

Insolvency proceedings. Recast

2012/0360(COD) - 12/12/2012 - Legislative proposal

PURPOSE: to revise Council Regulation (EC) No 1346/2000 on insolvency proceedings to improve the efficiency of the European framework for resolving cross-border insolvency cases in view of ensuring a smooth functioning of the internal market and its resilience in economic crises.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: Council Regulation (EC) No 1346/2000 established a European framework for cross-border insolvency proceedings. It determines which Member State has jurisdiction for opening insolvency proceedings, establishes uniform rules on applicable law and provides for the recognition and enforcement of insolvency-related decisions as well as for the coordination of main and secondary insolvency proceedings.

Adopted in May 2000, the Insolvency Regulation has applied since 31 May 2002. Ten years after its entry into force, the [Commission's December 2012](#) report on the application of the Regulation concludes that the Regulation is functioning well in general but that it is desirable to improve the application of certain of its provisions.

The evaluation of the Insolvency Regulation identified five main shortcomings:

1. the Regulation's scope does not cover national procedures which provide for the restructuring of a company at a pre-insolvency stage (pre-insolvency proceedings) or proceedings which leave the existing management in place (hybrid proceedings);
2. there are difficulties in determining which Member State is competent to open insolvency proceedings;
3. problems have also been identified with respect to secondary proceedings;
4. there are problems relating to the rules on publicity of insolvency proceedings and the lodging of claims;
5. the Regulation does not contain specific rules dealing with the insolvency of a multi-national enterprise group although a large number of cross-border insolvencies involve groups of companies.

According to the Commission, the revision of the Regulation will contribute to ensuring a smooth development and the survival of businesses, as stated in the [Small Business Act](#). The revision is also one of the key actions listed in the [Single Market Act II](#).

IMPACT ASSESSMENT: the Commission analysed the costs and benefits of the main aspects of the proposed reform in its [Impact Assessment](#) which accompanies this proposal.

LEGAL BASIS: Article 81 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the main elements of the proposed reform of the Insolvency Regulation may be summarised as follows:

Scope: the proposal extends the scope of the Regulation by revising the definition of insolvency proceedings to include hybrid and pre-insolvency proceedings, as well as debt discharge proceedings and other insolvency proceedings for natural persons which currently do not fit the definition. It is proposed to:

- amend the current definition of "insolvency proceedings" to open the scope to proceedings which do not involve a liquidator but in which the assets and affairs of the debtor are subject to control or supervision by a court;
- make an express reference to proceedings for the adjustment of debts and to the purpose of rescue in order to include also those proceedings which enable the debtor to find an arrangement with his creditors at a preinsolvency stage.

Jurisdiction: the proposal clarifies the jurisdiction rules and improves the procedural framework for determining jurisdiction. The proposal retains the concept of the centre of main interest (COMI) but complements the definition of it. It also introduces a provision determining the COMI of natural persons. In addition, a new recital clarifies the circumstances in which the presumption that the COMI of a legal person is located at the place of its registered office can be rebutted. Furthermore, the proposal grants all foreign creditors a right to challenge the opening decision and ensures that these creditors are informed of the opening decision in order to be able to effectively exercise their rights.

Secondary proceedings: several modifications are proposed with the aim of improving the efficient administration of the debtor's estate in situations where the debtor has an establishment in another Member State. The proposal provides for a more efficient administration of insolvency proceedings by:

- enabling the court to refuse the opening of secondary proceedings if this is not necessary to protect the interests of local creditors,
- abolishing the requirement that secondary proceedings must be winding-up proceedings and
- improving the cooperation between main and secondary proceedings, in particular by extending the cooperation requirements to the courts involved.

Publicity of insolvency proceedings and lodging of claims: the proposal requires Member States to publish the relevant court decisions in cross-border insolvency cases in a publicly accessible electronic register and provides for the interconnection of national insolvency registers. The proposal facilitates the lodging of claims for foreign creditors, particularly small creditors and SMEs, in three ways: (i) it introduces standard forms for the lodging of claims which will be available in all official languages of the European Union; (ii) it gives foreign creditors at least 45 days following publication of the notice of opening of proceedings in the insolvency register to lodge their claims; (iii) legal representation will not be mandatory for lodging a claim in a foreign jurisdiction, thereby reducing costs for creditors.

Groups of companies: the proposal creates a specific legal framework to deal with the insolvency of members of a group of companies while maintaining the entity-by-entity approach which underlies the current Insolvency Regulation. The proposal:

- introduces an obligation to coordinate insolvency proceedings relating to different members of the same group of companies by

obliging the liquidators and the courts involved to cooperate with each other in a similar way as this is proposed in the context of main and secondary proceedings;

- gives each liquidator standing in the proceedings concerning another member of the same group. In particular, the liquidator has a right to be heard in these other proceedings, to request a stay of the other proceedings and to propose a reorganisation plan in a way which would enable the respective creditors' committee or court to take a decision on it.

BUDGETARY IMPLICATION: the proposal would have limited impact on the EU budget. The IT application for the interconnection of the insolvency registers has already been developed and will be hosted on the e-Justice Portal. The implication for the EU budget over 2014-2020 will comprise only of hosting and maintenance costs of the IT application. In total, these costs would amount to EUR 1 500 000 for the period 2014-2020 and would be covered by the financial envelope of the [future Justice programme](#).

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.