

Insolvency proceedings. Recast

2012/0360(COD) - 20/12/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Klaus-Heiner LEHNE (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings.

The committee recommended that the Parliaments position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal. The key amendments are as follows:

Scope: the Regulation shall apply to collective judicial or administrative proceedings, including interim proceedings, which are based on a law relating to insolvency and in which, for the purpose of avoidance of liquidation, adjustment of debt, reorganisation or liquidation,

- the debtor is totally or partially divested of his assets and an insolvency representative is appointed, or
- the assets and affairs of the debtor are subject to control or supervision by a court.

Given that certain proceedings are confidential, their effects must not be extended to parties not having been involved in the proceeding at all.

Members propose to replace the term liquidator by insolvency representative to reflect better the objective, which is to rescue companies in difficulties.

Definition of the 'centre of main interests': the Commissions proposal provides that the 'centre of main interests' of a company or other legal person should be presumed to be at the place of its registered office. An amendment aims to clarify that not only management decisions but also other factors - such as such as the location of main assets - are relevant when determining this centre of main interests.

Jurisdiction and competence: whilst the Commission proposal provides for the possibility of opening insolvency proceedings in accordance with national law without a decision by a court, Members feel that a minimum control by a court is necessary when establishing the centre of main interests.

A further amendment aims to clarify that the validity of the decision to open proceedings can be challenged within three weeks after publication of information on the opening if insolvency proceedings.

Powers of the insolvency representative: Members laid down the minimum criteria that an undertaking given by an insolvency representative to local creditors needs to fulfil in order to be enforceable and binding, in order to ensure a minimum level of protection for local creditors.

Insolvency register: Members clarified that publication of information in a register is not limited to certain debtors. They also stated that Member States must establish procedures for removing entries from the insolvency register

Secondary proceedings: the report clarified that any decision to postpone or refuse the opening of secondary proceedings may be challenged by local creditors. It also dealt with the situation of an insolvency representative not complying with his undertaking. In such a case the local creditors should have the right to seek protection through a court order, for instance by prohibiting removal from assets

Insolvency of a group of companies: with regard to the coordination and communication of different insolvency proceedings, Members proposed a more ambitious solution on insolvency of groups of companies than that proposed by the Commission.

The report stipulated that the court opening group coordination proceedings shall appoint an independent coordinator with the task of:

- identifying and outlining procedural and substantive recommendations for the coordinated conduct of the insolvency proceedings;
- mediating in disputes arising between two or more insolvency representatives of group members; and
- presenting a group coordination plan that identifies, describes and recommends a comprehensive set of measures appropriate to an integrated approach to the resolution of the group members insolvencies.

The group coordination plan requires court approval.

Insolvency representatives appointed may comment on the draft of the group coordination plan before approval. An insolvency representative may deviate from measures or actions proposed in the group coordination plan.

The coordinator shall perform his duties with due care. He shall be liable the estates of the insolvency proceedings covered by the group coordination proceedings for damage reasonably attributable to breaches of those duties.