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*Committee on Legal Affairs*

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**2012/0360(COD)**

16.10.2013

# **AMENDMENTS**

## **63 - 90**

**Draft report**  
**Klaus-Heiner Lehne**  
(PE519.445v01-00)

Amendment of Council Regulation (EC) No 1346/2000 on insolvency proceedings

Proposal for a regulation  
(COM(2012)0744 – C7-0413/2012 – 2012/0360(COD))

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**EN**

*United in diversity*

**EN**



## **Amendment 63**

**Eva Lichtenberger**

on behalf of the Greens/EFA Group

### **Proposal for a regulation**

#### **Article 1 – point 7**

Regulation (EC) No 1346/2000

Recital 9 a

#### *Text proposed by the Commission*

(9a) The scope of this Regulation should extend to proceedings which promote the rescue of an economically viable debtor in order to help sound businesses to survive and give a second chance to entrepreneurs. It should notably extend to proceedings which provide for the restructuring of a debtor at a pre-insolvency stage, proceedings which leave the existing management in place and proceedings providing for a debt discharge of consumers and self-employed persons.

***Since*** these proceedings ***do not necessarily*** entail the appointment of a liquidator, they should be covered by this Regulation if they take place under the control or supervision of a court. ***In this context, the term “control” should include situations where the court only intervenes on appeal by a creditor or interested party.***

#### *Amendment*

(9a) The scope of this Regulation should extend to proceedings which promote the rescue of an economically viable debtor in order to help sound businesses to survive and give a second chance to entrepreneurs. It should notably extend to proceedings which provide for the restructuring of a debtor at a pre-insolvency stage, proceedings which leave the existing management in place and proceedings providing for a debt discharge of consumers and self-employed persons. These proceedings ***should*** entail the appointment of a liquidator, they should be covered by this Regulation if they take place under the control or supervision of a court.

Or. en

## **Amendment 64**

**Eva Lichtenberger**

on behalf of the Greens/EFA Group

### **Proposal for a regulation**

#### **Article 1 – point 12**

Regulation (EC) No 1346/2000

Recital 19 a

*Text proposed by the Commission*

(19a) Secondary proceedings may also hamper the efficient administration of the estate. Therefore, the court opening secondary proceedings should be able, on request of the liquidator, to postpone or refuse the opening if these proceedings are not necessary to protect the interests of local creditors. This should notably be the case if the liquidator, by an undertaking binding on the estate, agrees to treat local creditors as if secondary proceedings had been opened and to apply the rules of ranking of the Member State where the opening of secondary proceedings has been requested when distributing the assets located in that Member State. This Regulation should confer on the liquidator the possibility to give such undertakings.

*Amendment*

(19a) Secondary proceedings may also hamper the efficient administration of the estate. Therefore, the court opening secondary proceedings should be able, on request of the liquidator, to postpone or refuse the opening if these proceedings are not necessary to protect the interests of local creditors. This should notably be the case if the liquidator, by an undertaking binding on the estate, agrees to treat local creditors as if secondary proceedings had been opened and to apply the rules of ranking of the Member State where the opening of secondary proceedings has been requested when distributing the assets located in that Member State. This Regulation should confer on the liquidator the possibility to give such undertakings ***and to lay down objective criteria which such undertakings need to meet.***

Or. en

**Amendment 65**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

**Proposal for a regulation**

**Article 1 – point 14**

Regulation (EC) No 1346/2000

Recital 20 a

*Text proposed by the Commission*

(20a) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies. Where insolvency proceedings have been opened for several companies of the same group, these proceedings should be properly coordinated. The various liquidators and the courts involved should therefore be under the same obligation to

*Amendment*

(20a) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies. Where insolvency proceedings have been opened for several companies of the same group, these proceedings should be properly coordinated, ***in particular in order to prevent the insolvency of one company in the group from jeopardising***

cooperate and communicate with each other as those involved in main and secondary proceedings relating to the same debtor. In addition, a liquidator appointed in proceedings relating to a member of a group of companies should have standing to propose a rescue plan in the proceedings concerning another member of the same group to the extent such a tool is available under national insolvency law.

