


Procedure file

Basic information		
INL - Legislative initiative procedure	2011/2006(INL)	Procedure completed
Insolvency proceedings in the context of EU company law		
Subject		
3.45.01 Company law		
7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		01/12/2010
		PPE LEHNE Klaus-Heiner	
		Shadow rapporteur	
		S&D REGNER Evelyn	
		Verts/ALE LICHTENBERGER Eva	
	ECR KARIM Sajjad		
	EFD SPERONI Francesco Enrico		
	Committee for opinion	Rapporteur for opinion	Appointed
	EMPL Employment and Social Affairs		16/12/2010
		ECR GIRLING Julie	
	ECON Economic and Monetary Affairs		14/12/2010
		ALDE BOWLES Sharon	
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	

Key events			
20/01/2011	Committee referral announced in Parliament		
11/10/2011	Vote in committee		Summary
17/10/2011	Committee report tabled for plenary	A7-0355/2011	
15/11/2011	Results of vote in Parliament		
15/11/2011	Decision by Parliament	T7-0484/2011	Summary
15/11/2011	End of procedure in Parliament		

Technical information	
Procedure reference	2011/2006(INL)
Procedure type	INL - Legislative initiative procedure

Procedure subtype	Request for legislative proposal
Legal basis	Rules of Procedure EP 47
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/04999

Documentation gateway

Committee opinion	EMPL	PE458.820	31/05/2011	EP	
Committee draft report		PE467.008	06/06/2011	EP	
Committee opinion	ECON	PE464.777	12/07/2011	EP	
Amendments tabled in committee		PE469.800	13/07/2011	EP	
Committee report tabled for plenary, single reading		A7-0355/2011	17/10/2011	EP	
Text adopted by Parliament, single reading		T7-0484/2011	15/11/2011	EP	Summary
Commission response to text adopted in plenary		SP(2012)55	05/03/2012	EC	

Insolvency proceedings in the context of EU company law

The Committee on Legal Affairs adopted a report by Klaus-Heiner LEHNE (EPP, DE) with recommendations to the Commission on insolvency proceedings in the context of EU company law (Initiative ?Rule 42 of the Rules of Procedure).

The Committee responsible notes that disparities between national insolvency laws create competitive advantages or disadvantages and difficulties for companies with cross-border activities which could become obstacles to a successful restructuring of insolvent companies (?forum shopping?).

Underlining that the existence of identical conditions for all would help to strengthen the single market, Members request the Commission to submit to Parliament on the basis of Article 50, Article 81(2) or Article 114 of the Treaty on the Functioning of the European Union, one or more legislative proposals relating to an EU corporate insolvency framework, following the detailed recommendations set out in the Annex hereto, in order to ensure a level playing field, based on a profound analysis of all viable alternatives.

The detailed recommendations as to the content of the proposal requested are as follows:

1. The harmonisation of specific aspects of insolvency and company law: Members recommend in particular:

- the harmonisation, by means of a directive, of certain aspects of the opening of insolvency proceedings (e.g. the proceedings can be brought against debtors who are natural persons, legal entities or associations; the proceedings are initiated in a timely manner in order to allow a rescue of a troubled enterprise; a creditor may request the opening of proceedings if he/she has a legal interest therein and shows credibly that he/she has a claim);
- the harmonisation of the conditions under which claims in insolvency proceedings are to be filed (e.g. that the date for determining outstanding claims is the date on which the employer becomes insolvent; that creditors file their claim with the liquidator in written form within a certain period of time; that Member States are required to fix the above-mentioned period of time within one to three months from the date of publication of the bankruptcy decision);
- the harmonisation of aspects of avoidance actions (e.g. acts that can be the object of an avoidance action are transactions in a situation of imminent insolvency, the creation of security rights, transactions with connected parties and transactions carried out with the intention of defrauding creditors);
- the harmonisation of general aspects of the requirements for the qualification and work of liquidators (e.g. the liquidator must be approved by a competent authority of a Member State or appointed by a court of competent jurisdiction of a Member State, must be of good repute and must have the educational background needed for the performance of his/her duties; ? the liquidator must be competent and qualified to assess the situation of the debtor?s entity and to take over management duties for the company);
- the harmonisation of aspects of restructuring plans (e.g. the plan must i) contain rules for the satisfaction of the creditors and for the debtor?s liability after the insolvency proceeding have been concluded; ii) the plan must contain all relevant information enabling the creditors to decide whether they can accept the plan; iii) the plan must be approved or disapproved in a specific procedure before the relevant court);

2. The revision of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings: the recommendations relate to:

- the scope of the Insolvency Regulation which should be broadened to include insolvency proceedings in which the debtor remains in possession or where a preliminary liquidator has been appointed;
- the inclusion of a definition of the term ?centre of main interest? formulated in such a way as to prevent fraudulent forum shopping;
- the inclusion of a definition of ?establishment? as any place of operations where the debtor carries on a non-transitory economic activity with human means and goods and services;

- provision for an unequivocal duty of communication and cooperation not only between liquidators but also between courts;
- the Insolvency Regulation should be reviewed so that it does not encourage cross-border avoidance actions but helps to prevent avoidance actions from succeeding by means of choice-of-law clauses.

