

## Basic information

**2012/0360(COD)**

COD - Ordinary legislative procedure (ex-codecision procedure)  
Regulation

Insolvency proceedings. Recast

Repealing Regulation (EC) No 1346/2000 [1999/0806\(CNS\)](#)

Amended by [2016/0159\(COD\)](#)

Amended by [2017/0189\(COD\)](#)

Amended by [2021/0118\(COD\)](#)

Amended by [2025/0023\(COD\)](#)

### Subject

3.45.01 Company law

3.45.03 Financial management of undertakings, business loans,  
accounting

7.40.02 Judicial cooperation in civil and commercial matters

Procedure completed

## Key players

European  
Parliament

### Committee responsible

**JURI**

Legal Affairs

### Rapporteur

ZWIEFKA Tadeusz (PPE)

### Appointed

18/12/2012

### Shadow rapporteur

COFFERATI Sergio  
Gaetano (S&D)

MARINHO E PINTO António  
(ALDE)

HAUTALA Heidi (Verts/ALE)

DZHAMBAZKI Angel (ECR)

CHRYSOGONOS Kostas  
(GUE/NGL)

### Former committee responsible

**JURI**

Legal Affairs

### Former rapporteur

LEHNE Klaus-Heiner (PPE)

### Appointed

18/12/2012

### Former committee for opinion

**ECON**

Economic and Monetary Affairs

### Former rapporteur for opinion

The committee decided not  
to give an opinion.

### Appointed

**LIBE**

Civil Liberties, Justice and Home Affairs

The committee decided not  
to give an opinion.

Council of the European Union	<b>Council configuration</b>	<b>Meetings</b>	<b>Date</b>
	Justice and Home Affairs (JHA)	3279	2013-12-06
	Justice and Home Affairs (JHA)	3336	2014-10-10
	Justice and Home Affairs (JHA)	3376	2015-03-12
	Justice and Home Affairs (JHA)	3354	2014-12-04
	Justice and Home Affairs (JHA)	3244	2013-06-06
	Justice and Home Affairs (JHA)	3298	2014-03-03
European Commission	<b>Commission DG</b>	<b>Commissioner</b>	
	Justice and Consumers	JOUROVÁ Věra	
European Economic and Social Committee			

Key events			
Date	Event	Reference	Summary
12/12/2012	Legislative proposal published	COM(2012)0744 	Summary
15/01/2013	Committee referral announced in Parliament, 1st reading		
06/06/2013	Debate in Council		
06/12/2013	Debate in Council		
17/12/2013	Vote in committee, 1st reading		
20/12/2013	Committee report tabled for plenary, 1st reading	A7-0481/2013	Summary
05/02/2014	Decision by Parliament, 1st reading	T7-0093/2014	Summary
05/02/2014	Results of vote in Parliament		
03/03/2014	Debate in Council		
25/09/2014	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
10/10/2014	Debate in Council		Summary
02/12/2014	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations		
17/03/2015	Council position published	16636/5/2014	Summary
15/04/2015	Committee referral announced in Parliament, 2nd reading		
07/05/2015	Vote in committee, 2nd reading		
11/05/2015	Committee recommendation tabled for plenary, 2nd reading	A8-0155/2015	Summary
19/05/2015	Debate in Parliament		
20/05/2015	Decision by Parliament, 2nd reading	T8-0203/2015	Summary

20/05/2015	Results of vote in Parliament		
20/05/2015	Final act signed		
20/05/2015	End of procedure in Parliament		
05/06/2015	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2012/0360(COD)
<b>Procedure type</b>	COD - Ordinary legislative procedure (ex-codecision procedure)
<b>Procedure subtype</b>	Recast
<b>Legislative instrument</b>	Regulation
<b>Amendments and repeals</b>	Repealing Regulation (EC) No 1346/2000 <a href="#">1999/0806(CNS)</a> Amended by <a href="#">2016/0159(COD)</a> Amended by <a href="#">2017/0189(COD)</a> Amended by <a href="#">2021/0118(COD)</a> Amended by <a href="#">2025/0023(COD)</a>
<b>Legal basis</b>	Treaty on the Functioning of the European Union TFEU 081-p2
<b>Other legal basis</b>	Rules of Procedure EP 165
<b>Mandatory consultation of other institutions</b>	<a href="#">European Economic and Social Committee</a>
<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	JURI/8/02230