*the future of the others.* The various liquidators and the courts involved should therefore be under the same obligation to cooperate and communicate with each other as those involved in main and secondary proceedings relating to the same debtor. In addition, a liquidator appointed in proceedings relating to a member of a group of companies should have standing to propose a rescue plan in the proceedings concerning another member of the same group to the extent such a tool is available under national insolvency law.

Or. it

#### **Amendment 66**

**Eva Lichtenberger**

on behalf of the Greens/EFA Group

#### **Proposal for a regulation**

##### **Article 1 – point 21**

Regulation (EC) No 1346/2000

Article 1 – paragraph 1 – introductory wording

##### *Text proposed by the Commission*

1. This Regulation shall apply to collective judicial or administrative proceedings, including interim proceedings, which are based on a law relating to insolvency or adjustment of debt *and in which*, for the purpose of *rescue*, adjustment of debt, reorganisation or liquidation,

##### *Amendment*

1. This Regulation shall apply to collective judicial or administrative proceedings, including interim proceedings, which are based on a law relating to insolvency or adjustment of debt for the purpose of *avoidance of liquidation*, adjustment of debt, reorganisation or liquidation,

Or. en

#### **Amendment 67**

**Eva Lichtenberger**

on behalf of the Greens/EFA Group

#### **Proposal for a regulation**

##### **Article 1 – point 21**

Regulation (EC) No 1346/2000  
Article 1 – paragraph 2 – point b

*Text proposed by the Commission*

(b) credit institutions,

*Amendment*

(b) **any** credit institutions, **including institutions defined in article 2 of Directive 2013/36/EU,**

Or. en

### **Amendment 68**

**Eva Lichtenberger**

on behalf of the Greens/EFA Group

#### **Proposal for a regulation**

##### **Article 1 – point 21**

Regulation (EC) No 1346/2000

Article 1 – paragraph 2 – point c

*Text proposed by the Commission*

(c) investment firms to the extent these are covered by Directive 2001/24/EC as amended, and

*Amendment*

(c) investment firms to the extent these are covered by Directive 2001/24/EC as amended, and **institutions subject to Directive 2011/61/EU,**

Or. en

### **Amendment 69**

**Jean-Pierre Audy**

#### **Proposal for a regulation**

##### **Article 1 – point 21**

Regulation (EC) No 1346/2000

Article 2 – point b – point ii

*Text proposed by the Commission*

**(ii) in a case which does not involve the appointment of, or the transfer of the debtor's powers to, a liquidator, the debtor in possession.**

*Amendment*

**deleted**

*Justification*

*It is rather strange to call the debtor in possession a 'liquidator' in cases not involving the appointment of a liquidator.*

**Amendment 70**  
**Jean-Pierre Audy**

**Proposal for a regulation**  
**Article 1 – point 21**  
Regulation (EC) No 1346/2000  
Article 2 – point c

*Text proposed by the Commission*

(c) "court" means in all articles except Article 3b(2) the judicial body *or any other competent body of a Member State* empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;

*Amendment*

(c) "court" means in all articles except Article 3b(2) the judicial body empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;

*Justification*

*Such proceedings should be handled only by judicial bodies, in order to ensure that they are conducted independently.*

**Amendment 71**  
**József Szájer, Alajos Mészáros**

**Proposal for a regulation**  
**Article 1 – point 21**  
Regulation (EC) No 1346/2000  
Article 2 – point g

*Text proposed by the Commission*

(g) "establishment" means any place of operations where the debtor carries out a non-transitory economic activity with

*Amendment*

(g) "establishment" means any place of operations where the debtor carries *or carried* out a non-transitory economic

human means and assets;

activity with human means and assets;

Or. en

#### **Amendment 72**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

#### **Proposal for a regulation**

##### **Article 1 – point 22**

Regulation (EC) No 1346/2000

Article 3 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ("main proceedings"). The centre of main interests shall be the place where the debtor conducts the administration of his interests on a regular basis and which is ascertainable by third parties.

#### *Amendment*

1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ("main proceedings"). The centre of main interests shall be the place where the debtor conducts the administration of his interests on a regular basis ***prior to the opening of insolvency proceedings or provisional proceedings*** and which is ascertainable by third parties.

