

DEGANO TRASPORTI

Legal case

Inmaculada Membrillo López
Laura Sánchez Pozuelo

1. Summary



Insolvency



Procedure for an
arrangement with creditors



Partial payment of VAT debts

2. Intervening party

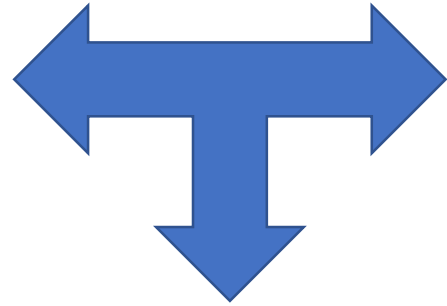
Degano Trasporti
Sas di Ferruccio
Degano & C.,



Pubblico Ministero
presso il Tribunale
di Udine

3. Judgment

Art. 4(3) TEU



Council Directive 2006/112/EC of 28
November 2006
(the VAT Directive)

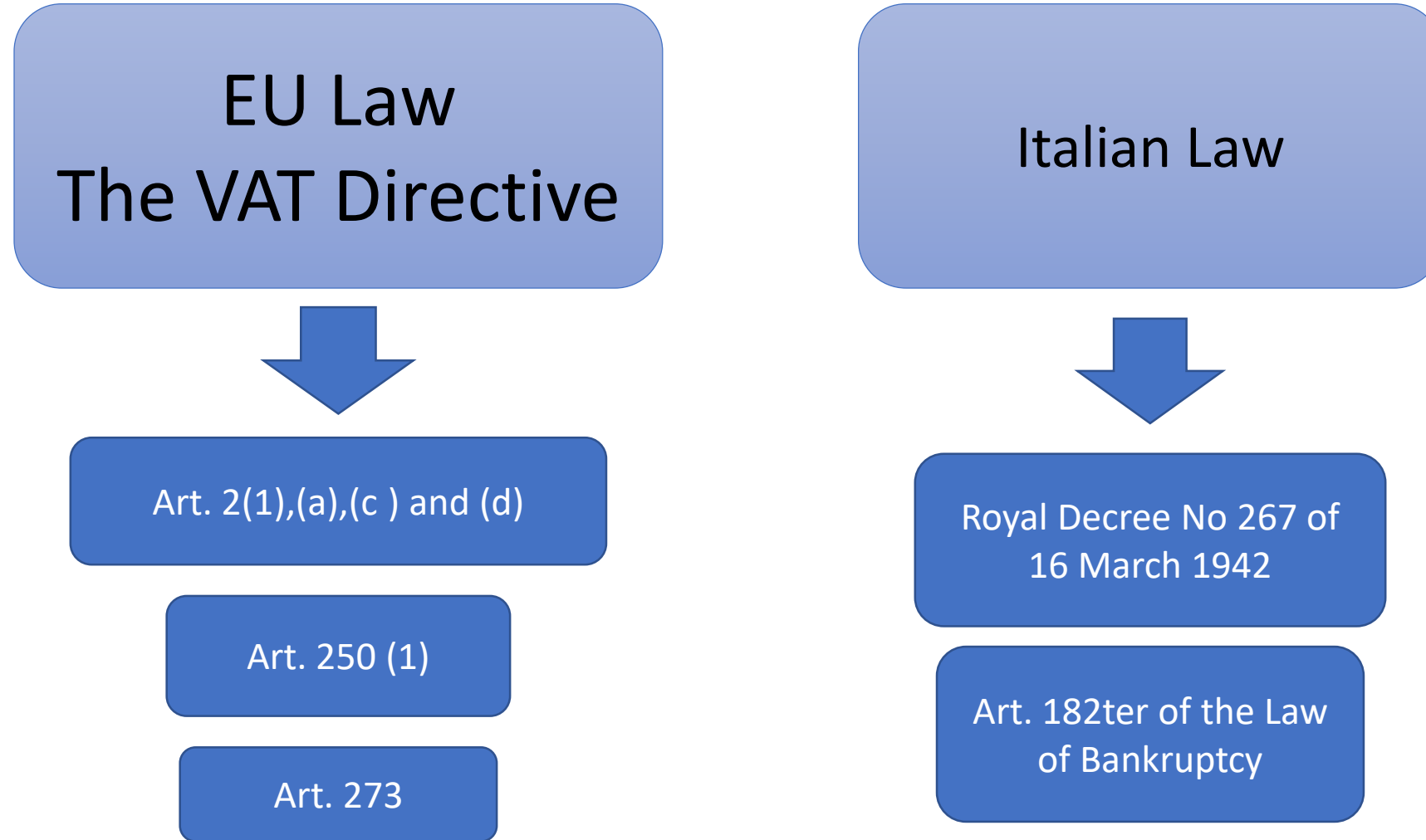
Degano Trasporti in liquidation

Tribunale di Udine

