


Basic information	
<b>1999/0806(CNS)</b> CNS - Consultation procedure Regulation	Procedure completed
Judicial cooperation in civil matters: undertakings, insolvency proceedings with cross-border implications	
Repealed by <a href="#">2012/0360(COD)</a> <b>Subject</b> 3.45.01 Company law 7.40.02 Judicial cooperation in civil and commercial matters	

Key players			
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>
	<div>JURI</div> Legal Affairs and Internal Market		LECHNER Kurt (PPE-DE)
	<b>Committee for opinion</b>		<b>Appointed</b>
	<div>LIBE</div> Citizens' Freedoms and Rights, Justice and Home Affairs		KESSLER Margot (PSE)
Council of the European Union	<b>Council configuration</b>	<b>Meetings</b>	<b>Date</b>
	Justice and Home Affairs (JHA)	2266	2000-05-29
	Justice and Home Affairs (JHA)	2229	1999-12-02

Key events			
Date	Event	Reference	Summary
05/07/1999	Legislative proposal published	09178/1999	<a href="#">Summary</a>
17/09/1999	Committee referral announced in Parliament		
02/12/1999	Debate in Council		
21/02/2000	Vote in committee		<a href="#">Summary</a>
21/02/2000	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0039/2000</a>	
01/03/2000	Debate in Parliament		
02/03/2000	Decision by Parliament	<a href="#">T5-0083/2000</a>	<a href="#">Summary</a>
29/05/2000	Act adopted by Council after consultation of Parliament		

29/05/2000	End of procedure in Parliament		
30/06/2000	Final act published in Official Journal		

Technical information	
Procedure reference	1999/0806(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by <a href="#">2012/0360(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 067-p1 EC Treaty (after Amsterdam) EC 061
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/12025

Documentation gateway






European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0039/2000</a> <a href="#">OJ C 346 04.12.2000, p. 0004</a>	21/02/2000	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0083/2000</a> <a href="#">OJ C 346 04.12.2000, p. 0015-0080</a>	02/03/2000	<a href="#">Summary</a>

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	<a href="#">09178/1999</a> <a href="#">OJ C 221 03.08.1999, p. 0008</a>	05/07/1999	<a href="#">Summary</a>

European Commission

Document type	Reference	Date	Summary
Follow-up document	<a href="#">COM(2007)0070</a> 	26/02/2007	
Follow-up document	<a href="#">COM(2008)0246</a> 	08/05/2008	
Follow-up document	<a href="#">COM(2012)0743</a> 	12/12/2012	<a href="#">Summary</a>
Follow-up document	<a href="#">COM(2013)0802</a> 	20/11/2013	
For information	<a href="#">COM(2016)0366</a> 	07/06/2016	

Other institutions and bodies				
Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	<a href="#">CES0079/2000</a> <a href="#">OJ C 075 15.03.2000, p. 0001</a>	26/01/2000	

Additional information		
Source	Document	Date
European Commission	<a href="#">EUR-Lex</a>	
European Commission	<a href="#">EUR-Lex</a>	

Final act
<a href="#">Regulation 2000/1346</a> <a href="#">OJ L 160 30.06.2000, p. 0001</a> <span style="float: right;"><a href="#">Summary</a></span>

## Judicial cooperation in civil matters: undertakings, insolvency proceedings with cross-border implications

1999/0806(CNS) - 12/12/2012 - Follow-up document

In accordance with the requirements of Council Regulation (EC) No 1346/2000 on insolvency proceedings, the Commission presents a report on the application of the Regulation. The report takes account of a number of documents, including a comparative legal study on the evaluation of the Regulation in 26 Member States, which was carried out by the Universities of Heidelberg and Vienna.

**General assessment:** based on the evaluation, the Commission considers that the Regulation is **generally regarded as a successful instrument** for the coordination of cross-border insolvency proceedings in the Union. Its fundamental choices and underlying policies are largely supported by stakeholders. The case-law of the Court of Justice of the European Union (CJEU) clarified the Regulation's interpretation on a number of issues, thereby contributing to the uniform interpretation of the Regulation by national courts. This assessment is supported by the results of the public consultation where a majority of respondents considered that the Regulation operates efficiently, with legal practitioners, public authorities and academics expressing the most positive views.

However, a **number of shortcomings of the Regulation** have been identified. Therefore, the Commission considers that there is a need to bring forward adaptations to meet the need for a modern and business-friendly environment. Essentially, problems have been identified in relation to the following:

**Scope of the Regulation:** due to new trends and approaches in the Member States, the current scope of the Regulation no longer covers a wide range of national proceedings aiming at resolving the indebtedness of companies and individuals, particularly pre-insolvency and hybrid proceedings.

The Commission **suggests extending the scope of the Regulation** by revising the definition of insolvency proceedings in order to include hybrid and pre-insolvency proceedings and insolvency proceedings for individuals, which are currently excluded.