Or. it

#### **Amendment 73**

**Jean-Pierre Audy**

#### **Proposal for a regulation**

##### **Article 1 – point 22**

Regulation (EC) No 1346/2000

Article 3 – paragraph 1 – subparagraph 3

#### *Text proposed by the Commission*

***In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be that individual's principal place of business; in the case of any other individual, the centre of main interests***

#### *Amendment*

***deleted***



*shall be the place of the individual's habitual residence.*

Or. fr

*Justification*

*There does not appear to be any need to make an exception for individuals of this kind.*

**Amendment 74**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

**Proposal for a regulation**

**Article 1 – point 23**

Regulation (EC) No 1346/2000

Article 3b – paragraph 2

*Text proposed by the Commission*

2. Where insolvency proceedings are opened in accordance with national law without a decision by a court, the liquidator **appointed in such proceedings** shall examine whether the Member State in which the proceedings are pending has jurisdiction pursuant to Article 3. Where this is the case, the liquidator shall specify the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

*Amendment*

2. Where insolvency proceedings are opened in accordance with national law without a decision by a court, the **court which appointed the** liquidator shall examine whether the Member State in which the proceedings are pending has jurisdiction pursuant to Article 3. Where this is the case, the liquidator shall specify the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

Or. it

**Amendment 75**

**Cecilia Wikström, Rebecca Taylor**

**Proposal for a regulation**

**Article 1 – point 23**

Regulation (EC) No 1346/2000

Article 3b – paragraph 2

*Text proposed by the Commission*

2. Where insolvency proceedings are

*Amendment*

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opened in accordance with national law without a decision by a court, the liquidator appointed in such proceedings shall examine whether the Member State in which the proceedings are pending has jurisdiction pursuant to Article 3. **In such cases**, the liquidator shall specify the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

Or. en

### *Justification*

*This amendment provides a minor technical change. We otherwise support the Commission proposal as it was drafted especially as out of court procedures are often pre-insolvency or rescue procedures. Out-of-court procedures have also been a part of the Regulation since 2002 and have proved successful in some Member States. In addition, out of court procedures are often more attractive for SMEs and micro-entities dealing with local creditors as the costs are much lower. The Commission in its 2011 report on Business Dynamics mentioned that "countries with more efficient out-of-court settlements have lower rate of insolvencies and a higher survival rate" and it is therefore important to retain the Commission proposal.*

## **Amendment 76** **Sajjad Karim**

**Proposal for a regulation**  
**Article 1 – point 23**  
Regulation (EC) No 1346/2000  
Article 3 b – paragraph 2

### *Text proposed by the Commission*

2. Where insolvency proceedings are opened in accordance with national law without a decision by a court, the **liquidator** appointed in such proceedings shall examine whether the Member State in which the proceedings are pending has jurisdiction pursuant to Article 3. Where this is the case, the **liquidator** shall specify the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

### *Amendment*

2. Where insolvency proceedings are opened in accordance with national law without a decision by a court, the **insolvency representative** appointed in such proceedings shall examine whether the Member State in which the proceedings are pending has jurisdiction pursuant to Article 3. Where this is the case, the **insolvency representative** shall specify the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2). **Such specification**

*may be reviewed by a court in the jurisdiction claimed by the insolvency representative, in cases where competing claims to jurisdiction based on Article 3 exist.*

Or. en

**Amendment 77**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

**Proposal for a regulation**

**Article 1 – point 28 a (new)**

Regulation (EC) No 1346/2000

Article 20 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

*(2a) Where the creditors include employees of the insolvent firm, those employees shall have a right of pre-emption with regard to the recovery of the sums owed.*

Or. it

**Amendment 78**

**Jean-Pierre Audy**

**Proposal for a regulation**

**Article 1 – point 29**

Regulation (EC) No 1346/2000

Article 20a – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*Member States shall introduce procedures for removing entries from the insolvency register when, for example, debts have been paid.*

Or. fr

## *Justification*

*There needs to be a procedure for removing entries from the insolvency register.*

### **Amendment 79**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

#### **Proposal for a regulation**

##### **Article 1 – point 30**

Regulation (EC) No 1346/2000

Article 21 – paragraph 1

#### *Text proposed by the Commission*

1. Until such time as the system of interconnection of insolvency registers referred to in Article 20b is established, the liquidator shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that State. Such publication shall ***specify the liquidator appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).***

#### *Amendment*

1. Until such time as the system of interconnection of insolvency registers referred to in Article 20b is established, the liquidator shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that State. Such publication shall ***cover the information provided for in Article 20a.***

