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Recent Amendments to Romanian Insolvency Law

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The recent amendments introduced by Law No. 239/2025 bring a series of targeted yet significant changes to the Romanian insolvency framework established by Law No. 85/2014. Rather than reshaping the system through a comprehensive reform, the legislator intervenes through punctual adjustments aimed at increasing procedural discipline, limiting abusive practices, and enhancing the overall efficiency of insolvency proceedings. A central aspect of these amendments concerns the regulation of persons closely related to the debtor. At the same time, the amendments introduce stricter conditions regarding the feasibility and implementation of reorganization plans. Another important dimension of the reform lies in the strengthening of legal tools aimed at challenging suspect transactions, particularly those involving persons connected to the debtor. Taken together, these legislative developments point towards a gradual reconfiguration of Romanian insolvency law, characterized by a shift from flexibility towards control, and from tolerance of complex intra-group arrangements towards heightened scrutiny. While these changes may contribute to greater procedural rigor and predictability, they also raise questions regarding the balance between efficiency and the preservation of genuine restructuring opportunities.

Keywords: *insolvency law, reform, reorganization, anti-abuse mechanisms*

Introduction

Insolvency law occupies a central position within contemporary market economies, functioning as a legal mechanism designed to reconcile the competing interests of debtors, creditors, employees, investors and public authorities. Beyond its traditional role of regulating situations of financial distress, modern insolvency legislation has increasingly become an instrument of economic policy, capable of influencing access to credit, market discipline and the overall efficiency of commercial activity.

The Romanian insolvency framework has undergone significant transformations during the last three decades. Following the transition from a centrally planned economy to a market-oriented system, the insolvency regime evolved from the provisions of Law No. 64/1995 to the more sophisticated framework established by Law No. 85/2006 and subsequently by Law No. 85/2014 on insolvency and insolvency prevention proceedings. The latter represented a major legislative codification effort, integrating previous regulations and aligning national law with emerging European standards in the field of restructuring and insolvency.

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More than a decade after the entry into force of Law No. 85/2014, the Romanian legislature adopted a new package of amendments through Law No. 239/2025[1], introducing substantial changes to the insolvency proceedings. The significance of these legislative interventions extends beyond technical adjustments of procedural rules. Rather, they reflect a broader governmental strategy aimed at increasing the efficiency of debt recovery mechanisms, strengthening fiscal discipline and reducing the economic costs generated by prolonged insolvency proceedings. The adoption of these amendments must also be understood in the broader context of Romania's economic and fiscal challenges. During the period preceding the reform, concerns regarding the sustainability of public finances, the persistence of a significant budgetary deficit and the need to improve the collection of public claims occupied a prominent place in the national policy agenda. Simultaneously, public authorities promoted a wider programme of administrative and economic reforms intended to enhance institutional efficiency and strengthen fiscal consolidation measures. Within this context, insolvency law emerged as one of the legal instruments through which the legislature sought to improve the recovery of assets and reduce opportunities for abusive conduct capable of prejudicing creditors and public budgets alike.

Several principal objectives appear to underpin the legislative amendments: procedural efficiency, creditor protection and the prevention of abusive use of insolvency proceedings. The 2025 reform represents more than a technical revision of Law No. 85/2014; it is part of a broader legislative trend towards enhancing procedural discipline, increasing the effectiveness of debt recovery and strengthening accountability mechanisms, while simultaneously raising legitimate concerns regarding the preservation of restructuring opportunities and the balance traditionally maintained between debtor and creditor interests.

From a European perspective, the reform also raises important questions concerning the relationship between creditor protection and the rescue culture promoted by Directive (EU) 2019/1023[2]. While the Directive encourages mechanisms facilitating business rescue and restructuring, several of the amendments introduced in 2025 appear to place greater emphasis on procedural efficiency, accountability and the protection of creditors' interests. Consequently, the Romanian reform offers an interesting case study regarding the manner in which Member States seek to reconcile restructuring objectives with the growing demand for effective enforcement and fiscal responsibility.

[1]Law No. 239/2025 on measures for the recovery and efficient use of public resources and for the amendment and supplementation of certain legislative acts, published in the Official Gazette of Romania, Part I, No. 1160 of 15 December 2025, entered into force on 18 December 2025.

[2]Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), OJ L 172, 26 June 2019.

The Legislative and Economic Context of 2025 Reform

The reform introduced through Law No. 239/2025 cannot be understood solely through an examination of the amendments brought to Law No. 85/2014. It must be analysed in the broader economic and legislative context that characterized Romania during the years preceding its adoption.

On 4 June 2025, the European Commission published The country report for Romania. It assessed Romania's progress in addressing the relevant country-specific recommendations and took stock of Romania's implementation of the recovery and resilience plan. Based on this analysis, the country report identified the most pressing challenges Romania is facing[3].

The Commission concluded that Romania is experiencing excessive macroeconomic imbalances. In particular, vulnerabilities have increased as Romania's twin fiscal and current account deficits widened, and cost competitiveness deteriorated in 2024. Overall, without resolute action on both fiscal and structural reform levers, fiscal and external deficits are likely to remain too high, leaving Romania significantly exposed to changes in investor sentiment and exogenous shocks[4].