**The rules on jurisdiction:** the report discusses difficulties with the definition and determination of the **debtor's centre of main interests** (COMI). The evaluation study also highlights several significant problems with regard to the procedural framework for examining the jurisdiction of the court opening insolvency proceedings.

The Commission considers that the Regulation should maintain the concept of COMI as interpreted by the Court of Justice of the European Union but the Commission proposes a revision adding language to clarify its meaning. It also clarifies the application of the COMI rule for individuals. The proposed revision inserts a rule on jurisdiction for related actions. Furthermore, the procedural framework for examining jurisdiction should be improved to limit the potential for wrongful forum shopping.

**Publication of insolvency-related decisions:** there is widespread support for the conclusion that the failure to publish the opening of proceedings in a public register reduces considerably the ability of creditors to know of insolvency proceedings opened in another Member State. The lack of information on existing proceedings has also resulted in unnecessary concurrent proceedings being launched in different Member States.

The Commission proposes improving the publication of insolvency proceedings in two ways: (a) by making publication of decisions in another Member State mandatory; and (b) by requiring that the decisions opening and closing insolvency proceedings and certain other decisions be published in an electronic register, publicly accessible on the internet. The electronic insolvency registers should address cross-border insolvency needs but will obviously also serve domestic users.

**Lodging of claims:** the evaluation study notes practical problems relating to certain aspects of the lodging claims in cross-border situations, in particular language barriers, costs, time-limits for lodging claims and a lack of information on the opening decision, the liquidator and the formalities of the *lex fori concursus* for the lodging of claims.

The proposal to bring in **new standard forms** for the notice of proceedings and the lodging of claims will make it easier for foreign creditors to make claims. In addition, the deadlines for lodging claims must be long enough to allow them to lodge an effective claim.

Group insolvency: the report recalls that the basic premise of the current Regulation is that insolvency proceedings relate to a single legal entity and that, in principle, separate proceedings must be opened for each individual member of the group. Overall, the Commission shares the finding of the evaluation study that the lack of a specific framework for group insolvency constitutes in certain cases an obstacle to the efficient administration of the insolvency of members of a group of companies

The Commission proposes including **specific rules** in the Regulation to make handling the insolvency of members of a multi-national group of companies more efficient. Smoother cooperation between liquidators in different Member States should aid the rescue of the companies and maximise the value of their assets.

Further matters for which certain problems were identified in the evaluation, such as the questions of **extension of the scope outside EU** and of the **applicable law**, were also considered. However, the Commission does not find it desirable to introduce specific provisions concerning the recognition of and coordination with insolvency proceedings opened outside the EU. The main reason is that such provisions would be binding only in the territory of Member States and not in non-EU countries. Therefore, a possible elaboration of a draft international convention would better achieve these objectives, and also ensure the Union's interests in reciprocal negotiations with the third countries.

Moreover, the Commission does not propose amendments to the provisions of the Regulation concerning applicable law. It finds that existing provisions apply sufficiently smoothly within the EU and the respective fields of the *lex fori* and the *lex situ* strike the right balance. Accordingly it is considered preferable to **keep the current conflict of law rules**, until the effects of possible changes on domestic insolvency law, company law and social law are further examined.

## Judicial cooperation in civil matters: undertakings, insolvency proceedings with cross-border implications

1999/0806(CNS) - 29/05/2000 - Final act

PURPOSE : to improve and speed up insolvency proceedings with cross-border implications - an area which is not covered by the 1968 Brussels I Convention. COMMUNITY MEASURE : Council Regulation 1346/2000/EC on insolvency proceedings. CONTENT : the Council adopted this Regulation further to the German and Finnish initiative submitted to it in accordance with Article 67(1) on 26 May 1999. This Regulation is an important element in the construction of the European judicial area. In 1995 it drew up a draft Convention, however, that draft was never signed by one of the fifteen Member States. The Regulation now adopted keeps the essential features of that draft Convention. The changes that have been made relate to the new institutional framework and to other aspects of the entry into force of the Amsterdam Treaty. The application of the Regulation will also reduce transfers of assets or of judicial proceedings from one Member State to another. The Regulation does not apply to insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties or to collective investment undertakings, since they are subject to special arrangements and national supervisory authorities have in these cases very wide-ranging powers of intervention. Furthermore, the Regulation establishes that the main insolvency proceedings be opened in the Member States where the debtor has his main interests. These proceedings have universal scope and are aimed at encompassing all the debtor's assets (principle of universality). However, in order to protect the diversity of interests, secondary proceedings can be opened to run in parallel in a Member State where the debtor has an establishment, but their effects will be limited to the assets located in that State. The Regulation therefore establishes certain exceptions to the general principle of the universal scope of insolvency proceedings. With regard to the annexes to the Regulation, which define in detail the scope of its application (list of national insolvency proceedings, the persons and bodies being liquidators and the procedures for winding-up proceedings), it was agreed that the Council may modify these annexes by qualified majority voting. Finally, the Regulation also applies to the United Kingdom and Ireland as they wished to take part in its adoption on the basis of their protocol to the Amsterdam Treaty. In accordance with its protocol, Denmark will not participate. It has, however, indicated that it wishes to apply the same rules as those defined in the Regulation on the basis of an agreement to be concluded between it and the Community. ENTRY INTO FORCE : 31/05/2002