Or. it

### **Amendment 80**

**József Szájer, Alajos Mészáros**

#### **Proposal for a regulation**

##### **Article 1 – point 34**

Regulation (EC) No 1346/2000

Article 29a – paragraph 1

#### *Text proposed by the Commission*

1. The court seized of a request to open secondary proceedings shall immediately ***give notice to the liquidator in the main***

#### *Amendment*

1. The court seized of a request to open secondary proceedings shall immediately ***open a temporary local proceeding and***

*proceedings and give him an opportunity to be heard on the request.*

*appoint a temporary local insolvency practitioner. The court shall within one working day provide for the publication of the request itself, and of the temporary stay of payment with immediate effect in the insolvency register. The court shall immediately give notice to the insolvency practitioner in the main proceedings.*

Or. en

## **Amendment 81**

**József Szájer, Alajos Mészáros**

### **Proposal for a regulation**

#### **Article 1 – point 34**

Regulation (EC) No 1346/2000

Article 29a – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*In order to ensure the efficient administration of the estate, the powers of the temporary insolvency practitioner are restricted. Disposition of the debtor's assets by the temporary insolvency practitioner is subject to approval by the insolvency practitioner in the main proceedings.*

Or. en

## **Amendment 82**

**József Szájer, Alajos Mészáros**

### **Proposal for a regulation**

#### **Article 1 – point 34**

Regulation (EC) No 1346/2000

Article 29a – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Upon request by the *liquidator* in the main proceedings, the court referred to in

2. Upon request *to be submitted within 3 weeks after the publication* by the

paragraph 1 shall postpone the decision of opening or refuse to open secondary proceedings if the ***opening of such proceedings is not necessary to protect the interests of local creditors, in particular, when the liquidator in the main proceedings has given the undertaking referred to in Article 18 (1) and complies with its terms.***

***insolvency practitioner*** in the main proceedings, the court referred to in paragraph 1 shall postpone the decision of opening or refuse to open secondary proceedings if the ***insolvency practitioner in the main proceedings provides sufficient evidence that the opening of such proceedings is not necessary to protect the interests of local creditors.***

Or. en

### **Amendment 83**

**József Szájer, Alajos Mészáros**

#### **Proposal for a regulation**

##### **Article 1 – point 34**

Regulation (EC) No 1346/2000

Article 29a – paragraph 2 a (new) – subparagraph 1

*Text proposed by the Commission*

*Amendment*

***2a. In order to avoid the opening of secondary proceedings, the insolvency practitioner in the main proceedings may give an undertaking ("the undertaking") that the distribution and priority rights which local creditors would have had if secondary proceedings had been opened will be respected in the main proceedings. The undertaking shall be made in the official language or one of the official languages of the Member State where secondary proceedings could have been opened. The undertaking shall be subject to the form requirements, if any, of the State of the opening of the temporary local proceeding and shall be binding on the estate as long as secondary proceedings have not been opened in the Member State referred to in paragraph 1.***

Or. en

**Amendment 84**

**József Szájer, Alajos Mészáros**

**Proposal for a regulation**

**Article 1 – point 34**

Regulation (EC) No 1346/2000

Article 29a – paragraph 2 a (new) – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***The court referred to in paragraph 1 shall prolong the appointment of the temporary local insolvency practitioner for the purpose of participating in the implementation of the undertaking if it is necessary for the protection of the interests of local creditors.***

Or. en

**Amendment 85**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

**Proposal for a regulation**

**Article 1 – point 34**

Regulation (EC) No 1346/2000

Article 29 a – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. The liquidator in the main proceedings shall be notified of the decision to open secondary proceedings and shall have the right to challenge that decision.

4. The liquidator in the main proceedings shall be notified of the decision to open secondary proceedings and shall have the right to challenge that decision ***within three weeks of the date of receipt of such notification.***

Or. it

**Amendment 86**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

**Proposal for a regulation**

**Article 1 – point 45**

Regulation (EC) No 1346/2000

Article 42 d – paragraph 2

*Text proposed by the Commission*

2. The court having opened proceedings referred to in point b) of paragraph 1 shall stay the proceedings in whole or in part if ***it is proven*** that such a stay would be to the benefit of the creditors in these proceedings. Such a stay may be ordered for up to ***three*** months and may be continued or renewed for the same period. The court ordering the stay may require the liquidator to take any suitable measure to guarantee the interests of the creditors in the proceedings.