By 2024 and 2025, concerns regarding the sustainability of public finances had become a central issue within Romanian public policy. Romania recorded the highest government deficit among the Member States of the European Union in 2024 at 9.3% of GDP[5], remaining subject to the excessive deficit procedure initiated by the European institutions[6]. The reduction of fiscal imbalances, the improvement of public revenue collection and the enhancement of administrative efficiency consequently became major objectives of governmental action.

At the same time, policymakers increasingly emphasized the need to strengthen the effectiveness of legal mechanisms designed to facilitate the recovery of claims and to prevent the inefficient allocation of economic resources. Insolvency proceedings occupied a prominent position within this debate. Although Law No. 85/2014[7] had established a modern insolvency framework and had undergone numerous amendments throughout its existence, concerns persisted regarding the duration of proceedings, the effectiveness of creditor recovery and practices capable of delaying the proper conduct of insolvency proceedings.

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[3]Council Recommendation of 8 July 2025 on the economic, social, employment, structural and budgetary policies of Romania, C/2025/3997, OJ C, 20 August 2025, recital 10.

[4]European Commission, *2025 European Semester- Spring Package*, COM(2025) 200 final, Brussels, 4 June 2025, p. 8; see also European Commission, recommendation for a Council Recommendation on economic, social, employment, structural and budgetary policies of Romania, COM(2025) 223 final, Brussels, 4 June 2025, recital 11.

[5]Eurostat, *Euro area government deficit at 3.1% and EU at 3.2% of GDP- Provision of deficit and debt data for 2024- first notification*, Euro indicators, 22 April 2025.

[6]Council Recommendation of 21 January 2025 with a view to bringing an end to the situation of an excessive deficit in Romania, ST 5038/25; see also Council Recommendation of 8 July 2025 on the economic, social, employment, structural and budgetary policies of Romania, C/2025/3997, OJ C, 20 August 2025, recital 12

[7]Law No. 85/2014 on Insolvency Prevention and Insolvency Proceedings, published in the Official Gazette of Romania, Part I, No. 466 of 25 June 2014, entered into force on 28 June 2014, as subsequently amended and supplemented.

Within this context, Romania adopted Law No. 239/2025 regarding measures for the recovery and efficient use of public resources and for the amendment of various legislative acts. The very title of the statute reflects the broader policy objectives pursued by the legislature, namely the strengthening of economic discipline and the improvement of institutional efficiency. Although the law amended numerous legislative acts, its intervention in the field of insolvency was among its most significant components.

The explanatory logic underlying the reform appears to have been based on the assumption that prolonged insolvency proceedings generate costs not only for private creditors but also for the wider economy. Delays in the administration of insolvency estates, reduced recovery rates and the strategic use of insolvency proceedings may negatively affect commercial certainty, distort competition and diminish the effectiveness of public debt recovery. Consequently, the amendments introduced in 2025 sought to strengthen procedural discipline, improve creditor participation and introduce additional safeguards against abusive conduct.

These concerns were not unique to Romania. At the European level[8], insolvency systems have increasingly been assessed not only from the perspective of debtor protection and business rescue, but also through their impact upon economic competitiveness, investment attractiveness and the efficient functioning of credit markets. Consequently, modern insolvency legislation has become closely connected to broader economic governance objectives, including fiscal sustainability and the promotion of responsible corporate behaviour. While Directive (EU) 2019/1023 promotes preventive restructuring frameworks and the preservation of viable businesses, it simultaneously recognises the necessity of protecting creditors and ensuring that insolvency procedures operate efficiently and transparently[9].

The Romanian legislator appears to have pursued a similar balance, albeit with a stronger emphasis on procedural efficiency and creditor protection than had previously characterized the insolvency framework established by Law No. 85/2014. Against this background, Law No. 239/2025 represents more than a technical amendment of insolvency legislation. It forms part of a broader effort to adapt insolvency law to contemporary economic realities, strengthen institutional effectiveness and improve the overall performance of insolvency proceedings within the Romanian legal system.

Main Directions of the 2025 Insolvency Reform

Procedural Efficiency

One of the principal objectives pursued by Law No. 239/2025 is the enhancement of procedural efficiency within insolvency proceedings. Although the Romanian insolvency framework established by Law No. 85/2014 was designed to ensure a balance between the interests of debtors and creditors, practical experience accumulated during more than a decade of application revealed persistent difficulties

[8]Madaus, S., *The EU Preventive Restructuring Framework: A Commentary*, Oxford University Press, Oxford, 2023, p.23.
[9]Paulus, C.G., "European Restructuring and Insolvency Law after Directive 2019/1023", *International Insolvency Review*, Vol. 29, No. 2, 2020, p. 139.

relating to the duration of proceedings, the complexity of decision-making processes and the maintenance of reorganization procedures that no longer had realistic prospects of success. Against this background, the 2025 reform introduced a series of measures intended to streamline the conduct of proceedings, strengthen institutional accountability and facilitate the adoption of timely decisions. Rather than pursuing efficiency as an objective in itself, the Romanian legislator appears to have sought to maximize the value of the debtor's estate and increase the prospects of creditor recovery by reducing procedural delays and eliminating structural sources of inefficiency.

