The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2012)0744),
– having regard to Article 294(2) and Article 81 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0413/2012),
– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
– having regard to the opinion of the European Economic and Social Committee of 22 May 2013¹,
– having regard to Rule 55 of its Rules of Procedure,
– having regard to the report of the Committee on Legal Affairs (A7-0481/2013),

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.


THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

After consulting the European Data Protection Supervisor³,

Whereas:

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Council Regulation (EC) No 1346/2000\(^1\) 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.

The Commission's report on the application of Regulation (EC) No 1346/2000 of 12 December 2012\(^2\) concludes that the Regulation is functioning well in general but that it is desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings.

The scope of Regulation (EC) No 1346/2000 should be extended to proceedings which promote the rescue of an economically viable debtor in severe financial distress in order to help sound companies to survive and give a second chance to entrepreneurs. It should extend, in particular, to proceedings which provide for the restructuring of a debtor at a pre-insolvency stage or which leave the existing management in place. The Regulation should also cover those proceedings providing for a debt discharge of consumers and self-employed persons which do not fulfil the criteria of the current instrument. [Am. 1]

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(4) The rules on jurisdiction for opening insolvency proceedings should be clarified and the procedural framework for determining jurisdiction should be improved. There should also be an explicit rule on jurisdiction for actions which derive directly from insolvency proceedings or are closely linked with them. [Am. 2]

(5) In order to improve the effectiveness of the insolvency proceedings in cases where the debtor has an establishment in another Member State, the requirement that secondary proceedings must be winding-up proceedings should be abolished. Moreover, a court should be able to refuse the opening of secondary proceedings if this is not necessary to protect the interests of local creditors. The coordination between main and secondary proceedings should be improved, in particular by requiring the courts involved to cooperate.

(6) In order to improve the information available to creditors and courts involved and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant decisions in cross-border insolvency cases in a publicly accessible electronic register. Provision should be made for the interconnection of insolvency registers. Standard forms for the lodging of claims to facilitate the tasks of foreign creditors and reduce translation costs should be introduced.
(7) There should be specific rules dealing with the coordination of proceedings involving different members of the same group of companies. The liquidators insolvency representatives and courts involved in the different insolvency proceedings should be obliged to cooperate and communicate with each other. In addition, any of the liquidators insolvency representatives involved should have the procedural tools to propose a rescue plan for the group companies subject to insolvency proceedings and to request, where necessary, a stay of the insolvency proceedings concerning a company other than the one for which they were appointed. The definition of the term "group of companies" should be understood as being limited to the context of insolvency and should not have any influence on the company aspects regarding groups. [Am 3. This amendment applies throughout the text]

(8) In order to enable the Regulation to be swiftly adapted to relevant amendments of the domestic insolvency law which the Member States have notified, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the amendment of the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
(9) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1346/2000, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council\(^1\).

(10) Regulation (EC) No 1346/2000 should therefore be amended accordingly.

(11) The amendment of this Regulation should be without prejudice to the rules on the recovery of State aid from insolvent companies as interpreted by the case-law of the Court of Justice of the European Union (C-454/09 Commission v. Italy – 'New Interline'). Where the full recovery of the amount of state aid is not possible because the recovery order concerns a company in insolvency proceedings, those proceedings should always be winding-up proceedings and lead to the definitive cessation of the beneficiary's activities and the liquidation of its assets.

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In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not participating in the adoption of this Regulation, and is therefore not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:
Article 1

Regulation (EC) No 1346/2000 is amended as follows:

(1) In Recital 2, the reference to Article 65 is replaced by a reference to Article 81.

(2) In Recitals 3, 5, 8, 11, 12, 14 and 21, the term 'Community' is replaced by the term 'Union'.

(3) Recital 4 is replaced by the following:

'(4) It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors (forum shopping).'}
(4) Recital 6 is replaced by the following:

'(6) This Regulation should encompass provisions governing jurisdiction for opening insolvency proceedings and proceedings which derive directly from the insolvency proceedings and are closely connected with them. This Regulation should also contain 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 should contain rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies.'

(5) Recital 7 is replaced by the following:

'(7) Proceedings concerning the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings are excluded from the scope of Council Regulation (EC) No 44/2001*. Such proceedings should be covered by this Regulation. The interpretation of this Regulation should as far as possible avoid regulatory loopholes between the two instruments.

Recital 9 is replaced by the following:

'(9) This Regulation should apply to insolvency proceedings which fulfil the conditions set out in this Regulation, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. Those insolvency proceedings are listed exhaustively in Annex A. When a national procedure figures in Annex A, this Regulation should apply without any further examination by the courts of another Member State as to whether the conditions set out in this Regulation are fulfilled. Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms to the extent that these are covered by Directive 2001/24/EC of the European Parliament and of the Council and collective investment undertakings should be excluded from the scope of this Regulation. Such undertakings should not be covered by this Regulation since they are subject to special arrangements and the national supervisory authorities have wide-ranging powers of intervention.