Art. 4.3 TEU

- Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.
- The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.
- The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

4. Legal Context



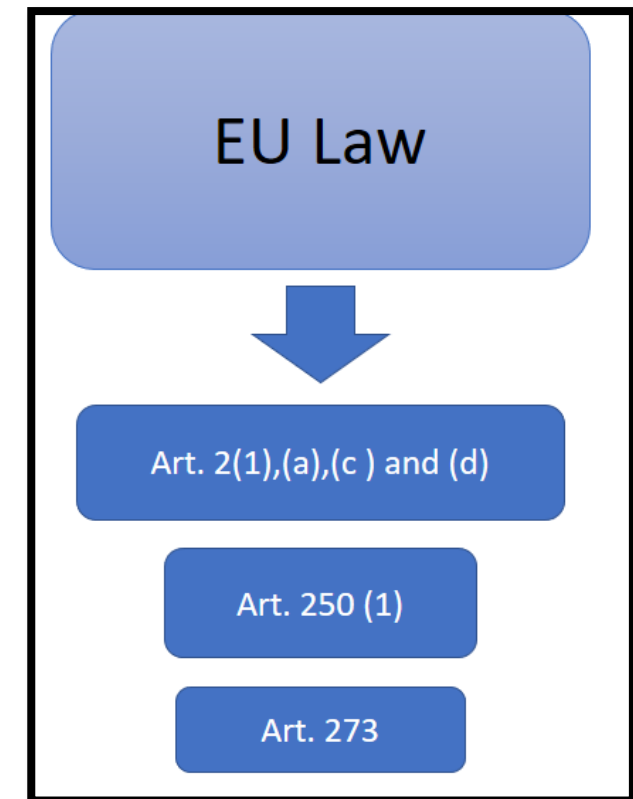
Article 2 of The VAT Directive

1. The following transactions shall be subject to VAT:

(a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

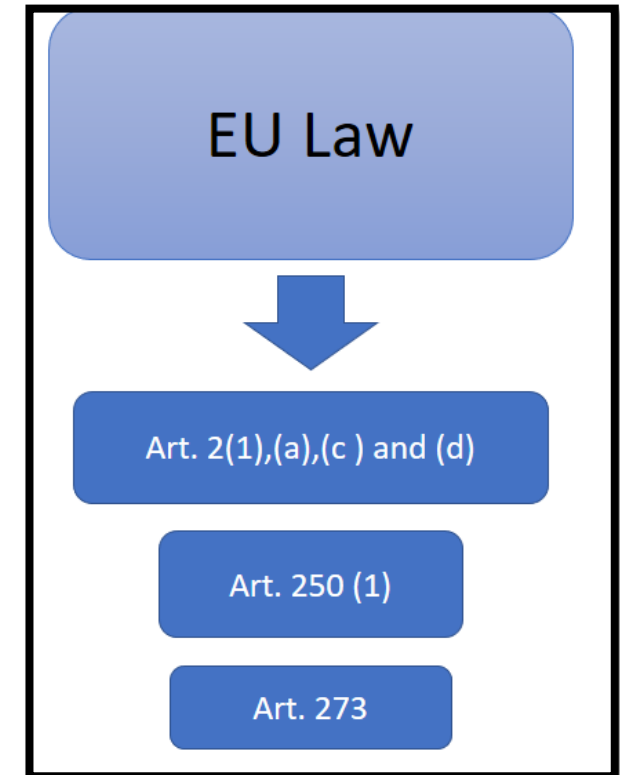
(c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

(d) the importation of goods.



