debtor; (ii) equity holders with a controlling interest in the debtor; (iii) persons which perform functions similar to those performed by persons under point (i); (iv) persons which are closely related in accordance with the second subparagraph to the persons listed in points (i), (ii) and (iii) of this subparagraph.“

³⁶ Certification of competitiveness, transparency, fairness of the process and that the offer corresponds to market value would not be required if the imperfect pre-pack model is applied (Article 24(3) of the Proposal for a Directive).

accordance with Article 22(2)(b) of the Proposal for a Directive. The answer to the question posed is found in Article 26(1) of the Proposal for a Directive, according to which the court examines whether the conditions set out in (inter alia) Article 22(2) have been met. The mentioned fiction refers only to the market value - it is irrelevant in relation to the other prerequisites, and in our opinion the monitor will thus still be obliged to verify the other conditions set out in Article 22(2) of the Proposal for a Directive.

If the court concludes that the conditions laid down in Article 22(2) are not fulfilled and therefore does not confirm the sale of the business, the insolvency proceedings continue in the liquidation phase without a pre-pack sale.³⁷

Regarding the third question:

We have already partially outlined the answer to the third stated question in the analysis of the first stated question. The analysed provision of the Proposal for a Directive raises doubts as to the fulfilment of the purpose of the pre-pack asset monetisation procedures, namely that the sale of the business as an economically viable unit will ensure that a higher yield from the monetisation of the assets will be achieved.

Doubts arise in particular because of the absence of any competitive process, since in the preparation phase a single bid will be submitted, which will be viewed as corresponding to market value due to the application of the fiction, and as long as the monitor justifies the competitiveness, transparency and fairness of the process and the court authorises the sale of the business, the sale of the business will be based solely on the single bid submitted.

In our view, the conclusion presented does not in any way verify that the business will be monetised in a pre-pack procedure for a higher yield than would be obtained by monetising the business in insolvency proceedings. Moreover, as we have already mentioned, the proceedings at this stage are essentially non-public compared to standard insolvency proceedings, which means that there is no knowledge of the initiation of the realisation by creditors or other potential participants in the process, as is the case with the mandatory publication of notices of the realisation of the debtor's assets in standard insolvency proceedings. At the same time, any verification of the market value of the business by experts is absent. Moreover, in the case of a single bid, we reiterate that there is no competitive process.

³⁷ Explanatory Memorandum to the Proposal for a Directive; Cioroiu, C. G.; Liapara, D. *op. cit.* note 13, p. 306.

In conclusion, we consider that, despite the fact that the business is transferred to the acquirer in a pre-pack procedure while maintaining the operation of the business as an economically productive unit, it cannot be said with certainty that, if a (standard) competitive process were to be carried out after the formal opening of the insolvency proceedings, the proceeds obtained by monetisation through this procedure would not be higher than the proceeds obtained by monetisation through the pre-pack procedure when a single bid for the business was made in the preparation phase.

Returning to the procedural aspect of pure pre-pack procedures, the preparation phase is followed by the liquidation phase - that is, the phase where the sale of the business is to take place and the proceeds of the sale are to be redistributed to the creditors. In the Slovak legal landscape, the liquidation phase should correspond to the standard insolvency proceedings as regulated by Act No 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended. Under the pure pre-pack procedure, the liquidation phase will include the court's decision to authorise the sale of the business to an acquirer selected by the monitor in the preparation phase. If the sale of the business to the selected acquirer is allowed, a sale contract is concluded, the parties to which are the insolvency administrator on the one hand and the investor (the selected acquirer) on the other hand.³⁸ As mentioned above, in the event that the sale of the business to the highest bidder is not allowed, the insolvency proceedings continue in the standard manner.³⁹

4. INSPIRATION BY STATES, WHERE PRE-PACK IS CURRENTLY APPLIED

The last part of this paper is devoted to the inspiration of the legislation of the states that have introduced the monetisation of the debtor's assets by pre-pack procedures into the application practice. We state that the outlined description of the process of pre-pack sale in selected states represents a selection of the potential inspiration that caught our attention while studying the subject matter. By no means can we say that this is a description of all the peculiarities of pre-pack sales in this-or-that country - that would require truly detailed research turned into a much more extensive output.