A first category of measures concerns the composition and functioning of the creditors' committee. Under the regulatory framework applicable prior to the 2025 reform, the creditors' committee consisted of three or five creditors. The syndic judge could initially appoint the committee from among creditors holding the largest secured, budgetary and unsecured claims, while the first creditors' meeting could elect a committee from among the first twenty creditors entitled to vote. The committee performed significant supervisory and procedural functions throughout the insolvency proceedings. In particular, it analysed the debtor's financial situation and made recommendations concerning the continuation of its activity and proposed reorganization plans, reviewed the reports of the judicial administrator or liquidator and could challenge them, proposed additional measures to the creditors' meeting, could request the withdrawal of the debtor's right of administration and, where the insolvency practitioner failed to act, could bring actions seeking the avoidance of fraudulent acts or transactions concluded by the debtor[10].

Prior to the reform, the legal framework offered limited safeguards against situations in which the committee could be influenced by creditors maintaining close economic or personal ties with the debtor. Law No. 239/2025 substantially amended Article 50 of Law No. 85/2014, introducing a more sophisticated mechanism for the constitution of the creditors' committee. Paragraphs (1) and (4) of Article 50 now provide that the committee may consist of three, five or seven creditors selected from among the first twenty creditors entitled to vote, while ensuring representation of the principal categories of claims, namely secured claims, employee claims, budgetary claims and unsecured claims.

This amendment pursues a dual objective. On the one hand, it increases the representativeness of the committee by ensuring the participation of creditors belonging to different classes. On the other hand, it seeks to improve the quality and legitimacy of the decisions adopted during the procedure. The previous regulatory model occasionally generated criticism because major procedural decisions could be influenced by a limited number of creditors whose interests did not necessarily reflect those of the creditors' body as a whole. By requiring a broader and more balanced representation, the legislature appears to have sought to strengthen the institutional capacity of the committee while simultaneously reducing the risk of procedural deadlock.

The reform further enhances transparency through the introduction of new paragraphs (5^1)-(5^3) of Article 50. Particularly significant is the rule according to which no more than one creditor belonging to the category of persons closely connected

[10]Art.50(1) and (4) and art. 51(1) (a)- (f), Law no. 85/2014 on Insolvency Prevention and Insolvency Proceedings, in the version applicable prior to the amendments introduced by Law no. 239/2025.

to the debtor may serve as a member of the creditors' committee, and such creditor may not hold the position of committee chairperson. In addition, creditors falling within this category are required to disclose their relationship with the debtor, while the judicial administrator is entrusted with the responsibility of verifying the existence of such connections through consultation of the Trade Register, the beneficial ownership register and other relevant corporate records.

Although these provisions may initially appear to be directed primarily at preventing abuses, they also serve an important efficiency function. Insolvency proceedings frequently become protracted when conflicts of interest compromise the credibility of collective decision-making mechanisms, generating litigation and procedural challenges. By identifying and managing such conflicts at an early stage, the legislature seeks to facilitate more effective governance of the proceedings and reduce disputes concerning the legitimacy of decisions adopted by the creditors' committee.

The objective of accelerating procedural decision-making is also reflected in the amendments introduced to Article 51. Under the revised Article 51(6), any creditor seeking to challenge actions, measures or decisions adopted by the creditors' committee must do so within seven days from the publication of the relevant minutes in the Insolvency Proceedings Bulletin. The establishment of a clear and relatively short time limit contributes to legal certainty and prevents the emergence of prolonged periods of uncertainty regarding the validity of decisions taken during the procedure. In insolvency matters, where delays may rapidly erode the value of the debtor's assets, procedural predictability is often as important as substantive protection.

Equally relevant is the amendment of Article 51(7), which authorizes the replacement of members of the creditors' committee who repeatedly act in situations of conflict of interest, repeatedly fail to participate in committee meetings without justification or are subsequently found to belong to the category of "persons closely connected to the debtor". While this provision undoubtedly serves broader anti-abuse objectives, it also contributes to procedural efficiency by ensuring the effective functioning of the committee and preventing situations in which its activity is compromised by members whose conduct undermines the proper administration of the proceedings.

Perhaps the most significant efficiency-oriented amendment introduced by Law No. 239/2025 concerns the new Article 58(1)(b^1). Under this provision, the judicial administrator is required to conduct a periodic assessment of whether a genuine possibility of effective reorganization continues to exist and, where such prospects no longer exist, to propose the commencement of bankruptcy proceedings. This amendment reflects a notable shift in legislative philosophy. Prior to the 2025 reform, Romanian insolvency law allowed relatively extended periods for the implementation of reorganization plans. Article 133(3^1) of Law No. 85/2014 provided that, in the case of legal persons, the implementation of a reorganization plan could extend over a period of four years from the date of its confirmation.