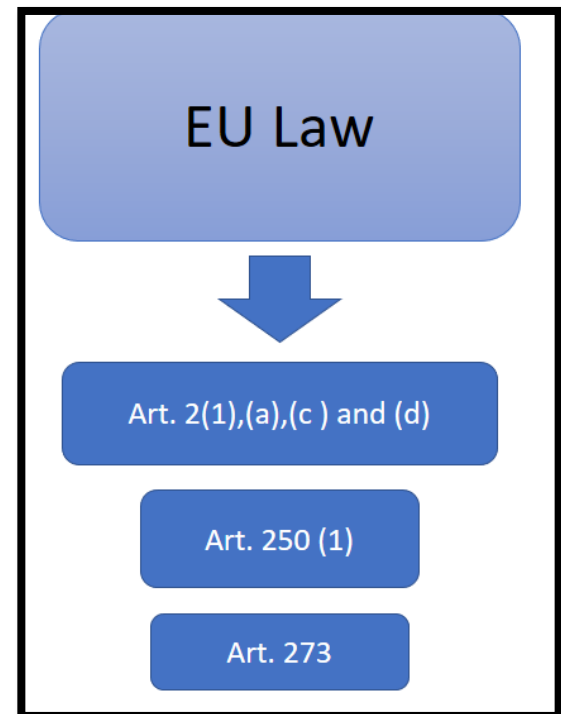
Article 250 of The VAT Directive

1. Every taxable person shall submit a VAT return setting out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, in so far as is necessary for the establishment of the basis of assessment, the total value of the transactions relating to such tax and deductions and the value of any exempt transactions.



Article 273 of The VAT Directive

Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.



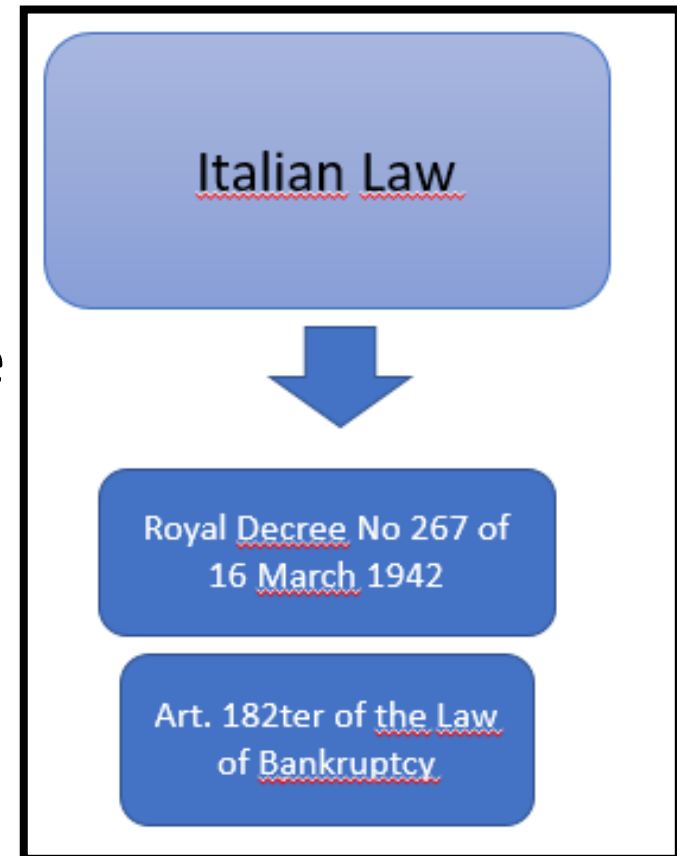
- *Royal Decree no 267*

Laying down provisions governing bankruptcy, arrangement with creditors, judicial administration and compulsory administrative liquidation.