The following recital is inserted:

'(9a) The scope of this Regulation should extend to proceedings which promote the rescue of an economically viable debtor in severe financial distress in order to help sound businesses to survive and give a second chance to entrepreneurs. It should extend, in particular, 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, an insolvency representative, 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.' [Am. 3]
Recital 10 is replaced by the following:

"(10) Insolvency proceedings do not necessarily involve the intervention of a judicial authority; the expression 'court' in this Regulation should be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened." [Am. 4]

Recital 11 is replaced by the following:
This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community Union. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community Union. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different. *Further harmonisation measures should also introduce preferential rights of employees.* This Regulation should take account of this in two different ways. On the one hand, provision should be made for special rules on applicable law 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 should also be allowed alongside main insolvency proceedings with universal scope*. [Am. 5]
The following recital is inserted:

'(12a) Before opening insolvency proceedings, the competent court should examine ex officio whether the debtor's centre of main interests or establishment is actually located within its jurisdiction. Where the circumstances of the case give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support his assertions and, where appropriate, give the debtor's creditors the opportunity to present their views on the question of jurisdiction. In addition, creditors should have an effective remedy against the decision opening insolvency proceedings.'

Recital 13 is deleted.
The following recitals are inserted:

'(13a) The "centre of main interests" of a company or other legal person should be presumed to be at the place of its registered office. It should be possible to rebut this presumption, in particular if the company's central administration is located in a Member State other than the Member State where its registered office is situated and a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company’s actual centre of management and supervision and of the management of its interests is located in that other Member State. By contrast, it should not be possible to rebut the presumption where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions are taken there in a manner ascertainable by third parties. [Am. 6]

(13b) The courts of the Member State opening insolvency proceedings should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them, such as avoidance actions. Where such an action is related with another action based on general civil and commercial law, the liquidator insolvency representative should be able to bring both actions in the courts of the defendant's domicile if he considers it more efficient to do so. This could, for example, be the case if the liquidator insolvency representative wishes to combine an action for director's liability on the basis of insolvency law with an action based on company law or general tort law.'
The following recitals are inserted:

'(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 insolvency representative, to postpone or refuse the opening if those proceedings are not necessary to protect the interests of local creditors. This should be the case, in particular, if the liquidator insolvency representative, 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 insolvency representative the possibility to give such undertakings and to lay down objective criteria which such undertakings need to meet. [Am. 7]

(19b) In order to ensure effective protection of local interests, the liquidator insolvency representative in the main proceedings should not be able to realise or re-locate the assets situated in the Member State where an establishment is located in an abusive manner, in particular, with the purpose of frustrating the possibility that such interests be effectively satisfied if secondary proceedings are subsequently opened. Local creditors should also be entitled to seek protective measures from a court in cases where an insolvency representative appears to be unable to honour the undertakings.' [Am. 8]
Recital 20 is replaced by the following:

'(20) Main insolvency proceedings and secondary proceedings can only contribute to the effective realisation of the total assets if all the concurrent proceedings pending are coordinated. The main condition here is that the various liquidators insolvency representatives and the courts involved must cooperate closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main proceedings, the liquidators insolvency representative in such proceedings should be afforded several possibilities to intervene in secondary insolvency proceedings which are pending at the same time. In particular, the liquidators insolvency representative should be able to propose a restructuring plan or composition or apply for a suspension of the realisation of the assets in the secondary insolvency proceedings. In their cooperation, liquidators insolvency representatives and courts should take into account best practices for cooperation in cross-border insolvency cases as set out in principles and guidelines on communication and cooperation adopted by European and international associations active in the area of insolvency law.'
The following recitals are inserted:

'(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, such proceedings should be properly coordinated, in particular in order to avoid the possibility of the insolvency of one group member jeopardising the future of other members of the group. The various liquidators insolvency representatives 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. [Am. 10]
The introduction of group coordination proceedings should in particular strengthen the restructuring of a group and/or its members by allowing for the flexible coordinated conduct of insolvency proceedings. Group coordination proceedings should not bind the individual proceedings but should rather serve as a reference for the measures to be taken in those individual proceedings. [Ams 9 and 11]

The introduction of rules on the insolvency of groups of companies should not limit the possibility of a court to open insolvency proceedings for several companies belonging to the same group in a single jurisdiction if the court finds that the centre of main interests of those companies is located in a single Member State within its national and local jurisdiction. In such situations, the court should also be able to appoint, if appropriate, the same liquidator insolvency representative in all proceedings concerned. Member States should also be able to introduce provisions on the insolvency of groups of companies within their jurisdiction which go beyond the provisions of this Regulation and do not affect the efficient and effective application of this Regulation.’ [Am. 12]
(15) The following recital is inserted:

'(21a) It is essential that creditors who have their habitual residence, domicile or registered office in the Union be informed about the opening of insolvency proceedings relating to their debtor's assets. In order to ensure a swift transmission of information to creditors, Regulation (EC) No 1393/2007 of the European Parliament and of the Council* should not apply where this Regulation refers to the obligation to inform creditors. The use of standard forms available in all official languages of the Union should facilitate the task of creditors when lodging claims in proceedings opened in another Member State.