Documentation gateway				
<b>European Parliament</b>				
Document type	Committee	Reference	Date	Summary
Committee draft report		<a href="#">PE519.445</a>	11/09/2013	
Amendments tabled in committee		<a href="#">PE521.673</a>	16/10/2013	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0481/2013</a>	20/12/2013	<a href="#">Summary</a>
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0093/2014</a>	05/02/2014	<a href="#">Summary</a>
Committee draft report		<a href="#">PE554.838</a>	17/04/2015	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A8-0155/2015</a>	11/05/2015	<a href="#">Summary</a>
Text adopted by Parliament, 2nd reading		<a href="#">T8-0203/2015</a>	20/05/2015	<a href="#">Summary</a>
<b>Council of the EU</b>				
Document type		Reference	Date	Summary
Council statement on its position		<a href="#">06583/2015</a>	17/02/2015	
Council position		<a href="#">16636/5/2014</a>	17/03/2015	<a href="#">Summary</a>
Draft final act		<a href="#">00031/2015/LEX</a>	20/05/2015	

## European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2012)0744 	12/12/2012	Summary
Document attached to the procedure	SWD(2012)0416 	12/12/2012	
Document attached to the procedure	SWD(2012)0417 	12/12/2012	
Commission response to text adopted in plenary	SP(2014)446	20/05/2014	
Commission communication on Council's position	COM(2015)0173 	13/04/2015	Summary

## National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2012)0744	28/02/2013	
Contribution	RO_CHAMBER	COM(2012)0744	23/05/2013	
Contribution	ES_PARLIAMENT	COM(2012)0744	16/01/2014	

## Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0044/2014 OJ C 358 07.12.2013, p. 0015	27/03/2013	Summary

## Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

## Final act

Regulation 2015/0848  
OJ L 141 05.06.2015, p. 0019

Corrigendum to final act 32015R0848R(02)  
OJ L 349 21.12.2016, p. 0009

Summary

# Insolvency proceedings. Recast

2012/0360(COD) - 12/12/2012 - Legislative proposal

**PURPOSE:** to revise Council Regulation (EC) No 1346/2000 on insolvency proceedings to improve the efficiency of the European framework for resolving cross-border insolvency cases in view of ensuring a smooth functioning of the internal market and its resilience in economic crises.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**BACKGROUND:** Council Regulation (EC) No 1346/2000 established a European framework for cross-border insolvency proceedings. It determines which Member State has jurisdiction for opening insolvency proceedings, establishes uniform rules on applicable law and provides for the recognition and enforcement of insolvency-related decisions as well as for the coordination of main and secondary insolvency proceedings.

Adopted in May 2000, the Insolvency Regulation has applied since 31 May 2002. Ten years after its entry into force, the [Commission's December 2012](#) report on the application of the Regulation concludes that the Regulation is functioning well in general but that it is desirable to improve the application of certain of its provisions.

The evaluation of the Insolvency Regulation identified **five main shortcomings**:

1. the Regulation's scope does not cover national procedures which provide for the restructuring of a company at a pre-insolvency stage ("pre-insolvency proceedings") or proceedings which leave the existing management in place ("hybrid proceedings");
2. there are difficulties in determining which Member State is competent to open insolvency proceedings;
3. problems have also been identified with respect to secondary proceedings;
4. there are problems relating to the rules on publicity of insolvency proceedings and the lodging of claims;
5. the Regulation does not contain specific rules dealing with the insolvency of a multi-national enterprise group although a large number of cross-border insolvencies involve groups of companies.

According to the Commission, the revision of the Regulation will contribute to ensuring a smooth development and the survival of businesses, as stated in the [Small Business Act](#). The revision is also one of the key actions listed in the [Single Market Act II](#).