The legislator's concern with reducing the duration of insolvency proceedings is reflected in the Explanatory Memorandum[11] to Law No. 239/2025, which identifies, as a matter of priority, the shortening of insolvency proceedings and the periodic assessment of the debtor's genuine prospects of effective reorganization, with a view to facilitating an earlier transition to bankruptcy where such prospects no longer exist.

The 2025 reform did not shorten the statutory maximum duration of the reorganization plan, which remains four years for legal persons. Instead, it introduced a stricter periodic viability assessment mechanism, allowing an earlier transition to bankruptcy where effective reorganization is no longer realistically achievable.

The new provision imposes an affirmative duty upon the judicial administrator to periodically evaluate the viability of the reorganization process, at intervals not exceeding six months[12]. As a result, procedures that no longer serve a realistic rescue purpose may be terminated at an earlier stage, thereby preventing the unnecessary consumption of procedural resources and the further depreciation of the debtor's assets. From an economic perspective, the amendment seeks to distinguish viable enterprises capable of rehabilitation from those whose continued presence in reorganization merely delays the inevitable transition to liquidation.

A similar concern for procedural expediency can be observed in the amendments brought to Article 137 regarding the circulation of reorganization plans. The revised provision requires the judicial administrator to publish a notice concerning the proposed plan in the Insolvency Proceedings Bulletin and expressly provides for the electronic transmission of the plan to creditors upon request. This measure is expressly presented in the Explanatory Memorandum as part of the reform's objective of increasing creditor recovery by enhancing transparency and facilitating creditors' access to procedural information[13].

Furthermore, the law establishes a structured timetable for voting on the plan, thereby reducing the possibility of administrative delays associated with the dissemination of documentation. These measures are consistent with broader trends toward digitalization and modernization of insolvency proceedings, aiming to facilitate creditor participation while reducing transactional costs.

Taken together, the amendments analysed above reveal a coherent legislative effort to address procedural inefficiencies that had become apparent during the practical application of Law No. 85/2014. Rather than relying exclusively upon stricter deadlines, the reform seeks to improve the quality of decision-making institutions, enhance transparency, identify non-viable reorganizations at an earlier stage and facilitate more rapid communication between procedural actors. Consequently, procedural efficiency emerges not merely as a technical concern but as a fundamental principle underpinning the 2025 reform of Romanian insolvency law.

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[11]Government of Romania, *Explanatory Memorandum – Draft Law on establishing measures for the recovery and more efficient use of public resources and for amending and supplementing certain normative acts*, 2025, section concerning the amendments to Law No. 85/2014, point 1(a).

[12]Art. 97(3^1) Law no. 85/2014 on Insolvecy Prevention and Insolvency Proceedings, as amended and supplemented by Law no. 239/2025

[13]Government of Romania, *Explanatory Memorandum – Draft Law on establishing measures for the recovery and more efficient use of public resources and for amending and supplementing certain normative acts*, 2025, section concerning the amendments to Law No. 85/2014, point 3(d).

Creditor Protection

A second fundamental pillar of the 2025 reform is the strengthening of creditor protection. While Romanian insolvency law has traditionally sought to maintain a balance between the interests of debtors and creditors, the amendments introduced by Law No. 239/2025 reveal a legislative shift toward enhancing the position of creditors within the proceedings and increasing the chances of effective debt recovery. The reform was adopted against the backdrop of growing concerns regarding fiscal sustainability, the efficiency of public revenue collection and the economic consequences generated by lengthy insolvency proceedings with limited recovery prospects. In this context, creditor protection emerged not merely as a private interest but as an objective closely connected to broader considerations of economic discipline and financial stability.

One of the most significant innovations introduced by Law No. 239/2025 is the establishment of a comprehensive regulatory framework concerning person closely connected to the debtor[14].

A person closely connected to the debtor is any person who, within the two years preceding the commencement of the insolvency proceedings, has held at least one of the following positions or relationships:

(a) an affiliated person, as defined by Fiscal Code[15];
(b) a member of the debtor's management, administrative, or supervisory bodies;
(c) a legal entity whose management, administrative, or supervisory bodies include directors, managers, or shareholders of the debtor;
(d) a person having access to non-public information concerning the debtor's business and capable of influencing or controlling its operations, including employees of the debtor, or a person capable of deriving benefits from the debtor's financial position in the capacity of an external adviser, accountant, or auditor;
(e) the spouse or relatives up to the third degree inclusive of the persons referred to in subparagraphs (a) and (b);
(f) the debtor's beneficial owner

The category encompasses not only affiliated entities and members of the debtor's management bodies, but also beneficial owners, relatives, advisers and other individuals capable of influencing the debtor's affairs or benefiting from its financial situation. By doing so, the legislature moves beyond formal legal relationships and focuses instead on the economic reality of influence, access to information and effective control. Prior to the reform, the legislation contained only fragmented provisions addressing conflicts of interest and affiliated creditors. The new law adopts a considerably broader approach by defining and regulating the category of persons whose economic, managerial or ownership links with the debtor may affect the

[14]Article 5(1) point 42^2 Law no. 85/2014 on Insolvency Prevention and Insolvency Proceedings.
[15]Affiliated persons, as defined for tax purposes under article 7(26) Law No. 227/2015 regarding the Fiscal Code, are the parent company and its subsidiaries; companies under common control; significant shareholders or equity holders; persons exercising direct or indirect control over the debtor.

integrity of insolvency proceedings. The legislator's concern with limiting the influence of persons closely connected to the debtor is also reflected in the Explanatory Memorandum to Law No. 239/2025, which identifies the definition of this category, the limitation of its representation on the creditors' committee and the verification of such connections among the measures intended to prevent the diversion of insolvency proceedings from their statutory purposes[16].