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(16) Recital 29 is replaced by the following:

'(29) For business considerations, the main content of the decision opening the proceedings should be published in another Member State at the request of the liquidator or insolvency representative. If there is an establishment in the Member State concerned, such publication should be mandatory until such time as the system of interconnection of insolvency registers is established. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.'
(17) The following recital is inserted:

'(29a) In order to improve the information to creditors and courts involved 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. In order to facilitate access to that information for creditors and courts domiciled or located in other Member States, this Regulation should provide for the interconnection of insolvency registers.'

(18) Recital 31 is replaced by the following:

'(31) This Regulation should include Annexes specifying, in particular, the national insolvency proceedings which are covered by this Regulation. In order to enable this Regulation to be swiftly adapted to relevant amendments of the domestic insolvency law of the Member States, the Commission should be empowered to adopt amendments to the annexes by way of delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (‘TFEU’). Before adopting a delegated act amending the list of national proceedings in the Annexes, the Commission should verify whether the procedure notified fulfils the criteria set out in this Regulation. When preparing and drawing up delegated acts, the Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.'
(19) The following recitals are inserted:

'(31a) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council'.

(31b) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union ("the Charter"). In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 of the Charter concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.

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(20) In recitals 32 and 33, the words 'Treaty establishing the European Community' are replaced by the words 'Treaty on the Functioning of the European Union'.

(21) Articles 1 and 2 are replaced by the following:
'Article 1
Scope

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 avoidance of liquidation, adjustment of debt, reorganisation or liquidation,

(a) the debtor is totally or partially divested of his assets and a liquidator an insolvency representative is appointed, or

(b) 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.

The proceedings referred to in this paragraph shall be listed in Annex A. [Am. 13]
1a. Where under the law of the Member State in which insolvency proceedings are opened, the proceedings referred to in paragraph 1 are confidential, this Regulation shall apply to such proceedings only as from the time when they become public in accordance with the law of that Member State and provided that they do not affect the claims of those creditors who are not involved in them. [Am. 14]

2. This Regulation shall not apply to insolvency proceedings concerning

(a) insurance undertakings,

(b) any credit institutions, including institutions defined in Article 2 of Directive 2013/36/EU of the European Parliament and of the Council*, [Am. 15]

(c) investment firms to the extent that these are covered by Directive 2001/24/EC as amended, and institutions subject to Directive 2011/61/EU of the European Parliament and of the Council**, [Am. 16]
(d) collective investment undertakings.


Article 2
Definitions

For the purposes of this Regulation:

(a) "insolvency proceedings" means the proceedings listed in Annex A;

(b) "liquidator insolvency representative" means any person or body whose function, including on a provisional basis, is to administer, in full or in part, or to liquidate assets of which the debtor has been divested or to supervise the administration of his affairs. Those persons and bodies are listed in Annex C;

(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. [Am. 17]
(ba) "debtor in possession" means a debtor in respect of whom insolvency proceedings have been opened which do not involve the complete transfer of the rights and duties to administer the debtor's assets to an insolvency representative and where the debtor therefore remains at least partially in control of his assets and affairs; [Am. 18]

(c) "court" means 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;

(d) "judgment opening insolvency proceedings" includes

(i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings, and

(ii) the decision by a court appointing a provisional liquidator insolvency representative.
(e) "the time of the opening of proceedings" means the time at which the judgment opening insolvency proceedings becomes effective, whether it is a final judgment or not; [Am. 20]

(f) "the Member State in which assets are situated" means, in the case of:

(i) tangible property, the Member State within the territory of which the property is situated,

(ii) property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept,

(iii) registered shares in companies, the Member State within the territory of which the company which issued the shares has its registered office,
(iv) financial instruments, title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary ("book entry securities"), the Member State in which the register or account in which the entries are made is maintained,

(v) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN,

(vi) claims against third parties other than those relating to assets referred to in point (v), the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);

(g) "establishment" means any place of operations where the debtor carries out, or has carried out in the three months prior to the request for the opening of the main insolvency proceedings, a non-transitory economic activity with human means and assets or services; [Am. 21]
(ga) “action directly deriving from insolvency proceedings and closely linked with them” means an action directed at obtaining a judgment that, by virtue of its substance, cannot be, or could not have been, obtained outside of, or independently from, insolvency proceedings, and that is exclusively admissible where insolvency proceedings are pending; [Am. 22]