*Amendment*

2. The court having opened proceedings referred to in point b) of paragraph 1 shall stay the proceedings in whole or in part if ***the liquidator provides sufficient evidence*** that such a stay would be to the benefit of the creditors in these proceedings. Such a stay may be ordered for up to ***two*** months and may be continued or renewed for the same period. The court ordering the stay may require the liquidator to take any suitable measure to guarantee the interests of the creditors in the proceedings.

Or. it

**Amendment 87**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

**Proposal for a regulation**

**Article 1 – point 45**

Regulation (EC) No 1346/2000

Article 42 d a (new)

*Text proposed by the Commission*

*Amendment*

***Article 42da***

***Opening of group coordination proceedings***

***1. Group coordination proceedings may be brought by an insolvency representative in any court having jurisdiction over the insolvency proceedings of a member of the group, provided that:***

***(a) insolvency proceedings with respect to that member of the group are pending; and***

***(b) the members of the group having their centre of main interests in the Member State of the court seized to open the group coordination proceedings perform crucial***



*functions within the group.*

*2. Where more than one court is seized to open group coordination proceedings, the group coordination proceedings shall be opened in the Member State where the most crucial functions within the group are performed. To that extent the courts seized shall communicate and cooperate in accordance with Article 42b.*

*Where the most crucial functions cannot be determined, the first court seized may open group coordination proceedings provided that the conditions for opening such proceedings are satisfied.*

Or. it

## **Amendment 88**

**Sergio Gaetano Cofferati, Luigi Berlinguer**

### **Proposal for a regulation**

#### **Article 1 – point 45**

Regulation (EC) No 1346/2000

Article 42 d b (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 42db**

##### **Tasks and rights of the coordinator**

**1. The court opening group coordination proceedings shall appoint a coordinator. The coordinator shall be independent of the group members and their creditors. The coordinator shall have the task of:**

**(a) identifying and outlining procedural and substantive recommendations for the coordinated conduct of the insolvency proceedings;**

**(b) mediating disputes arising between two or more insolvency representatives of group members; and**

**(c) 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. In particular, the plan may include recommendations on:*

*(i) the measures to be taken in order to re-establish the economic performance and the financial soundness of the group or any part of it;*

*(ii) the settlement of intra-group disputes, in particular with respect to intra-group transactions and avoidance actions;*

*(iii) agreements between the insolvency representatives of the insolvent group members.*

*2. The coordinator shall have the right to:*

*(a) be heard and to participate, in particular by attending creditors' meetings, in any of the proceedings opened with respect to any member of the group;*

*(b) present and explain a group coordination plan approved in accordance with Article 42dc(3);*

*(c) request information from any insolvency representative that is or might be of use when identifying and outlining strategies and measures for coordinating the proceedings; and*

*(d) request a stay for a period of up to three months of proceedings opened with respect to any other member of the group and to request the cessation of that stay.*

Or. it

**Amendment 89**  
**Sergio Gaetano Cofferati, Luigi Berlinguer**

**Proposal for a regulation**  
**Article 1 – point 45**

*Text proposed by the Commission*

*Amendment*

**Article 42dc**

***Court approval of group coordination plan***

***1. Insolvency representatives appointed for insolvency proceedings that would be affected by the implementation of a group coordination plan may comment on the draft of the plan within a period of no more than 15 days set by the coordinator when submitting the plan.***

***2. The draft plan submitted for court approval shall be accompanied by***

***(a) a description of how paragraph 1 was complied with, drafted by the coordinator;***

***(b) the comments received by the insolvency representatives as at the time of submission of the draft plan;***

***(c) a reasoned statement by the coordinator as to how the comments have, or have not, been reflected in the draft plan.***

***3. The court shall approve the plan if it is satisfied that the coordinator complied with the formal requirements of paragraph 2 and of point (c) of paragraph 1 of Article 42db.***

Or. it

**Amendment 90**  
**Jean-Pierre Audy**

**Proposal for a regulation**  
**Article 2 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the

European Union.

European Union. *It shall be consolidated with the Regulation it is amending within three months of its publication.*

Or. fr