

Insolvency proceedings. Recast

2012/0360(COD) - 05/02/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 589 votes to 69 with 19 abstentions, a legislative resolution 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 Parliaments position adopted in first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Scope: the scope of Regulation (EC) No 1346/2000 should be extended to proceedings which promote the rescue of a debtor in severe financial distress in order to help sound companies to survive and give a second chance to entrepreneurs.

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:

- 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.

Where such proceedings may be commenced prior to the insolvency, their purpose must be the avoidance of liquidation.

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 of insolvency proceedings.

Powers of the insolvency representative: Parliament 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: Parliament 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 court seised of such proceedings shall postpone the decision of opening or refuse to open secondary proceedings if the insolvency representative in the main proceedings provides sufficient evidence that the opening of such proceedings is not necessary to protect the interests of local creditors.

Parliament 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, Parliament proposed a more ambitious solution on insolvency of groups of companies than that proposed by the Commission.

The resolution 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.

The costs in the group coordination proceedings shall be borne pro rata by the group members in relation to which insolvency proceedings had been opened at the time of the opening of the coordination proceedings.