(gb) "close-out netting provision" means a contractual provision on the basis of which, upon the occurrence of an event predefined in the provision in relation to a party to the contract, the obligations owed by the parties to each other that are covered by the provision, whether or not they are at that time due and payable, are automatically, or at the election of one of the parties, reduced to or replaced by a single net obligation, whether by way of novation, termination or otherwise, representing the aggregate value of the combined obligations, which is thereupon due and payable by one party to the other; [Am. 23]

(h) "local creditors" means the creditors whose claims against the debtor arose from the operation of an establishment situated in a Member State other than the one where the debtor's centre of main interests is located;
(i) "group of companies" means a number of companies consisting of parent company and all its subsidiary companies; [Am. 24]

(j) "parent company" means a company which controls one or more subsidiary companies. A company which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council shall be deemed to be a parent company; [Am. 25]

(i)—has a majority of the shareholders' or members' voting rights in another company (a "subsidiary company"); or

(ii)—is a shareholder or member of the subsidiary company and has the right to

(aa)—appoint or remove a majority of the members of the administrative, management or supervisory body of that subsidiary; or

(bb)—exercise a dominant influence over the subsidiary company pursuant to a contract entered into with that subsidiary or to a provision in its articles of association.
(ja) “crucial functions within the group” means

(i) the ability, prior to the opening of insolvency proceedings with respect to any member of the group, to take and enforce decisions of strategic relevance for the group or parts of it; or

(ii) the economic significance within the group, which shall be presumed if the group member or members contribute at least 10 per cent to the consolidated balance-sheet total and consolidated turnover. [Am. 26]

(22) Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

'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 at least three months prior to the opening of insolvency proceedings or provisional proceedings and which is ascertainable by third parties. [Am. 27]

In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.

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 shall be the place of the individual's habitual residence.'
(b) paragraph 3 is replaced by the following:

'3. Where a judgment opening insolvency proceedings have been opened delivered in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary proceedings. In such a case, the relevant time for assessing whether the debtor possesses an establishment within the territory of another Member State shall be the date of the opening of the main proceedings.' [Am. 28]

(23) The following articles are inserted:

'Article 3a
Jurisdiction for related actions

1. The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for any action which derives directly from the insolvency proceedings and is closely linked with them.
2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the liquidator insolvency representative may bring both actions in the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, in the courts of the Member State within the territory of which any of them is domiciled, provided that that court has jurisdiction pursuant to the rules of Regulation (EC) No 44/2001-1215/2012 of the European Parliament and of the Council. [Am. 29]

3. For the purpose purposes of this Article paragraph 2, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. [Am. 30]
Article 3b

Examination as to jurisdiction; right to judicial review

1. The court seised of a request to open insolvency proceedings shall ex officio examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

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). [Am. 31]
3. Any creditor or interested party who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, shall have the right to challenge the decision opening the main proceedings. The court opening main proceedings or the liquidator shall inform such creditors insofar as they are known of the decision in due time in order to enable them to challenge it on grounds of international jurisdiction within three weeks after information concerning the date of the opening of insolvency proceedings has been made publicly available in accordance with point (a) of Article 20a. [Am. 32]

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(24) In Article 4(2), point (m) is replaced by the following:

'(m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.'
(25) The following article is inserted:

'Article 6a
Netting agreements Close-out netting provisions

Netting agreements When one party to a contract containing a close-out netting provision is an institution falling within the scope of Directive 2001/24/EC, that close-out netting provision shall be governed solely by the law of the contract governing such agreements.

[Am. 33]

(26) The following article is inserted:
Article 10a
Approval requirements under local law

Where the law of the Member State governing the effects of insolvency proceedings on the contracts referred to in Articles 8 and 10 provides that a contract can only be terminated or modified with the approval of the court opening insolvency proceedings but no insolvency proceedings have been opened in that Member State, the court which opened the insolvency proceedings shall have the competence to approve the termination or modification of those contracts.

(26a) Article 12 is replaced by the following:

'Article 12

Community European patents with unitary effect and Community trade marks

For the purposes of this Regulation, a Community European patent with unitary effect, a Community trade mark or any other similar right established by Community law may be included only in the proceedings referred to in Article 3(1).' [Am. 34]
(27) Article 15 is replaced by the following:

'Article 15
Effects of insolvency proceedings on lawsuits or arbitral proceedings pending

The effects of insolvency proceedings on a pending lawsuit or arbitral proceeding concerning an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral proceedings have their seat.’