³⁸ Kapica, V.; Radwański, D., *Insolvency Pre-pack Transaction in Poland*, In: Emerging Markets restructuring Journal, year 2021, 11/2021, p. 4, https://www.clearygottlieb.com/-/media/files/emrj-materials/issue-11-spring-2021/polandarticle_insolvency_prepack_transactions_in_poland_v3-pdf.pdf, 6 March, 2025.

³⁹ Dolný, J.; Cukerová, D., *op cit.* note 3, p. 137.

4.1. From the selected specifications of France

Pre-pack procedures have been gradually (in a modified form) appearing on the French legislative scene since 2010, when a pre-pack reorganisation plan was introduced by the French legislator with the creation of the so-called fast-track financial protection procedure (SFA - „*Sauvegarde financière accélérée*“).⁴⁰ It is necessary to explain at the outset that French law recognises pre-pack procedures as either (i) reorganisation procedures,⁴¹ whereby a pre-agreed reorganisation plan is implemented subsequently in insolvency proceedings, or (ii) transactional procedures - whereby a sale of the business is implemented.⁴²

In the implementation of a sale of a business through pre-pack procedures, the *mandataire ad hoc* ('conciliation') plays a relatively important role during the process. He oversees the whole process of monetisation and ensures the identification of potential buyers of the debtor's business - investors. He must also ensure the transparency of the process by giving it sufficient publicity, in particular with regard to the identification of potential purchasers,⁴³ which is also supervised by the court.⁴⁴ In our view, the French legislator, by means of the rules in question, ensures some of the most important prerequisites for pre-pack monetisation, namely (i) the transparency of the process (its publicity) and (ii) the competitiveness of the process, while at the same time creating the conditions for obtaining the best possible offer. The presumption of compliance with the established obligations of the *mandataire ad hoc* empowers the court's supervisory duty. Thus, pre-pack monetisation in the French concept does not imply the sale of the business to a bidder pre-selected by the debtor - quite the contrary. A

⁴⁰ Lauriston, H.; Gallo, B.; Remaud, CH., *Prepacks under French Insolvency Law*, In: International Corporate Rescue, year 20, 2/2023, p.107, <https://www.hoche-avocats.com/en/prepacks-under-french-insolvency-law-h-de-lauriston-b-gallo-c-remaud/>, 7 March, 2025; Pre-pack sales were introduced only by the reform in 2014 (Bruère-Dawson, D.; Moulette, CH., *The FRAm case and the French "Pre-Pack" solution*, In: eurofenix, year 2016, p. 16, <https://www.insol-europe.org/download/documents/769>, 7 March, 2025).

⁴¹ Golshani, S.; Hojabr, A., *The Art of the Pre-Pack - Edition 3*, In: Global Restructuring Review, year 2024, https://globalrestructuringreview.com/guide/the-art-of-the-pre-pack/edition-3/article/france?utm_source=GRR&utm_medium=pdf&utm_campaign=The+Art+of+the+Pre-Pack+-+Edition+3, 7 March, 2025.

⁴² Lauriston, H.; Gallo, B.; Remaud, CH., *op cit.* note 40, p. 107.

⁴³ The advantage of addressing potential acquirers at this stage is the fact that the debtor is not yet formally in insolvency proceedings, which ensures the prevention of harmful effects of the declaration of insolvency proceedings on the assets of the company, for example, also associated with damage to the reputation of the company. (Bouté, G.; Gironde, L. *Pre-pack proceedings in France: Are they the best of two worlds?*, <https://cms-lawnnow.com/en/alerts/2023/07/pre-pack-proceedings-in-france-are-they-the-best-of-two-worlds?format=pdf&v=13>, 7 March, 2025).

⁴⁴ Lauriston, H.; Gallo, B.; Remaud, CH., *op cit.* note 40, p. 110.

competitive, rival and fair process is elevated by the French legislator above a pre-negotiated (relatively certain) sale.

4.2. From the selected specifications of Poland

The distinctive features of pre-pack procedures in Poland are described in their article entitled "Insolvency Pre-pack Transactions in Poland" by Kapica, V., Radwański, D. : (i) the rules of a specific M&A transaction; (ii) the sale relates only to the assets (shares in the insolvent company are not sold); (iii) approval of the sale by the court; (iv) the conclusion of a contract on the sale of the business between the investor (acquirer) and the insolvency trustee; (v) the acquirer is not liable for the debts of the insolvent debtor; (vi) the security instruments on the assets subject to the transfer are extinguished; (vii) all concessions, permits, licences and also concessions related to the acquired business are transferred to the acquirer together with the business.⁴⁵

From the publication mentioned above, we have selected perhaps the most interesting (and inspiring) measures introduced by the Polish legislation on pre-pack monetisation procedures, which we present below.

