

Finalising reform of cross-border insolvency rules

In February 2014, the Parliament adopted a legislative resolution on the Commission's 2012 proposal to reform the Insolvency Regulation. The Council adopted its first-reading position in March 2015, following trilogue negotiations. The Legal Affairs Committee now proposes the Parliament approves the agreed text in second reading.

Background

Insolvency proceedings affect some 200 000 business a year within the EU, with a quarter of these having a cross-border character. The existing [Regulation](#) on insolvency proceedings lays down rules on jurisdiction of courts, recognition of judgments, and applicable law in [cross-border insolvency proceedings](#), but does not apply to debt adjustment and reorganisation. The key connecting factor used in the Regulation is the insolvent debtor's '[centre of main interests](#)' (COMI) which has raised many doubts in practice, especially in the context of '[forum shopping](#)'. In 2012, the Commission adopted a [proposal](#) to [reform](#) the Regulation which would broaden its scope to cover restructuring, introduce a more precise definition of COMI, oblige courts to verify whether they are competent under the Regulation, and oblige Member States to create insolvency registers. Courts and liquidators from different Member States would be obliged to cooperate closely to coordinate cross-border insolvencies. A new chapter would address the issue of insolvency of a firm belonging to a group of companies, enabling a coordinated restructuring plan for the entire group.

Early second reading compromise between Parliament and Council

In February 2014, the outgoing Parliament adopted a [legislative resolution](#) (rapporteur: Klaus-Heiner Lehne, EPP, Germany), addressing inter alia the definition of COMI, the relationship between main proceedings and secondary proceedings, as well as rules on the insolvency register. Agreement between the Parliament and Council on a compromise package was reached in November 2014, and in March 2015 the Council adopted its [position](#) at first reading which reflects the compromise reached by the two co-legislators.

The scope of the Regulation is **broadened**, in line with the 'second-chance approach', to cover not only bankruptcy proceedings, but hybrid and pre-insolvency proceedings, as well as debt discharges and debt adjustments for natural persons (consumers and sole traders). The key concept of **COMI is further clarified** in order to prevent abusive [forum-shopping](#) practices. Courts must be proactive in checking whether they really have jurisdiction to open insolvency proceedings for a given company, taking into account the actual perception of creditors as to where the business is administered from. If doubts arise as to where the COMI is located, the court must request the debtor to provide further evidence in that regard.

In two types of situations, the court seised with a request to open [secondary proceedings](#) will be able to refuse to open them, or postpone them. This would be possible, firstly, if the insolvency practitioner in the main proceedings undertakes that local creditors will be treated on an equal footing to creditors from the country of the main proceedings. Secondly, a court will be able to stay secondary proceedings if enforcement is suspended in the country of the main proceedings. All Member States will be obliged to establish **insolvency registers** containing information on the insolvent debtor, the insolvency practitioner and the course of the insolvency proceedings. The registers will be interconnected via the [e-Justice](#) portal. The rules on **group insolvency**, proposed by the Commission, are completed with rules allowing for the coordination of proceedings regarding the companies within the group.

Second reading

On 17 April 2015 the Committee on Legal Affairs (rapporteur: Tadeusz Zwiefka, EPP, Poland) tabled a draft recommendation for second reading, proposing that the EP approve the Council's first-reading position.