(28) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:
The liquidator insolvency representative appointed by a court which has jurisdiction pursuant to Article 3(1) or, in the case of a debtor in possession proceedings in accordance with that jurisdiction, either the insolvency representative or the debtor may exercise all the powers conferred on him by the law of the State of the opening of proceedings in another Member State, as long as no other insolvency proceedings have been opened there and no preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. Subject to Articles 5 and 7, he may in particular remove the debtor's assets from the territory of the Member State in which they are situated. He may also give the an enforceable and binding 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. Such an undertaking shall be subject to the form specify the factual assumptions upon which it is based, in particular with respect to the distribution of local claims over the priority and ranking system under the law governing the secondary proceedings, the value of distributable assets within the secondary proceedings, the options available to realise such value, the proportion of creditors in the main proceedings participating in the secondary proceedings and the costs that would have to be incurred by the opening of secondary proceedings. Requirements concerning the form which the undertaking is to take, if any, shall be laid down by the laws of the State of the opening of the main proceedings and shall be enforceable and binding on the estate." [Am. 35]
(29) The following articles are inserted:

'Article 20a
Establishment of insolvency registers

Member States shall establish and maintain in their territory one or more registers in which the following information is made available to the public on the internet free of charge ("insolvency registers"):

(a) the date of the opening of insolvency proceedings;
(b) the court opening insolvency proceedings and the case reference number, if any;
(c) the type of insolvency proceedings opened;
(d) the name and address of the debtor;

(da) if the debtor is a company, the company number and the address of its registered office; [Am. 36]

(e) the name and address of the liquidator insolvency representative appointed in the proceedings, if any;

(f) the time limit for lodging claims;

(g) the decision opening insolvency proceedings;

(h) the decision appointing the liquidator insolvency representative, if different from the decision referred to in point (g);

(i) the date of closing the main proceedings.
Article 20b
Interconnection of insolvency registers

1. The Commission shall establish, by means of implementing acts, a decentralised system for the interconnection of insolvency registers. That system shall be composed of the insolvency registers and the European e-Justice Portal, which shall serve as the central public electronic point of access to information from the system. The system shall provide a search service in all the official languages of the Union in order to make available the information referred to in Article 20a.

2. By means of implementing acts in accordance with the procedure referred to in Article 45b(3), the Commission shall adopt by ... the following:

- the technical specification defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of insolvency registers;

______________________

+ 36 months after the entry into force of this Regulation.
– the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;

– minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 20a;

– minimum criteria for the presentation of the results of such searches based on the information set out in Article 20a;

– the modalities and the technical conditions of availability of services provided by the system of interconnection; and

– a glossary containing a basic explanation of the national insolvency procedures listed in Annex A.
Article 20c
Costs of establishing and interconnecting insolvency registers

1. The establishment and future development of the system of interconnection of insolvency registers shall be financed from the general budget of the Union.

2. Each Member State shall bear the costs of adjusting its domestic insolvency registers to make it interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining that register.

Article 20d
Registration of insolvency proceedings

Where main or secondary proceedings are opened in relation to a company or legal person or an individual exercising an independent business or professional activity, the court opening insolvency proceedings shall ensure that the information referred to in Article 20a is published immediately in the insolvency register of the State of opening. Member States shall establish procedures for removing entries from the insolvency register.' [Am. 37]
Article 21 is replaced by the following:

'Article 21
Publication in another Member State

1. Until such time as the system of interconnection of insolvency registers referred to in Article 20b is established, the liquidator insolvency representative 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) all other information provided for in Article 20a. [Am. 38]

2. The liquidator insolvency representative may request that the information referred to in the first paragraph of this Article be published in any other Member State where assets or creditors or debtors of the debtor are located, in accordance with the procedure provided for in that State.' [Am. 39]
(31) Article 22 is replaced by the following:

'Article 22

Registration in public registers of another Member State

Until such time as the system of interconnection of insolvency registers referred to in Article 20b is established, the liquidator insolvency representative shall request that the decisions referred to in Article 21 be published in the land register, trade register or any other public register of any other Member State where an establishment of the debtor is located and has been entered in a public register of that Member State. The liquidator insolvency representative may request such publication in any other Member State.'

(31a) In Article 24, paragraph 2 is replaced by the following:

'2. Where such an obligation is honoured before the publication provided for in Article 20a or 21 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings; where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.' [Am. 40]
(32) Article 25 is replaced by the following:

'Article 25
Recognition and enforceability of other judgments

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 16 and which concern the course and closure of insolvency proceedings, and compositions approved by that court, shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 32 to 56, with the exception of Article 34(2), 46 of Regulation (EC) No 44/2001 [Am. 41].

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings or in connection with it.
2. The recognition and enforcement of judgments other than those referred to in paragraph 1 shall be governed by Regulation (EU) No 1215/2012 provided that that Regulation is applicable.'