This innovative feature is important, because insolvency proceedings are based upon the collective participation of creditors and the assumption that decisions concerning the administration of the debtor's estate are taken in the common interest of the creditors' body. This principle may be undermined where creditors formally participating in the procedure are, in reality, economically aligned with the debtor or with persons exercising control over it. By expanding the legal significance of relationships between creditors and the debtor, the legislature sought to reduce the possibility that insolvency proceedings could be influenced through affiliated entities acting under the appearance of independent creditors.

This objective becomes particularly visible in the amendments concerning the creditors' committee. Under the new Article $50(5^1)$, only one creditor falling within the category of persons closely connected to the debtor may serve on the creditors' committee, and such creditor is expressly prohibited from holding the position of chairperson. The provision constitutes a significant departure from the previous regulatory framework, under which affiliated creditors could, in practice, exercise substantial influence over the decision-making process.

The rationale of this amendment lies in the recognition that the creditors' committee performs a central role in the governance of insolvency proceedings. It supervises the activity of the insolvency practitioner, expresses positions regarding significant procedural measures and influences strategic decisions concerning the future of the debtor's business. Allowing the committee to be dominated by creditors maintaining close connections with the debtor would undermine both the credibility and the effectiveness of the procedure. Consequently, the reform seeks to ensure that the committee remains a genuine representative of creditor interests rather than a mechanism susceptible to indirect debtor influence.

The same concern explains the introduction of new disclosure and verification obligations. Creditors who fall within the category of persons closely connected to the debtor must expressly declare this circumstance, while the judicial administrator is required to verify the accuracy of such declarations through the consultation of relevant public registers and available corporate information[17]. The introduction of these obligations significantly increases procedural transparency and reduces the informational asymmetry that frequently characterizes insolvency proceedings.

From the perspective of creditor protection, transparency performs a function that extends beyond the mere prevention of conflicts of interest. Effective creditor participation depends upon access to reliable information regarding the identity,

[16] Government of Romania, *Explanatory Memorandum – Draft Law on establishing measures for the recovery and more efficient use of public resources and for amending and supplementing certain normative acts*, 2025, section concerning the amendments to Law No. 85/2014, point 4(a)-(b)

[17] Art.50(5^1)-(5^3) Law no. 85/2014 Insolvency Prevention and Insolvency Proceedings

interests and affiliations of other participants in the procedure. By strengthening disclosure requirements, the legislature enhances the ability of creditors to evaluate the legitimacy of procedural decisions and to challenge conduct that may prejudice the collective interest of the creditors' body.

Another important aspect of the reform concerns the protection of creditors against transactions capable of diminishing the value of the insolvency estate. The amendments introduced by Law No. 239/2025 impose stricter scrutiny upon transactions involving persons closely connected to the debtor, particularly where such transactions concern the acquisition of assets from the insolvency estate.

The sale of assets as an independent business unit may be carried out in favour of a person closely connected to the debtor, provided that at least the following requirements are satisfied[18]:

(a) the sale procedure is open, competitive, transparent, and conducted under market conditions;
(b) the person closely connected to the debtor expressly discloses in its offer that it is a person closely connected to the debtor and specifies the nature of its connection with the debtor;
(c) persons who are not closely connected to the debtor are granted a reasonable period to submit competing offers, which shall not exceed 10 days;
(d) the information referred to in point (b) is disclosed to the creditors' committee and to the other bidders participating in the sale process;
(e) an independent valuation report concerning the assets as an independent business unit is prepared by an independent authorised valuer; where such a valuation has already been conducted during the insolvency proceedings, this requirement shall be deemed fulfilled.

The anti-abuse rationale of these provisions is also expressly reflected in the Explanatory Memorandum, which identifies the imposition of strict requirements for the sale of assets as an independent business unit to persons closely connected to the debtor, together with judicial authorization of such sales, among the measures intended to prevent the diversion of insolvency proceedings from their statutory purposes[19]. Such concerns are not merely theoretical, because practice has repeatedly demonstrated that affiliated transactions may create opportunities for the extraction of value from the estate to the detriment of creditors, particularly where effective safeguards are lacking.

The reform also strengthens creditor protection through measures designed to improve the recovery of claims. Although Romanian insolvency law continues to preserve its collective character and does not formally establish a hierarchy favouring particular categories of creditors beyond the statutory ranking of claims, the overall orientation of the amendments indicates a clear legislative preference for maximizing recovery rates. This objective is reflected in the stricter supervision of

[18]Article 154^1 Law no.85/2014
[19]Government of Romania, *Explanatory Memorandum – Draft Law on establishing measures for the recovery and more efficient use of public resources and for amending and supplementing certain normative acts*, 2025, section concerning the amendments to Law No. 85/2014, point 4(c)

reorganization proceedings, the enhanced role of creditors in monitoring the conduct of the procedure and the broader effort to eliminate mechanisms capable of artificially delaying the realization of assets.