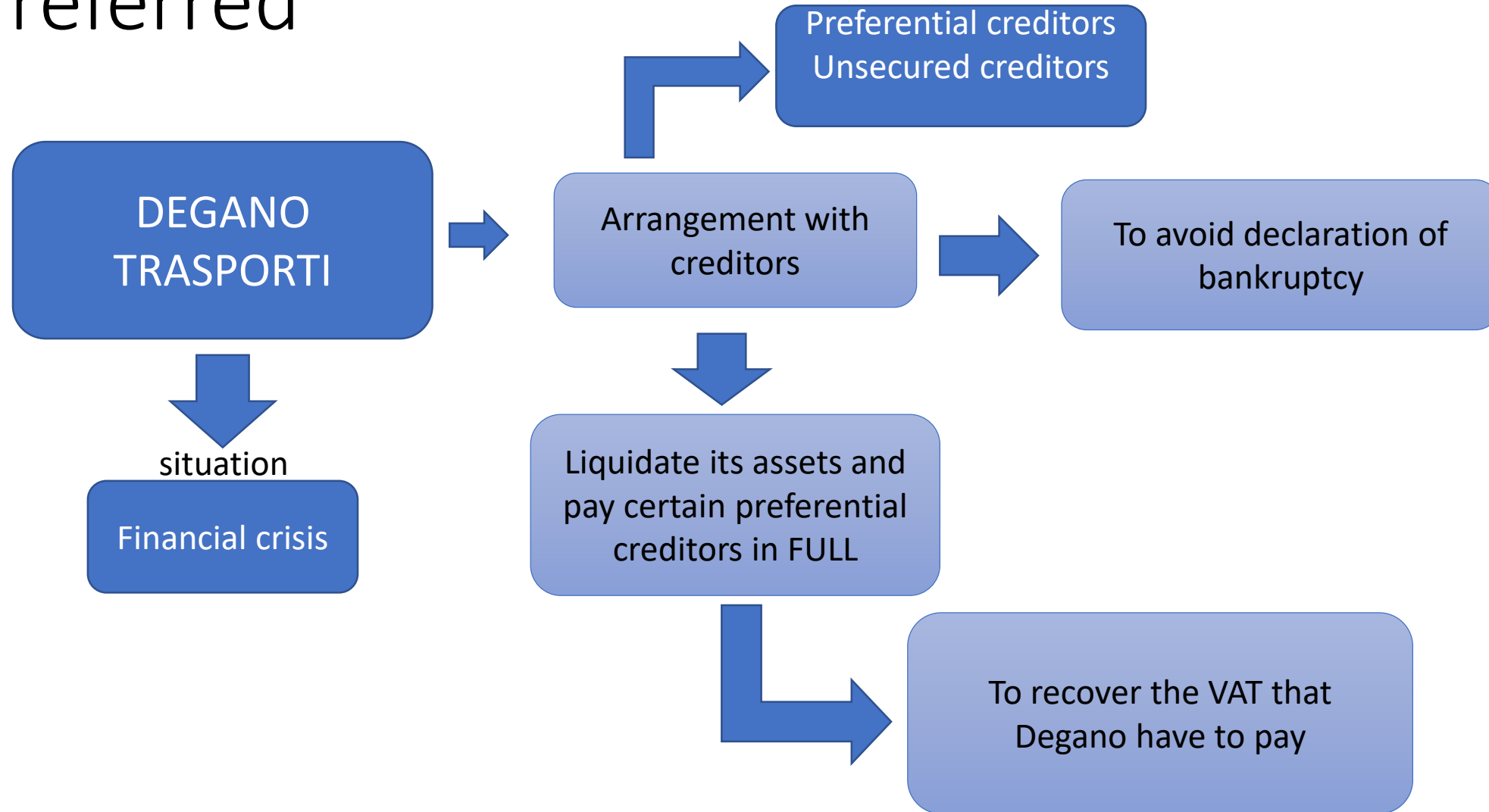


- **Article 182ter**

Of the law of bankruptcy, entitle 'Tax settlement', provides that, y the plan referred to in Article 160 of that law, the debtor may propose the payment, partial and/or delayed, of taxes and ancillary claims of the tax authorities, as well contributions and ancillary claims made by the compulsory social security institutions, as regards the part of the debt which is unsecured, even if they are not entered in the register, with the exception of taxes constituting the European Union's own resources. As regards. However, VAT and tax retained but unpaid, the proposal made by the debtor may solely provide for deferred payment.