(33) Article 27 is replaced by the following:

'Article 27
Opening of proceedings

Where main proceedings have been opened by a court of a Member State and recognised in another Member State, a court of another Member State which has jurisdiction pursuant to Article 3(2) may open secondary insolvency proceedings in accordance with the provisions set out in this Chapter. The effects of secondary proceedings shall be restricted to the assets of the debtor situated within the territory of the Member State where those proceedings have been opened.'
The following article is inserted:

'Article 29a
Decision to open secondary proceedings

1. The court **seized** of a request to open secondary proceedings shall immediately give notice to the **liquidator** and **insolvency representative** in the main proceedings and give him an opportunity to be heard on the request. [Am. 42]

2. Upon request by the **liquidator** and **insolvency representative** in the main proceedings, the court referred to in paragraph 1 shall postpone the decision 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, in particular when the **liquidator** in the main proceedings has given the undertaking referred to in Article 18(1) and complies with its terms. [Am. 43]
2a.  Local creditors shall have the right to challenge the decision to postpone or to refuse the opening of secondary proceedings within three weeks of that decision having been made available to the public under point (a) of Article 20a. [Am. 44]

2b.  Local creditors shall have the right to petition the court conducting the main proceedings to require the insolvency representative in the main proceedings to take suitable measures necessary to protect the interests of the local creditors. Such requirement may include a prohibition against a removal of assets from the Member State in which the opening of secondary proceedings has been postponed or refused, a postponement of the distribution of proceeds in the main proceedings or an obligation on the insolvency representative in the main proceedings to provide security for the performance of the undertakings. [Am. 45]

2c.  The court referred to in paragraph 1 may appoint a trustee whose powers are restricted. The trustee shall ensure that the undertaking is duly performed and shall participate in its implementation if this is necessary for the protection of the interests of local creditors. The trustee shall have the right to petition in accordance with paragraph 2b. [Am. 46]
3. When deciding whether to open secondary proceedings, the court referred to in paragraph 1 shall open the type of proceedings under its national law which is the most appropriate taking into account the interests of the local creditors, irrespective of whether any conditions relating to the debtor’s solvency are fulfilled.

4. The liquidator insolvency representative in the main proceedings shall be immediately notified of the decision to open secondary proceedings and shall have the right to challenge that decision within three weeks after receipt of notification thereof. In justified cases the court opening secondary proceedings may shorten that period to not less than one week after receipt of the notification.\[Am. 47\]

(35) Article 31 is replaced by the following:

'Article 31
Cooperation and communication between liquidators insolvency representatives
1. The liquidator *insolvency representatives* in the main *insolvency* proceedings and the liquidators in the secondary proceedings *concerning the same debtor* shall cooperate with each other to the extent that such cooperation is *appropriate in order to facilitate the effective administration of the proceedings*, is not incompatible with the rules applicable to each of the proceedings *and does not entail any conflict of interests*. Such cooperation may take the form of agreements or protocols. [Am. 48]

2. In particular, the liquidators *insolvency representatives* shall:

   (a) immediately communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information;
(b) explore the possibility of restructuring the debtor and, where such possibility exists, coordinate the elaboration and implementation of a restructuring plan;

c) coordinate the administration of the realisation or use of the debtor's assets and affairs; the liquidator insolvency representative in the secondary proceedings shall give the liquidator insolvency representative in the main proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary proceedings.'

(36) The following articles are inserted:

'Article 31a

Cooperation and communication between courts

1. In order to facilitate the coordination of main and secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending or which has opened such proceedings shall cooperate with any other court before which insolvency proceedings are pending or which has opened such proceedings to the extent that such cooperation is appropriate in order to facilitate the effective administration of the proceedings and is not incompatible with the rules applicable to each of the proceedings. For this purpose, the courts may, where appropriate, appoint a person or body acting to act on its instructions, provided that this is not incompatible with the rules applicable to the proceedings. [Am. 49]
2. The courts referred to in paragraph 1 may communicate directly with, or request information or assistance directly from, each other provided that such communication is free of charge and respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3. Cooperation may be implemented by any appropriate means, including

(a) communication of information by any means considered appropriate by the court;

(b) coordination of the administration and supervision of the debtor's assets and affairs;

(c) coordination of the conduct of hearings,

(d) coordination in the approval of protocols.
Article 31b
Cooperation and communication between liquidators, insolvency representatives and courts

1. In order to facilitate the coordination of main and secondary insolvency proceedings opened with respect to the same debtor, [Am. 50]

(a) a liquidator an insolvency representative in main proceedings shall cooperate and communicate with any court before which a request to open secondary proceedings is pending or which has opened such proceedings, and

(b) a liquidator an insolvency representative in secondary or territorial insolvency proceedings shall cooperate and communicate with the court before which a request to open main proceedings is pending or which has opened such proceedings,

in each case to the extent that such cooperation and communication are appropriate in order to facilitate the coordination of the proceedings, are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interests. [Am. 51]
2. The cooperation referred to in paragraph 1 shall be implemented by any appropriate means, including the means set out in Article 31a(3), to the extent that these are not incompatible with the rules applicable to each of the proceedings.'

(37) Article 33 is amended as follows:

(a) the title is replaced by the following:

'Stay of proceedings';

(b) in paragraphs 1 and 2, the words "process of liquidation" are replaced by the word "proceedings".

(38) Article 34 is replaced by the following:
Article 34
Closure of main or secondary insolvency proceedings

1. The closure of main proceedings shall not prevent the continuation of secondary proceedings which are still open at that point in time.