## Judicial cooperation in civil matters: undertakings, insolvency proceedings with cross-border implications

1999/0806(CNS) - 05/07/1999 - Legislative proposal

PURPOSE: improvement to and speeding up of insolvency proceedings with cross-border implications. CONTENT: This proposed Regulation falls within the scope of judicial cooperation in civil matters within the meaning of Art. 65 of the Treaty. Because business undertakings are involved in more and more cross-border transactions and the failure of businesses also affects the functioning of the internal market, there is a need for a Community

act which permits coordination of the measures to be taken regarding an insolvent debtor's assets. The proposal seeks to ensure that there are no incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position ('forum shopping'). As these objectives cannot be achieved to a sufficient degree at national level, action at Community level is justified. In line with the principle of proportionality, the Regulation is confined to provisions governing jurisdiction for opening insolvency proceedings and for judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings. The Regulation also contains provisions regarding the recognition of these judgments and the law applicable, which also satisfy that principle. The proposed Regulation would apply equally to all proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. In solvency proceedings concerning insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties and collective investment undertakings are excluded from the scope of the Regulation because they are subject to special rules. The Regulation acknowledges the fact that as a result of widely differing laws on property it is scarcely possible to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. Furthermore, the preferential claims made by individual creditors in the insolvency proceedings are also, in some cases, completely different. The Regulation tries to take account of this in two different ways. On the one hand, provision is made for special references in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of opening are also allowed alongside main insolvency proceedings with universal scope. A parallelism between main insolvency proceedings - recognised in other Member States - enabling creditors in another Member State to invoke a local instrument in order to safeguard their interests - avoids over-rigid centralisation. Mandatory rules of coordination with the main proceedings guarantee the needs for unity in the Community. Insolvency proceedings may be opened in the Member States where the debtor has the centre of his main interests. Main insolvency proceedings have universal scope, they aim at encompassing all the debtor's assets on a worldwide basis and at affecting all creditors, wherever located. The centre of main interests is taken as meaning a place with which a debtor regularly has very close contacts, in which his manifold commercial interests are concentrated and in which the bulk of his assets is, for the most part, situated. The rules of jurisdiction set out in this Regulation establish only international jurisdiction; territorial jurisdiction within a Member State must be established by the national law. The rule on international jurisdiction enables the court having jurisdiction to open main insolvency proceedings to order provisional and protective measures from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are very important to guarantee the effectiveness of the insolvency proceedings. Cases may arise where the estate of the debtor is too complex to administer as a unit, where differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening to the other States where the assets are located. For this reason, the liquidator in the main proceedings may request the opening of secondary proceedings when the efficient administration of the estate so requires. Every creditor, wherever domiciled in the Community, has the right to assert his claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. This also applies to tax and social insurance authorities. The Regulation provides for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition therefore means that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States. The Regulation sets out, for the matters covered by it, uniform rules on the conflict of laws which replace - within their scope of application - national rules of private international law. Automatic recognition of insolvency proceedings to which the law of the opening State normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, the Regulation provides for a number of exceptions to the general rule (Arts. 5-15). There is a need for a special reference diverging from the law of the opening State in the case of rights in rem, since these are of considerable importance for the granting of credit. There is also need for special protection in the case of payment systems and financial markets. The provision in this regard is intended to prevent the possibility of mechanisms for the payment and settlement of transactions provided for in the payment and set-off systems or on to the regulated financial markets of the Member States being altered in the case of the insolvency of a business partner. In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment must be determined by the law applicable to the agreement in accordance with the general rules on the conflict of law. This Regulation does not apply to Denmark, Ireland and the U.K.

## Judicial cooperation in civil matters: undertakings, insolvency proceedings with cross-border implications

1999/0806(CNS) - 02/03/2000 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report drafted by Mr. Kurt Lechner (EPP/ED, D) on the German and Finnish initiative with a view to the adoption of a Council Regulation on insolvency proceedings, subject to a number of amendments. These include: - an addition to Recital 10 stating that with regard to insurance undertakings, however, special arrangements exist only for the original (direct) insurers. In the case of insolvency proceedings relating to a reinsurer, therefore, the general rules laid down in this regulation apply; - an addition to Recital 13 concerning main solvency proceedings, requiring that the legal independence of legal persons be preserved; - an addition to Article 29(b) stating that any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested, provided that that person informs the liquidator in the main proceedings without delay; - the Commission is required, five years after the entry into force of this Regulation, to submit to the Parliament, Council and Economic and Social Committee a report on the experience of its implementation and, if appropriate, incorporate proposals for improving the Regulation.