5. The main proceedings and questions referred



IT IS POSSIBLE THE
PARTIAL PAYMENT OF
VAT DEBTS?

NO

Art. 182ter of the Law
of Bankruptcy

Prohibits

Partial payment of
state claims of VAT

Only allows for staggered
payment of such claims

CORTE SUPREMA DI CASSAZIONE

Art 4 (3) TEU

VAT Directive

Member States (EU)

For FULL recovery of VAT

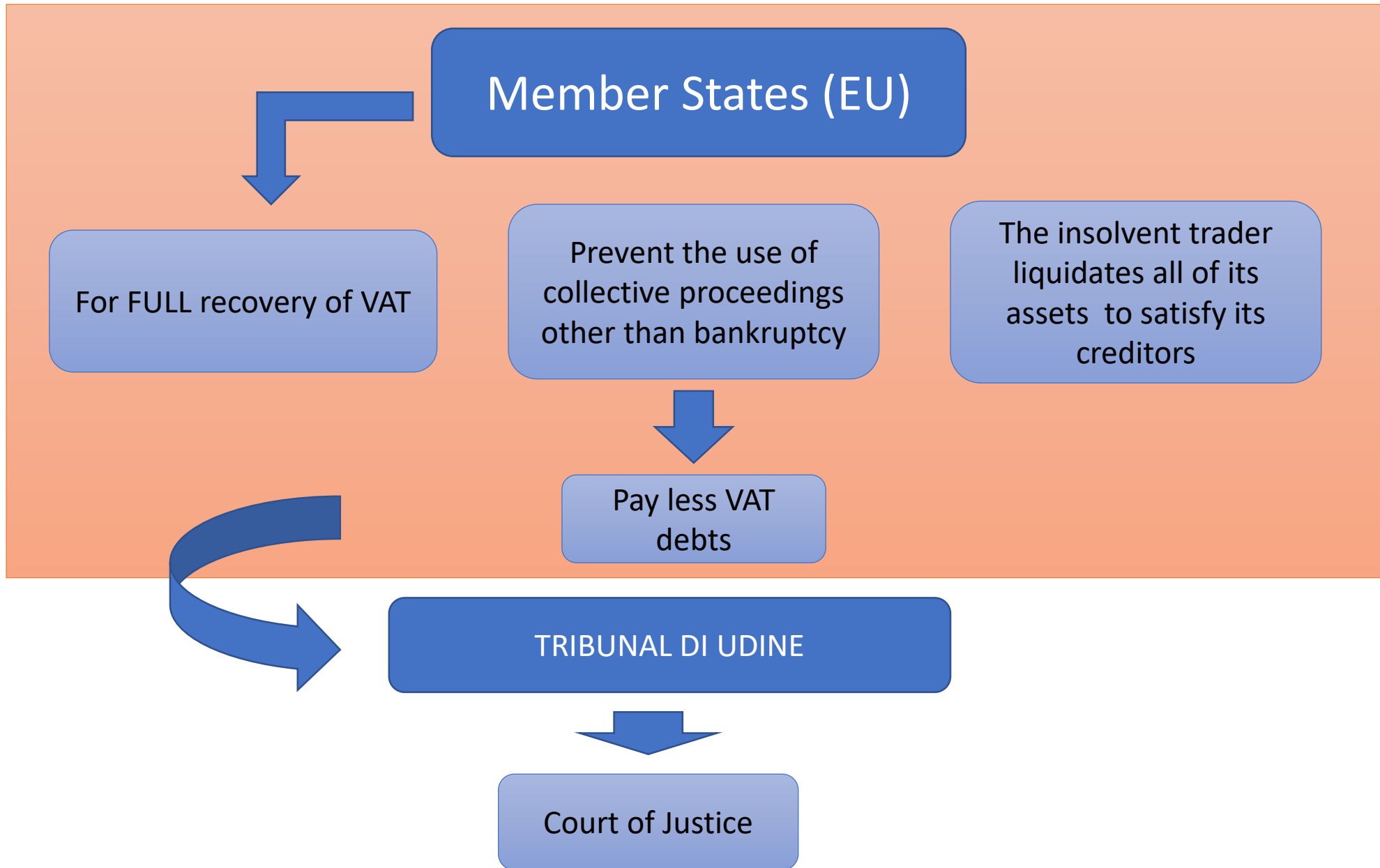
Prevent the use of
collective proceedings
other than bankruptcy