2. Where secondary proceedings concerning a legal person have been opened in the Member State of that person's registered office and the closure of those proceedings entails the dissolution of the legal person, such dissolution shall not prevent the continuation of main proceedings which have been opened in another Member State. The legal person concerned shall not be struck off the company register until the main proceedings are closed. [Am. 52]

(39) In Article 35, the term "liquidation" is replaced by the term "realisation".
Article 37 is replaced by the following:

'Article 37
Conversion of earlier proceedings

The liquidator insolvency representative in the main proceedings may request the court of the Member State where secondary proceedings have been opened to order the conversion of the secondary proceedings into another type of insolvency proceedings available under the law of that Member State.'

Article 39 is replaced by the following:

'Article 39
Right to lodge claims

Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States ("foreign creditors"), shall have the right to lodge claims in the insolvency proceedings by any means of communication, including electronic means, which are accepted by the law of the State of opening. Representation by a lawyer or another legal professional shall not be mandatory for the lodging of claims.'
(42) Article 40 is amended as follows:

(a) in paragraph 2, the following sentence is added:

'The notice shall also include a copy of the standard claims form referred to in Article 41 or a link to the publication of that form on the internet.';

(b) the following paragraph is added:

'3. The information referred to in this Article shall be provided using the standard notice form to be established in accordance with the advisory procedure referred to in Article 45b(4) and to be published in the European e-Justice Portal by ...†. The form shall bear the heading "Notice of insolvency proceedings" in all official languages of the Union. It shall be transmitted in the official language or one of the official languages of the State of the opening of proceedings or in another language which that State has indicated it can accept in accordance with Article 41(3) if it can be assumed that that language is easier to understand for the foreign creditors.'

† 24 months after the entry into force of this Regulation.
Article 41 is replaced by the following:

Article 41

Procedure for lodging claims

1. Any known foreign creditor shall lodge his claim using the standard claims form to be established in accordance with the advisory procedure referred to in Article 45b(4) and to be published on the European e-Justice Portal by ...+. The form shall bear the heading "Lodgment of claims" in all official languages of the Union.

2. In the standard claims form, the creditor referred to in paragraph 1 shall indicate

(a) his name and address;

(b) the nature of the claim;

(c) the amount of the claim and the date on which it arose;

* 24 months after the entry into force of this Regulation.
(d) whether any preferential creditor status is claimed;

(e) whether security in rem or a reservation of title is alleged in respect of the claim and if so, what assets are covered by the security interest he is invoking; and

(f) whether any set-off is claimed and whether the amount claimed is net of set-off.

The standard claims form shall be accompanied by copies of supporting documents, if any.

3. Claims may be lodged in any official language of the Union. The creditor may be required to provide a translation into the official language or one of the official languages of the State of the opening of proceedings or into another language which that Member State has accepted. Each Member State shall indicate at least one official language of the Union other than its own which it accepts for the purpose of the lodging of claims.
4. Claims shall be lodged within the period stipulated by the law of the State of the opening of insolvency proceedings. In the case of a foreign creditor, that period shall not be less than 45 days following the publication of the opening of proceedings in the insolvency register of the State of opening.

5. Where the liquidator *insolvency representative* contests a claim lodged in accordance with this Article, he shall give the creditor the opportunity to provide additional evidence on the existence and the amount of the claim.'

(44) Article 42 is deleted.
The following Chapter is inserted:

'CHAPTER IVa
INSOLVENCY OF MEMBERS OF A GROUP OF COMPANIES

Article 42a
Duty to cooperate and communicate information between liquidators insolvency representatives

1. Where insolvency proceedings relate to two or more members of a group of companies, a liquidator an insolvency representative appointed in proceedings concerning a member of the group shall cooperate with any liquidator insolvency representative appointed in proceedings concerning another member of the same group to the extent that such cooperation is appropriate to facilitate the effective administration of the proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interests. That cooperation may take the form of agreements or protocols.
2. In the exercise of the cooperation referred to in paragraph 1, the liquidators insolvency representatives shall

(a) immediately communicate to each other any information which may be relevant to the other proceedings, provided that appropriate arrangements are made to protect confidential information;

(b) explore the possibilities for restructuring the group members subject to insolvency proceedings and, where such possibilities exist, coordinate with respect to the proposal and negotiation of a coordinated restructuring plan; [Am. 53]

(c) coordinate the administration and supervision of the affairs of the group members subject to insolvency proceedings.