It is also possible for creditors of the debtor to initiate a pre-pack monetisation of assets⁴⁶ (provided, however, that formal insolvency proceedings have not yet commenced). This is probably a more specific legal regulation of pre-pack procedures for monetisation of the debtor's assets, since the rule, as stated also by Cukerová, D., Dolný, J. in their paper entitled "O pre-pack postupoch v konkurznom práve: Ďalšia harmonizácia na obzore?" (in translation: "On pre-pack procedures in insolvency law: further harmonisation on the horizon?"), is the initiation of the process in question by the debtor.⁴⁷ The Polish legislator thus clearly establishes higher powers in favour of creditors, thus ensuring greater protection of their property interests. However, from our point of view, it is questionable whether creditors are able to carry out the entire pre-pack process of monetisation of the debtor's business without the debtor's participation or cooperation. In our view, creditors do not have sufficient access to the information that is essential for negotiating the sale of the business. This results in a situation where creditors are not even able to 'sell' the debtor's bid for the business, as they

⁴⁵ Kapica, V.; Radwański, D., *op cit.* note 38, p. 4.

⁴⁶ Olech, M.; Wnukowski, M., *Prepared Liquidation - Pre-Pack Sales Under Polish Bankruptcy Law*, In: Squire Patton Boggs Restructuring GlobalView, year 2023, <https://www.restructuring-globalview.com/2023/12/prepared-liquidation-pre-pack-sales-under-polish-bankruptcy-law/>, 7 March, 2025.

⁴⁷ Dolný, J.; Cukerová, D., *op cit.* note 3, p. 134.

are not able to present any details (including the benefits) of acquiring the business to a potential bidder.

Earlier in this post, we addressed the issue of meeting the condition of a sufficiently high purchase price or a purchase price corresponding to market values. It turned out that Polish practice has indeed introduced the necessity to have the value of the business assessed by an expert, by means of an expert's report, which must be submitted to the court already together with the proposal to carry out a pre-pack monetisation of the business. The court then verifies whether the proposed price for the purchase of the debtor's business is higher than the difference between (i) the theoretical price potentially representing the proceeds from the monetisation of the assets in a standard insolvency procedure and (ii) the bankruptcy costs saved,⁴⁸ which represent a kind of additional special discount on the purchase price ('pre-pack discount'), which allows the investor to acquire the business even below its full market value.⁴⁹ In our view, this rule is very beneficial, especially from the point of view of potential investors with the skills or knowledge to revive a company in difficulty - such an offer may appear economically interesting from their point of view, representing a bargain purchase. If the acquirer is to be an entity closely related to the debtor, a condition for the authorisation of the pre-pack monetisation of the business is the appointment of an additional expert - the court's own expert - whose task is to prepare an independent valuation of the assets.⁵⁰ From the point of view of protecting the rights of the debtor's creditors, this element is highly effective - in addition to the approval of the pre-pack procedure, an 'independent' expert enters the process to provide an additional expert opinion on the value of the business, thus clearly preventing the debtor and a closely related party from acting as an acquirer of the business with the intention of harming creditors and obtaining a profit for their own benefit.

4.3. From the selected specifications of England and Wales

One of the concerns raised in relation to pre-pack monetisation is the sale of the business to persons closely linked to the debtor (and the associated potential sale

⁴⁸ In this case, the court must approve the pre-pack. If the price set would be lower but would be close to the proceeds obtained by the monetisation in the insolvency proceedings, the court may authorise the sale if an overriding legitimate interest so requires or if the preservation of the debtor's business is enabled. (Olech, M.; Wnukowski, M., *op. cit.* note 46).

⁴⁹ Kapica, V.; Radwański, D., *op cit.* note 38, p. 7-10.