Particularly relevant in this regard is the relationship between creditor protection and the treatment of public claims. The adoption of Law No. 239/2025 formed part of a broader legislative programme aimed at improving the recovery and efficient use of public resources. The title of the law itself reflects this policy orientation. Although the reform does not fundamentally alter the ranking of public creditors within insolvency proceedings, it is difficult to ignore the broader fiscal considerations that influenced its adoption. Increased recovery rates inevitably benefit both private creditors and public authorities, particularly in a period characterized by significant concerns regarding budgetary sustainability and public revenue collection.

From a broader perspective, the amendments introduced by Law No. 239/2025 illustrate a shift from a predominantly debtor-oriented understanding of insolvency law toward a model placing greater emphasis upon creditor confidence and the protection of collective recovery interests.

Taken together, the provisions concerning affiliated creditors, transparency obligations, creditor representation and asset recovery reveal a coherent legislative effort to reinforce the position of creditors within insolvency proceedings. By limiting opportunities for indirect debtor influence and increasing the transparency of procedural governance, the 2025 reform seeks to ensure that insolvency remains an effective mechanism for the collective and equitable satisfaction of creditor claims.

Anti-abuse Mechanisms

A third defining feature of the 2025 reform is the legislature's determination to strengthen the integrity of insolvency proceedings by introducing a series of measures designed to prevent abusive conduct and to increase the accountability of individuals whose actions contribute to the debtor's financial collapse. While the Romanian insolvency framework has traditionally pursued a balance between facilitating business rescue and protecting creditors, practical experience revealed that insolvency proceedings could occasionally be exploited for purposes unrelated to their legitimate objectives. The reform also addresses the risk that insolvency proceedings may be used to delay enforcement, preserve control over assets or shield persons exercising effective control without formally holding management positions.

One of the central elements of the reform is the expansion of the legal framework governing persons responsible for the debtor's insolvency. Romanian insolvency law has long recognised the possibility of engaging the patrimonial liability of directors and other individuals whose conduct contributed to the debtor's inability to meet its obligations. However, the practical application of these provisions often encountered difficulties where the individuals exercising effective control over the debtor remained outside the formal management structure. In such situations, decision-making authority could be exercised by shareholders, beneficial owners or other influential actors who were not officially registered as directors, thereby limiting the effectiveness of existing accountability mechanisms.

The amendments introduced by Law No. 239/2025 seek to address this problem by broadening the scope of individuals who may become subject to liability proceedings. The reform reflects an increasingly accepted principle in modern insolvency law: responsibility should be linked not merely to formal corporate titles but also to the actual exercise of managerial influence and decision-making power. Consequently, the law moves beyond a purely formalistic understanding of corporate governance and places greater emphasis on the economic reality of control relationships.

This evolution is particularly significant because it aligns Romanian insolvency law with broader developments observable in comparative jurisprudence. Comparable concepts are well established in several European jurisdictions, either through legislation or case law. French insolvency law[20] expressly extends liability for insufficiency of assets to both *de jure* and *de facto* directors ("dirigeants de droit ou de fait"), while French case law[21] defines a de facto director by reference to the independent exercise of positive acts of management and direction. Spanish insolvency law[22] similarly includes de jure and de facto directors ("administradores de derecho o de hecho") among the persons whose conduct may lead to a finding of culpable insolvency. In the United Kingdom[23], the related concept of the "shadow director" is expressly defined as a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

This comparative development is mirrored by the Romanian reform. The Explanatory Memorandum to Law No. 239/2025 expressly states that the liability action is no longer intended to concern only formal directors, but also de facto directors, understood as persons who impose the company's financial and operational decisions[24].

Although Romanian law traditionally approached such situations with greater caution, the 2025 reform clearly indicates a legislative willingness to prevent individuals from avoiding responsibility through formal separation from the company's governing bodies.

The amendments concerning liability also reveal an increased emphasis on deterrence. Insolvency law traditionally performs not only a compensatory function but also a preventive one. By expanding the circumstances in which liability may be engaged and by facilitating the identification of individuals exercising effective control over the debtor, the legislature seeks to discourage conduct that may contribute to financial distress or prejudice creditor interests. The reform thus signals a broader policy shift toward managerial accountability and responsible corporate governance.

The same objective is visible in the amendments concerning persons closely connected to the debtor. As discussed in the previous section, the reform introduces extensive disclosure obligations and restrictions regarding the participation of affiliated creditors in procedural governance. Another important anti-abuse dimension

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[20]French Commercial Code, Art. L.651-2.

[21]Cour de cassation, Commercial Chamber, 1 December 2015, No. 14-20.116, ECLI:FR:CCASS:2015:CO01024.

[22]Art.442 and art.455(2)(1) Royal Legislative Decree 1/2020 of 5 May approving the consolidated text of the Insolvency Law, Spain.

[23]Companies Act 2006, s. 251(1), UK.