**IMPACT ASSESSMENT:** the Commission analysed the costs and benefits of the main aspects of the proposed reform in its [Impact Assessment](#) which accompanies this proposal.

**LEGAL BASIS:** Article 81 of the Treaty on the Functioning of the European Union (TFEU).

**CONTENT:** the main elements of the proposed reform of the Insolvency Regulation may be summarised as follows:

**Scope:** the proposal extends the scope of the Regulation by revising the definition of insolvency proceedings to include **hybrid and pre-insolvency proceedings**, as well as **debt discharge proceedings** and other insolvency proceedings for natural persons which currently do not fit the definition. It is proposed to:

- amend the current definition of "insolvency proceedings" to open the scope to proceedings which do not involve a liquidator but in which the assets and affairs of the debtor are subject to control or supervision by a court;
- make an express reference to proceedings for the adjustment of debts and to the purpose of rescue in order to include also those proceedings which enable the debtor to find an arrangement with his creditors at a preinsolvency stage.

**Jurisdiction:** the proposal clarifies the jurisdiction rules and **improves the procedural framework** for determining jurisdiction. The proposal retains the concept of the centre of main interest (COMI) but complements the definition of it. It also introduces a provision determining the COMI of natural persons. In addition, a new recital clarifies the circumstances in which the presumption that the COMI of a legal person is located at the place of its registered office can be rebutted. Furthermore, the proposal grants all foreign creditors a right to challenge the opening decision and ensures that these creditors are informed of the opening decision in order to be able to effectively exercise their rights.

**Secondary proceedings:** several modifications are proposed with the aim of improving the efficient administration of the debtor's estate in situations where the debtor has an establishment in another Member State. The proposal provides for a more efficient administration of insolvency proceedings by:

- enabling the court to refuse the opening of secondary proceedings if this is not necessary to protect the interests of local creditors,
- abolishing the requirement that secondary proceedings must be winding-up proceedings and
- improving the cooperation between main and secondary proceedings, in particular by extending the cooperation requirements to the courts involved.

**Publicity of insolvency proceedings and lodging of claims:** the proposal requires Member States to publish the relevant court decisions in cross-border insolvency cases in a publicly accessible **electronic register** and provides for the interconnection of national insolvency registers. The proposal facilitates the **lodging of claims** for foreign creditors, particularly small creditors and SMEs, in three ways: (i) it introduces standard forms for the lodging of claims which will be available in all official languages of the European Union; (ii) it gives foreign creditors at least 45 days following publication of the notice of opening of proceedings in the insolvency register to lodge their claims; (iii) legal representation will not be mandatory for lodging a claim in a foreign jurisdiction, thereby reducing costs for creditors.

**Groups of companies:** the proposal creates a specific legal framework to deal with the insolvency of members of a group of companies while maintaining the entity-by-entity approach which underlies the current Insolvency Regulation. The proposal:

- introduces an obligation to **coordinate insolvency proceedings** relating to different members of the same group of companies by obliging the liquidators and the courts involved to cooperate with each other in a similar way as this is proposed in the context of main and secondary proceedings;
- **gives each liquidator standing in the proceedings** concerning another member of the same group. In particular, the liquidator has a right to be heard in these other proceedings, to request a stay of the other proceedings and to propose a reorganisation plan in a way which would enable the respective creditors' committee or court to take a decision on it.

BUDGETARY IMPLICATION: the proposal would have **limited impact** on the EU budget. The IT application for the interconnection of the insolvency registers has already been developed and will be hosted on the e-Justice Portal. The implication for the EU budget over 2014-2020 will comprise only of hosting and maintenance costs of the IT application. In total, these costs would amount to **EUR 1 500 000 for the period 2014-2020** and would be covered by the financial envelope of the [future Justice programme](#).

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

## Insolvency proceedings. Recast

2012/0360(COD) - 27/03/2013 - Document attached to the procedure

### Opinion of the European Data Protection Supervisor on the Commission proposal for a Regulation amending Council Regulation (EC) No 1346/2000 on insolvency proceedings.

The proposed Regulation amends the Insolvency Regulation in order to cope with weaknesses revealed in its practical application.