The insolvent trader
liquidates all of its
assets to satisfy its
creditors

Pay less VAT
debts

TRIBUNAL DI UDINE

Court of Justice



6. The Question referred for a preliminary ruling

Is permissible where there is **no tax settlement** and where a **larger payment in the event of bankruptcy is not foreseeable** on the basis of an assessment by an **independent expert** and following the formal review of the court?

It is admissible the preliminary ruling?



Seeks to open a procedure for an arrangement with creditors

If it is admissible



Judicial decision in the presence of the publish prosecutor

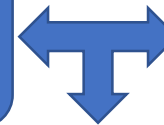


Art. 4 (3) TEU

Art. 2, 250 (1) and 273 VAT Directive

Insolvent trader

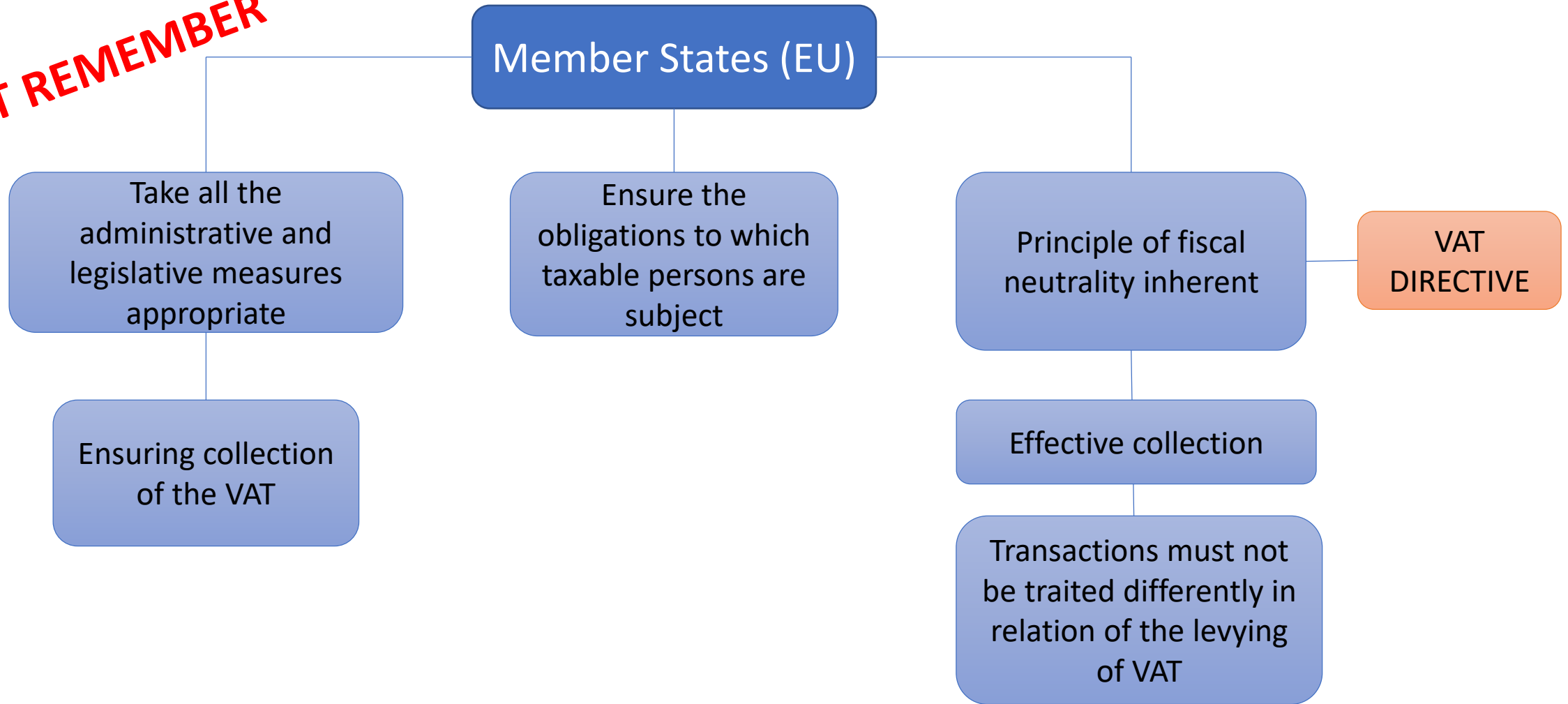
Offers only partial payment of a VAT debt

