

Insolvency proceedings. Recast

2012/0360(COD) - 20/05/2015 - Final act

PURPOSE: to adopt new measures at EU level as regards cross-border insolvency proceedings.

LEGISLATIVE ACT: Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings.

CONTENT: the new Regulation is aimed at making cross-border insolvency proceedings more efficient and effective, benefiting debtors and creditors, facilitating the survival of businesses and presenting a second chance for entrepreneurs. It also brings the current insolvency regulation into line with developments in national insolvency laws introduced since its entry into force in 2002.

This Regulation includes provisions governing jurisdiction for opening insolvency proceedings and actions which are directly derived from insolvency proceedings and are closely linked with them. It also contains provisions regarding the recognition and enforcement of judgments issued in such proceedings, and provisions regarding the law applicable to insolvency proceedings. In addition, this Regulation lays down rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies.

Scope: the scope of this Regulation should extend to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs. The new rules also cover:

- proceedings which provide for the restructuring of a debtor at a stage where there is only a likelihood of insolvency
- proceedings which leave the debtor fully or partially in control of his assets and affairs
- proceedings providing for a debt discharge or a debt adjustment of consumers and self-employed persons for example by reducing the amount to be paid by the debtor or by extending the payment period granted to the debtor.

Jurisdiction for opening insolvency proceedings: the new Regulation improves the procedural framework for determining jurisdiction. The concept of centre of main interest is further clarified to provide useful guidance to all those concerned and increase legal certainty. Moreover, the new rules contain a set of safeguards aimed at preventing abusive forum shopping.

Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction. When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests.

Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of a Member State should carefully assess whether the centre of the debtor's main interests is genuinely located in that Member State.

This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.

In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.

Applicable law: the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure.

The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

Secondary insolvency procedures: where main insolvency proceedings have been opened by a court of a Member State and recognised in another Member State, a court of that other Member State which has jurisdiction may open secondary insolvency proceedings. The law applicable to secondary insolvency proceedings shall be that of the Member State within the territory of which the secondary insolvency proceedings are opened.

Secondary insolvency proceedings may also hamper the efficient administration of the insolvency estate. Therefore, this Regulation sets out two specific situations in which the court seised of a request to open secondary insolvency proceedings should be able, at the request of the insolvency practitioner in the main insolvency proceedings, to postpone or refuse the opening of such proceedings.

First, this Regulation confers on the insolvency practitioner in main insolvency proceedings the possibility of giving an undertaking to local creditors that they will be treated as if secondary insolvency proceedings had been opened. That undertaking has to meet a number of conditions set out in this Regulation, in particular that it be approved by a qualified majority of local creditors. Where such an undertaking has been given, the court seised of a request to open secondary insolvency proceedings should be able to refuse that request if it is satisfied that the undertaking adequately protects the general interests of local creditors.

Moreover, a number of rules of cooperation and communication between the actors involved in the main and in the secondary proceedings are also added.

Insolvency registers: in order to improve the provision of information to relevant creditors and courts and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register. This Regulation should provide for the interconnection of such insolvency registers via the European e-Justice Portal, in conformity with EU legislation on data protection.

Groups of companies: the Regulation contains a set of procedural rules aimed at ensuring the efficient administration of insolvency

proceedings relating to different companies forming part of a group of companies. It contains specific measures on the cooperation and communication between insolvency practitioners and courts involved in insolvency proceedings opened against group members.

Review clause: no later than 27 June 2027, and every 5 years thereafter, the Commission shall present a report on the application of this Regulation. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.

ENTRY INTO FORCE: 25.6.2015. The Regulation is applicable from 26.6.2017 (with the exception of certain provisions which shall apply from 26.6.2016, from 26.6.2018 and from 26.6.2019).