⁵⁰ Kapica, V.; Radwański, D., *op cit.* note 38, p. 10.

of the business at below market value) - for this reason the Graham Review⁵¹ recommended the establishment of a panel of independent experts assessing the appropriateness of pre-pack sales, the 'Pre-pack Pool'.⁵² The usefulness of their statement⁵³ on the forthcoming pre-pack sale was assumed to be mainly in the context of sales to related parties. Later on, this opinion became more popular, not least because it brought more credibility to the process, especially in relation to unsecured creditors⁵⁴ who do not participate in the monetisation process.⁵⁵ It can be seen here that the English environment brings into the pre-pack monetisation environment a whole group of experts who are supposed to enter into the process on the assumption that the business is to be sold off to a debtor related party. Indeed, it can be said that this is a matter of providing credibility in relation to (unsecured) creditors that the sale will be conducted in accordance with the required terms and that the debtor's *mala fides* will be avoided.

In addition to the "Pre-pack pool" statement, the Graham Review recommends that the related party provide a review of the viability of the business in the 12 months following the sale.⁵⁶

A further guarantee is provided by the fact that, unless the related party has a qualified report from an expert (or the consent of creditors), the trustee in bankruptcy is prohibited from transferring the assets of the company within 8 weeks of the commencement of the insolvency proceedings.⁵⁷ This again improves the position of creditors and ensures the protection of their property interests.

The above specification of the Proposal for a Directive in the context of the English perspectives on the treatment of pre-pack sales of a business represents

⁵¹ Graham Review into Pre-pack Administration (n 20) 59, <https://www.gov.uk/government/publications/graham-review-into-pre-pack-administration>, 7 March, 2025.

⁵² Adebola, B., *Transforming Perceptions: The Development of Pre-pack Regulations in England and Wales*, In: Oxford Journal of Legal Studies, year 43, 1/2023, p. 156, <https://academic.oup.com/ojls/article/43/1/150/6779857>, 7 March, 2025; The list of experts forming the "Pre-pack Pool" is available at the following link: <https://www.prepackpool.co.uk/about-the-pool>.

⁵³ In concluding the opinion, the experts are to make one of the following statements (alternatively): (i) there are no reasons to suggest that pre-pack sales are inappropriate, (ii) more information is necessary to verify the reasonableness of pre-pack sales, but there is no presumption that pre-pack sales are inappropriate, (iii) there is no evidence to support the assertion that pre-pack sales are appropriate for assessing the reasonableness of pre-pack sales. (*Ibid.*, p. 162).

⁵⁴ *Ibid.*, p. 157.

⁵⁵ Flannery, G., *Pre-pack insolvency sales: the UK approach*, In: Lexology, year 2023, <https://www.lexology.com/library/detail.aspx?g=5291e7fb-fb87-4026-bf32-56a932096e96>, 7 March, 2025.

⁵⁶ Mokal, R.; Nocilla, A., *Rehabilitating the U.K. Pre-Pack: A Critical Analysis and Proposals for Reform*, In: Banking and Finance Law Review, year 40, 2/2024, p. 32, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4565561, 7 March, 2025.

⁵⁷ The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021; Adebola, B., *op. cit.* note 52, p. 167-168.

the choice of guarantees or special conditions that most appeals to us (particularly from the perspective of the protection of creditors' rights). In other respects, it is a relatively familiar process of pre-pack sales.

5. CONCLUSION

Pre-pack procedures are characterised by their speed, efficiency and the intention to monetise the debtor's business as a whole, as an economically productive unit, with the aim of achieving a higher yield from monetisation than a monetisation in a standard insolvency proceedings. The interest in a prompt sale of the debtor's business with a view to a relatively certain entry into insolvency proceedings comes not only from the debtor, but also from potential acquirers of the business who are interested in acquiring the business before its economic condition deteriorates further.⁵⁸

In our paper we have focused on one of the two models of pre-pack procedures, the so-called "pure pre-pack". Its essence lies in the selection of the most suitable acquirer of the business in the preparation phase and the subsequent sale of the business shortly after the commencement of formal insolvency proceedings, in the liquidation phase. Negotiations on the sale of the business are thus postponed to a stage when insolvency proceedings have not yet formally started,⁵⁹ which is intended to ensure the effectiveness of the transfer of the business to the new acquirer and to prevent further deterioration of the economic situation. As we have stated in our paper, the proceedings in question raise certain doubts, in particular as to the amount of the sale price. The monitor, as the 'main actor' in the preparation phase, should be a certain guarantee. In our view, it is appropriate that the Proposal for a Directive stipulates that the monitor may, in principle, only be a person who can be appointed as an insolvency trustee in a particular State - increased requirements for expertise. The monitor performs the control function of the process, while at the same time it is within his remit to select the most suitable potential acquirer of the business. We consider that the most ideal procedure for selecting the best offer for the purchase of the debtor's business in the Slovak Republic would be a public bidding procedure (with some modification, in particular in terms of time) as a relatively quick and formally simple procedure, in which the monitor would clearly set out the conditions that the proposal for the