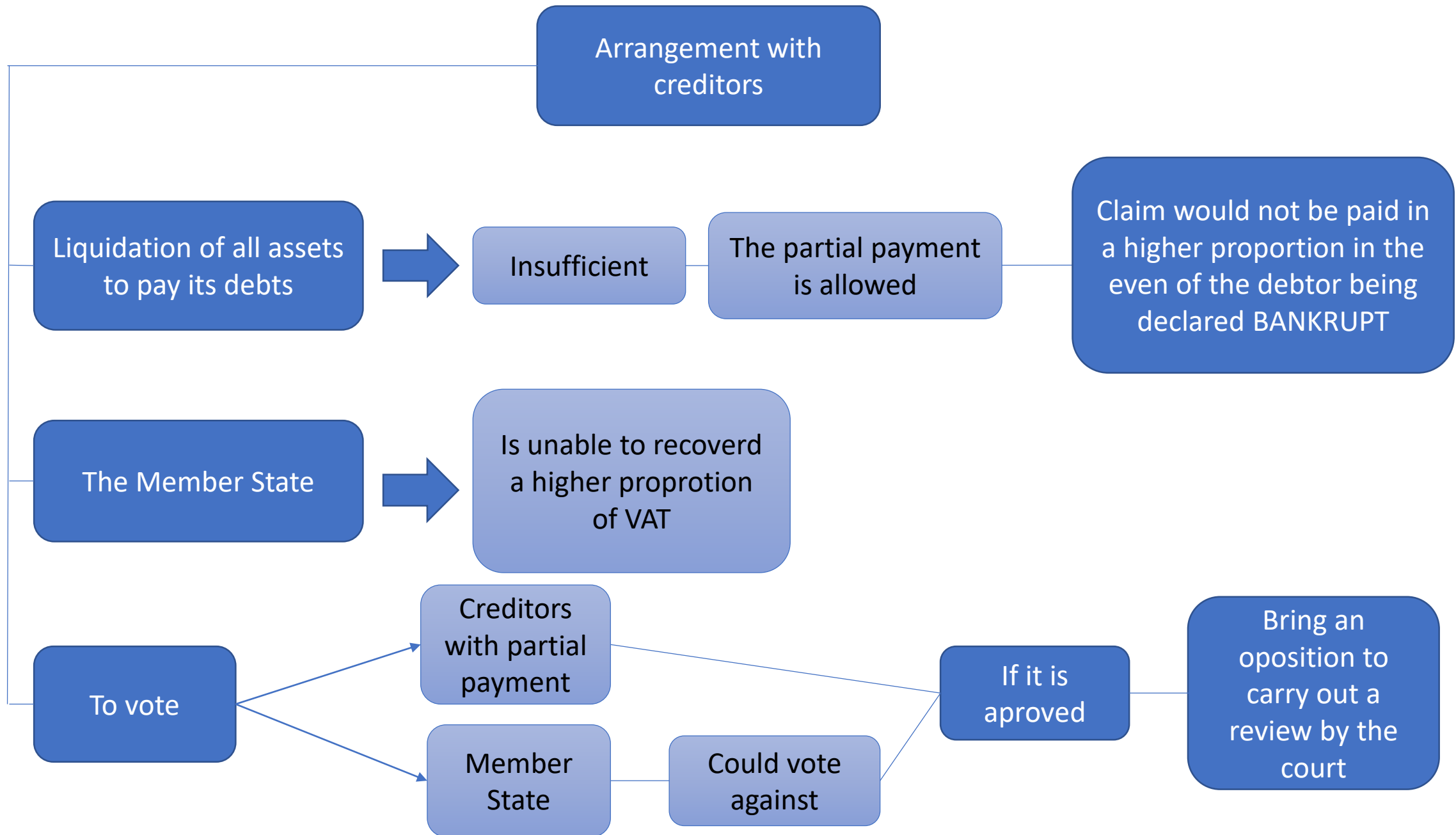


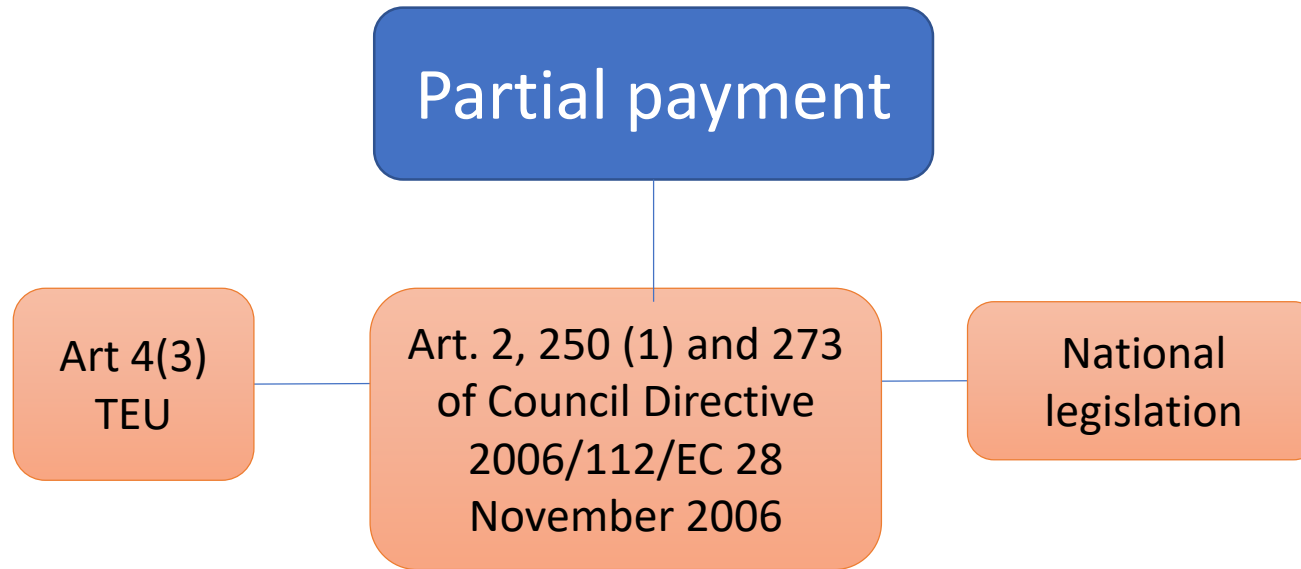
Independent expert's report

The debt would not be repaid in case of trader's bankruptcy

JUST REMEMBER







Interpreted as meaning that as insolvent trader may applied to a court to open a procedure for an arrangement with creditors for the purpose of settling its debts by liquidating its assets, in which that trader offers only partial payment of a VAT and establishes by an independent expert's report that that debt would not be repaid more fully in the event of that trader's bankruptcy