[24]Government of Romania, *Explanatory Memorandum – Draft Law on establishing measures for the recovery and more efficient use of public resources and for amending and supplementing certain normative acts*, 2025, section concerning the amendments to Law No. 85/2014, point 2(b).

of the reform concerns the supervision of reorganization proceedings. One of the recurrent criticisms directed at insolvency practice was the tendency of certain debtors to prolong reorganization procedures despite the absence of realistic prospects for economic recovery.

This development is particularly relevant in the context of contemporary European discussions[25] regarding directors' duties in situations of financial distress. Directive (EU) 2019/1023 requires Member States to ensure that, where there is a likelihood of insolvency, directors have due regard to the interests of creditors, equity holders and other stakeholders, to the need to take steps to avoid insolvency, and to the need to avoid elberate or grossly negligent conduct that threatens the viability of the business.[26]. The Romanian reform reflects a similar concern with aligning managerial incentives with the objective of preserving enterprise value and protecting creditors.

The anti-abuse philosophy underlying Law No. 239/2025 therefore operates on multiple levels. It seeks to prevent the manipulation of creditor representation, reduce opportunities for conflicts of interest, discourage the artificial prolongation of reorganization proceedings and strengthen the accountability of those exercising effective control over financially distressed companies. Rather than treating insolvency solely as a mechanism for distributing losses after business failure has occurred, the reform increasingly views insolvency law as an instrument capable of influencing behaviour before and during financial distress.

Taken together, these amendments reveal a legislative effort to reinforce the legitimacy and credibility of insolvency proceedings. By targeting structural vulnerabilities that have historically facilitated opportunistic conduct, the reform aims to ensure that insolvency remains a collective procedure dedicated to the equitable treatment of creditors and the efficient administration of the debtor's estate.

Critical Assessment of the Reform

The amendments introduced by Law No. 239/2025 constitute the most significant intervention in Romanian insolvency law since the adoption of Law No. 85/2014. Their overall architecture reveals a clear legislative preference for procedural discipline, creditor protection and managerial accountability. While these objectives are legitimate and largely consistent with contemporary concerns regarding economic efficiency and fiscal sustainability, the reform also raises important questions concerning the future balance between creditor interests and the traditional rescue function of insolvency law[27].

A first strength of the reform lies in its attempt to address long-standing procedural deficiencies identified during the practical application of Law No. 85/2014. The

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[25]Gurrea-Martínez A., *Towards an Optimal Model of Directors' Duties in the Zone of Insolvency*, *Journal of Corporate Law Studies*, Vol. 22, No. 1, 2022, p. 25-32.
[26]Directive (EU) 2019/1023, Art. 19; see also recitals 70–71.
[27]About "traditional rescue function" see Goode, R., *Principles of Corporate Insolvency Law*, 5th ed., Sweet & Maxwell, London, 2018, p.10.

introduction of mechanisms designed to ensure greater transparency in the composition of the creditors' committee, the stricter regulation of persons closely connected to the debtor and the obligation imposed upon judicial administrators to periodically evaluate the viability of reorganization proceedings are likely to reduce procedural abuses and improve the quality of decision-making within insolvency proceedings. In this respect, the reform responds to vulnerabilities identified in the functioning of the insolvency framework and to the legislative objective of increasing procedural efficiency, particulary by reducing the duration of proceedings and strengthening the periodic assessment of the prospects of effective reorganization[28].

The reform may also contribute to increasing creditor confidence in insolvency proceedings. Creditors are more likely to support restructuring efforts and participate actively in insolvency procedures when they perceive the institutional framework as transparent, predictable and resistant to manipulation. By limiting the influence of affiliated creditors and strengthening disclosure obligations, the Romanian legislator seeks to enhance the legitimacy of collective decision-making mechanisms and to ensure that insolvency proceedings serve the interests of the creditors' body as a whole rather than those of specific groups connected to the debtor.

A further positive aspect concerns the enhanced accountability of individuals exercising control over distressed companies. The expansion of liability mechanisms reflects an increasingly accepted principle of contemporary insolvency law: responsibility should follow actual economic influence rather than formal corporate titles. The reform therefore reduces the possibility that individuals who effectively direct corporate affairs may avoid liability by operating through informal structures of control. Such an approach is particularly relevant in modern corporate environments, where ownership and managerial influence are frequently separated from formally registered positions.

Nevertheless, the reform is not immune from criticism. Perhaps the most important concern relates to the potential impact of the new provisions upon the rescue culture promoted by Directive (EU) 2019/1023. The Directive expressly seeks to enable viable enterprises experiencing financial difficulties to restructure at an early stage, with a view to preventing insolvency and avoiding the unnecessary liquidation of viable businesses. The Directive is built upon the assumption that economically viable enterprises should be afforded a realistic opportunity to reorganize before liquidation becomes inevitable[29]. By contrast, several provisions introduced by Law No. 239/2025 appear to prioritize efficiency and recovery objectives over restructuring considerations.