⁵⁸ Rodríguez Ruiz De Villa, D., *Jurisprudencia comunitaria y pre-pack: hacia un pre-pack reestructador preconcursal*, In: Revista Jurídica De Asturias, year 46, 2023, p. 225, <https://reunido.uniovi.es/index.php/RJA/article/view/20281>, 8 March 2025.

⁵⁹ Dolný, J.; Cukerová, D., *op cit.* note 3, p. 134.

purchase of the business must meet, while these conditions would be publicly available (ensuring publicity, transparency).

One part of our article was devoted to possible inspiration for the regulation of pre-pack sales by states where this process is already in use.

In our view, an interesting addition to the pre-pack sales under the Proposal for a Directive is the explicit obligation given to the monitor (*mandataire ad hoc*) in the French sense (i) to identify potential acquirers⁶⁰ of the debtor's business (i.e., active action by the monitor is required) – this undoubtedly broadens the possible range of bids submitted and increases the competitiveness of the process (which ultimately has a positive impact on the price offered for the purchase of the assets) – and (ii) to ensure the transparency of the pre-pack process by publicising it. We view positively these obligations given to the monitor - it can be inferred that the French legislator elevates a competitive and fair process above the pre-negotiated sale of the business (by the debtor) to a selectively chosen acquirer.

Poland introduces the possibility of initiating a pre-pack sale of the debtor's business by the creditors themselves. This is an interesting regulation from our point of view; we assume that the legislator probably intended to provide greater protection for creditors and improve their position by granting them this right. However, we cannot imagine a pre-pack sale without the debtor's participation, or at least without the debtor's proper cooperation, as creditors largely lack information and access to the debtor's business documents, which reduces the effectiveness of the sale. However, what we see as positive is the obligation to have the value of the business valued by an expert, already at the stage of filing a pre-pack sale proposal with the court (prevention of low buy-out sums). At the same time, we see as positive the possibility of obtaining a "pre-pack discount", which means a discount for the costs saved by monetising the business only during the insolvency proceedings - and thus in a way legalises the possibility of selling the business for less than market value. In our view, the 'pre-pack discount' is particularly attractive from the perspective of potential investors with the skills or knowledge to revive a business in difficulty - such an offer may appear economically interesting from their point of view, representing a bargain purchase. England is perhaps the most open in relation to the valuation of the value of a business by experts - it introduces a whole group of experts whose remit is to carry out a valuation of the business (and therefore in some way approve the proposed offer) that is to be the subject of a pre-pack sale - the so-called "Pre-pack Pool".

⁶⁰ What is supervised by the court (Lauriston, H.; Gallo, B.; Remaud, CH., *op cit.* note 40, p. 110).

The introduction of this pool has been shown to increase the credibility⁶¹ in the monetisation process of pre-pack procedures. At the same time, England introduces an interesting obligation, from our perspective, in relation to the sale of a business to a person closely connected with the debtor, and that is the obligation to submit a viability review of the business within a period of 12 months of the sale taking place. This prevents the economic situation of the business (even after the pre-pack sale) from continuing to deteriorate and thus from the need to initiate insolvency proceedings also in relation to the entity acquiring the business.

We conclude our paper by stating that the Proposal for a Directive comes up with a really interesting idea of pre-pack sales, which is supposed to be an efficient way of monetisation of the debtor's business, however, in order to achieve the pursued purpose - to achieve a higher yield from the monetisation of the business by pre-pack sale than the yield achieved by the monetisation in the standard insolvency proceedings, it is necessary to fine-tune the legal regulation by the Member States, in particular with regard to the sale of the business at the relevant market value and in order to protect the creditors' property interests. It is important that the efficiency of the process is not elevated above the protection of creditors as entities harmed by the debtor's actions.

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⁶¹ In particular by entities not involved in the monetisation process (unsecured creditors) (Adebola, B., *op. cit.* note 52, p. 157.).

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