Amongst the measures proposed that will impact data protection, the Proposal provides for a mandatory publication of the decisions opening or closing a proceeding and encourages and organises cross-boarder exchanges of information between stakeholders. Information thus published and/or exchanged may identify (either directly or indirectly) debtors, creditors, and liquidators involved in the proceeding. Therefore, EU data protection legislation applies.

The EDPS recommends that:

- **concrete and effective data protection safeguards** are put in place for any situation in which personal data processing is envisaged;
- the **necessity and the proportionality of the proposed system for the Internet publication** of decisions opening and closing insolvency proceedings is assessed. Subject to the outcome of this proportionality test, the publication obligation should in any event be supported by adequate safeguards to ensure full respect of the rights of the persons concerned, the security/accuracy of the data and their deletion after an adequate period of time;
- the **modalities of the functioning of national databases and the EU database** with regard to data protection issues are clarified by introducing more detailed provisions in the proposed Regulations, in compliance with Directive 95/46/EC and Regulation (EC) No 45/2001;
- it is specified whether any data will be stored in the **e-Justice portal**. If this is the case, specific safeguards should be added.

## 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 Parliament's 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 Commission's 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 seized 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.

## 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 Parliament's 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 Commission's 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:** 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 for the estates of the insolvency proceedings covered by the group coordination proceedings for damage reasonably attributable to breaches of those duties.

## Insolvency proceedings. Recast

2012/0360(COD) - 11/05/2015 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Legal Affairs adopted the recommendation for second reading contained in the report by Tadeusz ZWIEFKA (EPP, PL) on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on insolvency proceedings (recast).

The committee recommended that the European Parliament approve the Council position at first reading without amendment.

## 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).

## Insolvency proceedings. Recast

2012/0360(COD) - 10/10/2014

The Council reached a **general approach** on the proposal for a regulation amending Council Regulation No 1346/2000 on insolvency proceedings. That general approach includes the recitals and annexes of the draft regulation and will constitute, **together with the June 2014 general approach**, the basis for negotiations with the European Parliament in order to agree on the final text of the regulation.

The Presidency has put the examination of the proposed Insolvency Regulation at the top of its agenda owing to the importance of efficient cross-border insolvency proceedings for the European economy and in response to the European Council's call for a swift examination.

On 5 and 6 June 2014, the Council reached an agreement on the normative part of the proposed Insolvency Regulation and called for work on the remaining recitals and Annexes to be finalised at technical level as soon as possible.

The Working Party on Civil Law Matters (Insolvency) examined the recitals and aligned them, where necessary, to the amendments of the Articles, on the basis of the general approach. In September 2014, an updated text, reflecting the modifications of the Annexes as notified by the Member States, was examined.

The Commission acknowledged that the various types of insolvency proceedings and of insolvency practitioners proposed by the Member States were in line with the requirements of Article 1(1) and Article 2(4)(b) respectively of the proposed Insolvency Regulation.

At the same meeting, one Member State indicated that it was revising its national legislation on insolvency and that new insolvency proceedings, which could be included in the Annexes, might be adopted at national level. Two other Member States indicated that they were still reflecting internally whether certain types of national insolvency proceedings might fall within the scope of the proposed Insolvency Regulation and should therefore be included in the Annexes.

The Presidency considered that in view of the above, a degree of flexibility, as regards the final text of the Annexes, should be maintained in order to allow to the Member States concerned to communicate their final views on the content of the Annexes as soon as possible and, at any rate, by mid-November 2014, at the latest, so as not to disrupt the timely conclusion of the negotiations with the European Parliament.

Given that there appears to be broad agreement amongst the Member States regarding the text of the remaining recitals and Annexes, the Presidency is of the opinion that a partial general approach can be achieved on the text of the recitals and Annexes.

## Insolvency proceedings. Recast

2012/0360(COD) - 17/03/2015 - Council position

The Council's position in first reading reflects the overall compromises reached by the two co-legislators, with the support of the Commission with a view to concluding an agreement at the stage of the Council's position at first reading.