This tension becomes particularly visible in the new obligation imposed upon judicial administrators to periodically assess whether a genuine possibility of effective reorganization continue to exist and, where such a possibility no longer exist, to propose the commencement of bankruptcy proceedings. While the rationale underlying this provision is understandable, its practical application may prove challenging. Determining whether a company remains capable of successful

[28]Government of Romania, *Explanatory Memorandum – Draft Law on establishing measures for the recovery and more efficient use of public resources and for amending and supplementing certain normative acts*, 2025, section concerning the amendments to Law No. 85/2014, point 1(a).
[29]Directive (EU) 2019/1023, recitals 1–2 and Art. 4(1).

reorganization is rarely a purely objective exercise. Insolvency practitioners are often required to evaluate future economic developments, market conditions and business opportunities that may be difficult to predict with certainty. An excessively restrictive interpretation of viability could therefore encourage premature transitions to bankruptcy and reduce opportunities for genuine business rescue.

Another issue concerns the growing emphasis placed upon creditor protection. Although strengthening creditor rights is a legitimate legislative objective, insolvency law has traditionally been based upon a careful equilibrium between creditor recovery and debtor rehabilitation[30]. Certain aspects of the reform may be interpreted as signaling a shift toward a more creditor-oriented model, particularly when considered in conjunction with the broader fiscal and economic context in which the law was adopted. The prominence accorded to recovery rates and procedural efficiency reflects concerns that extend beyond private creditor interests and include public policy objectives related to fiscal consolidation and public revenue collection. While understandable from a governmental perspective, this orientation may gradually alter the traditional balance characterizing Romanian insolvency law.

Additional practical difficulties may arise from the application of the concept of "persons closely connected to the debtor." Although the objective of preventing conflicts of interest is fully justified, the broad formulation adopted by the legislature may generate interpretative uncertainties. Insolvency practitioners and courts will inevitably face difficult questions regarding the identification of indirect relationships, beneficial ownership structures and situations involving complex corporate groups. Consequently, some degree of litigation concerning the scope and application of these provisions appears unavoidable during the first years following the reform.

The provisions concerning de facto controllers may generate similar challenges. While the extension of liability to individuals exercising effective control represents a welcome development from the perspective of accountability, the evidentiary burden associated with establishing such control may prove substantial. Courts may therefore face the difficult task of distinguishing between legitimate shareholder influence and actual managerial control, a distinction that has generated considerable debate in comparative insolvency jurisprudence[31]. The effectiveness of these provisions will therefore depend largely upon the consistency of judicial interpretation and the ability of insolvency practitioners to gather adequate evidence.

Ultimately, the 2025 reform should not be understood merely as a technical amendment to Law No. 85/2014. It represents a policy choice regarding the future orientation of Romanian insolvency law. The legislature has clearly signalled its preference for a more disciplined and economically efficient insolvency system. The challenge for future practice will be to ensure that this objective does not undermine the goal of preserving viable businesses and encouraging successful restructuring efforts.

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[30]Fletcher, I.F., *The Law of Insolvency*, 5th ed., Sweet & Maxwell, London, 2017. p.41

[31]Finch V., Milman D., *Corporate Insolvency Law: Perspectives and Principles*, 3rd ed., Cambridge University Press, Cambridge, 2017, p. 579-644; See also *Secretary of State for Trade and Industry v Deverell* [2001] Ch 340, where the Court of Appeal emphasised that the concept of a shadow director must be interpreted in light of the actual influence exercised over corporate decision-making.

Conclusions

The reform introduced through Law No. 239/2025 represents one of the most significant developments in Romanian insolvency law since the adoption of Law No. 85/2014. Far from constituting a mere technical revision of existing provisions, the amendments reveal a broader legislative effort to recalibrate the functioning of insolvency proceedings in response to contemporary economic, fiscal and institutional challenges. The reform was adopted in a period marked by increasing concerns regarding public finances, the efficiency of debt recovery mechanisms and the need to strengthen economic discipline, all of which influenced the legislative choices reflected in the new regulatory framework.

The reform also raises important questions concerning the future orientation of Romanian insolvency law. The increased emphasis on procedural discipline, creditor recovery and accountability may contribute to a more efficient insolvency framework, but it also creates the risk that restructuring objectives could gradually become secondary to recovery considerations. The long-term challenge will therefore consist in maintaining an appropriate equilibrium between efficiency and restructuring, between creditor protection and business rehabilitation.

Ultimately, the success of the 2025 reform cannot be assessed solely by reference to the text of the law. Its effectiveness will depend upon the manner in which courts, insolvency practitioners and creditors interpret and apply the new provisions in practice. If implemented in a balanced and coherent manner, the amendments introduced by Law No. 239/2025 have the potential to enhance the credibility, transparency and effectiveness of Romanian insolvency proceedings. Whether they will simultaneously preserve the restructuring opportunities necessary for economically viable businesses remains a question that only future practice and jurisprudence will be able to answer.

The 2025 reform thus marks not merely a legislative amendment, but a significant moment in the evolution of Romanian insolvency law, signalling a shift toward a more disciplined, transparent and creditor-conscious system while reopening the debate concerning the proper balance between economic efficiency and the rescue function traditionally associated with modern insolvency regimes.

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