Insolvency proceedings in the context of EU company law

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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 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**. 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.