The main elements of the Council's position are as follows:

**Scope:** one of the key objectives of the proposed Insolvency Regulation is to move away from a traditional liquidation approach to insolvency to a "second-chance approach" for businesses and entrepreneurs in financial difficulties when cross-border insolvency proceedings are involved.

The scope of the proposed Insolvency Regulation is therefore **broader** than the scope of the current Insolvency Regulation and extends to hybrid and pre-insolvency proceedings, as well as to proceedings providing for a debt discharge or a debt adjustment for consumers and self-employed persons.

**Jurisdiction for opening insolvency proceedings:** the concept of **centre of main interest** ("COMI") and that of "establishment" are further clarified to provide useful guidance to all those concerned and increase legal certainty.

Before opening insolvency proceedings, courts must actively examine whether the debtor's COMI is actually located within their jurisdiction. As regards the determination of the COMI, special consideration should be given to creditors and to their perception as to where the debtor conducts the administration of his business.

Moreover, the new rules contain a set of safeguards aimed at **preventing abusive forum shopping**.

In all cases, where the circumstances give rise to doubts regarding the court's jurisdiction, the court should ask the debtor to supply additional evidence to support his assertions as to the location of the COMI and, where the law applicable to the insolvency proceedings so allows, **give creditors an opportunity to present their views on the question of jurisdiction**.

**Secondary proceedings:** the proposed regulation sets out **two specific situations** in which a court seized with a request to open secondary proceedings should be able, at the request of the insolvency practitioner in main proceedings, to refuse or to postpone the opening of such proceedings.

1) the insolvency practitioner in the main proceedings may propose **an undertaking** to local creditors according to which they will be treated, in the main proceedings, as if secondary proceedings had been opened. Where such an undertaking has been given, the court seized with a request to open secondary proceedings should be able to refuse the opening when it is satisfied that the undertaking adequately protects the general interests of local creditors.

2) the court may **temporarily stay the opening** of secondary proceedings when a temporary stay of individual enforcement is granted in the Member State where main proceedings have been opened.

**Insolvency registers:** in order to improve the provision of relevant and timely information to creditors and courts involved and to prevent the opening of parallel insolvency proceedings, the Regulation would impose on Member States an obligation to establish insolvency registers that contain, under the conditions set out in the Regulation, certain information on the debtor and the insolvency practitioner, as well as information relating to the insolvency proceedings.

These national insolvency registers are to be **interconnected** and accessible via the European e-Justice portal, in full conformity with the European legislation on data protection.

**Group of companies:** the regulation would include specific provisions on cooperation and communication between the courts and the insolvency practitioners involved in the insolvency of members of groups of companies. The provisions on cooperation and communication referred to above are completed with a **system for the coordination of the insolvency proceedings** of members of a group of companies.

# Insolvency proceedings. Recast

2012/0360(COD) - 13/04/2015 - Commission communication on Council's position

The Commission can **accept the amendments** adopted by the Council in first reading on the adoption of a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings

All amendments introduced to the Commission proposal were agreed on during the informal tripartite discussions.

The Council's position endorses all core elements of the Commission's proposal with some technical changes as to the details.

The Commission supports the changes that introduce:

- additional measures to fight abusive forum shopping by consumers,
- the requirement of approval of synthetic secondary proceedings by a majority of the local creditors, and
- the establishment of so called 'group coordination proceedings'.

# Insolvency proceedings. Recast

2012/0360(COD) - 20/05/2015 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a legislative resolution of 20 May 2015 on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on insolvency proceedings (recast).

Parliament approved, without amendment, the Council position at first reading.

The proposed Insolvency Regulation is aimed at making cross-border insolvency proceedings more effective with a view to ensuring the smooth functioning of the internal market and its resilience in economic crises. It also brings the current Insolvency Regulation into line with developments in national insolvency laws introduced since its entry into force in 2002.

One of the key objectives of the proposed Insolvency Regulation is to move away from a traditional liquidation approach to insolvency to a "second-chance approach" for businesses and entrepreneurs in financial difficulties when cross-border insolvency proceedings are involved.