3. The insolvency of groups of companies: due to the different levels of integration which may exist within a group of companies, Parliament considers that the Commission should present a flexible proposal for the regulation of the insolvency of groups of companies, whenever the functional/ownership structure allows it. They also suggest providing for an instrument for insolvency proceedings in respect of decentralised groups.

4. The creation of an EU insolvency register: Members propose the creation of an EU insolvency register in the context of the European e-Justice Portal, which should contain, for every cross-border insolvency opened, at least: (i) the relevant court orders and judgments, (ii) the appointment of the liquidator and that person's contact details, and (iii) the deadlines for filing claims. Transmission of these data to the EU registry by the courts should be compulsory.

Members consider that the legislative action requested should be based on detailed impact assessments, as requested by Parliament.

Insolvency proceedings in the context of EU company law

The European Parliament adopted a resolution with recommendations to the Commission on insolvency proceedings in the context of EU company law (Initiative Rule 42 of the Rules of Procedure).

Parliament notes that disparities between national insolvency laws create competitive advantages or disadvantages and difficulties for companies with cross-border activities which could become obstacles to a successful restructuring of insolvent companies (forum shopping). However, the existence of identical conditions for all would help to strengthen the single market.

If the creation of a body of substantive insolvency law at EU level is not possible, there are certain areas of insolvency law where harmonisation is worthwhile and achievable. It is for this reason that Members request the Commission to submit to Parliament on the basis of Article 50, Article 81(2) or Article 114 of the Treaty on the Functioning of the European Union, one or more legislative proposals relating to an EU corporate insolvency framework, following the detailed recommendations set out in the Annex hereto, in order to ensure a level playing field, based on a profound analysis of all viable alternatives.

The detailed recommendations as to the content of the proposal requested are as follows:

1. The harmonisation of specific aspects of insolvency and company law: Parliament recommends in particular:

- the harmonisation, by means of a directive, of certain aspects of the opening of insolvency proceedings (e.g. the proceedings can be brought against debtors who are natural persons, legal entities or associations; the proceedings are initiated in a timely manner in order to allow a rescue of a troubled enterprise; a creditor may request the opening of proceedings if he/she has a legal interest therein and shows credibly that he/she has a claim);
- the harmonisation of the conditions under which claims in insolvency proceedings are to be filed (e.g. that the date for determining outstanding claims is the date on which the employer becomes insolvent; that creditors file their claim with the liquidator in written form within a certain period of time; that Member States are required to fix the above-mentioned period of time within one to three months from the date of publication of the bankruptcy decision);
- the harmonisation of aspects of avoidance actions (e.g. acts that can be the object of an avoidance action are transactions in a situation of imminent insolvency, the creation of security rights, transactions with connected parties and transactions carried out with the intention of defrauding creditors);
- the harmonisation of general aspects of the requirements for the qualification and work of liquidators (e.g. the liquidator must be approved by a competent authority of a Member State or appointed by a court of competent jurisdiction of a Member State, must be of good repute and must have the educational background needed for the performance of his/her duties; the liquidator must be competent and qualified to assess the situation of the debtors entity and to take over management duties for the company);
- the harmonisation of aspects of restructuring plans (e.g. the plan must i) contain rules for the satisfaction of the creditors and for the debtors liability after the insolvency proceeding have been concluded; ii) the plan must contain all relevant information enabling the creditors to decide whether they can accept the plan; iii) the plan must be approved or disapproved in a specific procedure before the relevant court);

2. The revision of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings: the recommendations relate to:

- the scope of the Insolvency Regulation which should be broadened to include insolvency proceedings in which the debtor remains in possession or where a preliminary liquidator has been appointed;
- the inclusion of a definition of the term centre of main interest formulated in such a way as to prevent fraudulent forum shopping;
- the inclusion of a definition of establishment as any place of operations where the debtor carries on a non-transitory economic activity with human means and goods and services;
- provision for an unequivocal duty of communication and cooperation not only between liquidators but also between courts;
- the Insolvency Regulation should be reviewed so that it does not encourage cross-border avoidance actions but helps to prevent avoidance actions from succeeding by means of choice-of-law clauses.

3. The insolvency of groups of companies: due to the different levels of integration which may exist within a group of companies, Parliament considers that the Commission should present a flexible proposal for the regulation of the insolvency of groups of companies, whenever the functional/ownership structure allows it. They also suggest providing for an instrument for insolvency proceedings in respect of decentralised groups. In this case, the instrument should provide, inter alia:

- rules for mandatory coordination and cooperation between courts, between courts and insolvency representatives and between insolvency representatives;
- rules on immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings and judgments handed down in connection with such proceedings;
- rules on access to courts by liquidators and creditors;

- rules allowing and promoting cross-border insolvency agreements which would address the allocation of responsibility for various aspects of the conduct and administration of the proceedings between the different courts involved and between insolvency representatives.

4. The creation of an EU insolvency register: Members propose the creation of an EU insolvency register in the context of the European e-Justice Portal, which should contain, for every cross-border insolvency opened, at least: (i) the relevant court orders and judgments, (ii) the appointment of the liquidator and that person's contact details, and (iii) the deadlines for filing claims. Transmission of these data to the EU registry by the courts should be compulsory.

Parliament considers that the legislative action requested should be based on detailed impact assessments, as requested by Parliament.