The liquidators insolvency representatives may agree to grant additional powers to the liquidator insolvency representative appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings.
Article 42b

Communication and cooperation between courts

1. Where insolvency proceedings relate to two or more members of a group of companies, a court before which a request to open proceedings concerning a member of the group is pending or which has opened such proceedings shall cooperate with any other court before which a request to open proceedings concerning another member of the same group is pending or which has opened such proceedings to the extent that such cooperation is appropriate to facilitate the effective administration of the proceedings and is not incompatible with the rules applicable to them. For this purpose, the courts may, where appropriate, appoint a person or body acting to act on its instructions, provided that this is not incompatible with the rules applicable to the proceedings. [Am. 54]

2. The courts referred to in paragraph 1 may communicate directly with each other, or request information or assistance directly from each other.
3. Cooperation shall take place by any appropriate means, including

(a) communication of information by any means considered appropriate by the court provided that such communication shall be free of charge and shall respect the procedural rights of the parties to the proceedings and the confidentiality of information;

(b) coordination of the administration and supervision of the assets and affairs of the members of the group;

(c) coordination of the conduct of hearings;

(d) coordination in the approval of protocols.
Article 42c
Cooperation and communication between liquidators and courts

A liquidator appointed in insolvency proceedings concerning a member of a group of companies shall cooperate and communicate with any court before which a request for the opening of proceedings with respect to another member of the same group of companies is pending or which has opened such proceedings, to the extent that such cooperation is appropriate to facilitate the coordination of the proceedings, and is not incompatible with the rules applicable to them and does not entail any conflict of interests. In particular, the liquidator may request information from that court concerning the proceedings regarding the other member of the group or request assistance concerning the proceedings in which he has been appointed. [Am. 55]
Article 42d
Powers of the liquidators and stay of proceedings

1. A liquidator appointed in insolvency proceedings opened with respect to a member of a group of companies shall have the right

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

(b) to request, for a period of up to two months, a stay of the proceedings opened with respect to any other member of the same group. [Am. 56]

(c) to propose a rescue plan, a composition or a comparable measure for all or some members of the group for which insolvency proceedings have been opened and to introduce it into any of the proceedings opened with respect to another member of the same group in accordance with law applicable to those proceedings; and [Am. 57]
(d)—to request any additional procedural measures under the law referred to in point
(c) which may be necessary to promote rescue, including the conversion of
proceedings. [Am. 58]

2. The court which opened proceedings referred to in point (b) of paragraph 1 shall stay
those proceedings in whole or in part if it is proven the insolvency representative
provides sufficient evidence that such a stay would be to the benefit of the creditors
in those proceedings. Such a stay may be ordered for up to three two months and may
be continued or renewed for the same period. The court ordering the stay may require
the liquidator insolvency representative to take any suitable measure to guarantee the
interests of the creditors in the proceedings. [Am. 59]

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 seised to open the group coordination proceedings perform crucial functions within the group.

2. Where more than one court is seised 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 seised shall communicate and cooperate with each other in accordance with Article 42b. Where the most crucial functions cannot be determined, the first court seised may open group coordination proceedings provided that the conditions for opening such proceedings are satisfied.
3. Where group coordination proceedings have been opened, the right of insolvency representatives to request a stay of the proceedings in accordance with point (b) of Article 42d(1) shall be subject to the approval of the coordinator. Existing stays shall remain in force and effect, subject to the coordinator’s power to request the cessation of any such stay. [Am. 60]

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 and shall have the task of:

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

(b) mediating in 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 entail recommendations on

(i) the measures to be taken in order to re-establish the economic performance and 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:

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

(c) to request information from any insolvency representative that is or might be of use for the purpose of identifying and outlining strategies and measures in order to coordinate the proceedings; and

(d) to request a stay for a period of up to three months of the proceedings opened with respect to any other member of the group and to request the cessation of any such stay. [Am. 61]

Article 42dc

Court approval of group coordination plans

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 group coordination plan within a period of not more than one month set by the coordinator when submitting the plan.
2. The draft plan submitted for court approval shall be accompanied by:

   (a) a representation of the coordinator as to how paragraph 1 has been complied with;

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

   (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 has complied with the formal requirements of paragraph 2 of this Article and of point (c) of Article 42db(1). [Am. 62]
Article 42dd

Relation between group coordination proceedings and insolvency proceedings

1. When conducting their insolvency proceedings, insolvency representatives shall have a duty to consider the recommendations of the coordinator and the group coordination plan. Where an insolvency representative intends to deviate from measures or actions proposed in the group coordination plan, he shall explain the reasons for such deviation at the creditors’ meeting or to any other body to which he is accountable under the laws of the relevant Member State.

2. Non-compliance with paragraph 1 shall be treated as a breach of the duties of the insolvency representative under the laws of the relevant Member State. [Am. 63]

Article 42de

Coordinator’s liability

The coordinator shall perform his duties with due care. He shall be responsible vis-à-vis the estates of the insolvency proceedings covered by the group coordination proceedings for damage reasonably attributable to breaches of those duties. His liability shall be established in accordance with the law of the Member State where the coordination proceedings were opened. [Am. 64]
Article 42df

Costs

1. The laws of the Member States shall make provision for the court fees and the remuneration of the coordinator.

2. 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. The share to be borne by each group member shall be calculated with reference to the share of the asset value of such member in the consolidated assets of all the members of the group in relation to which insolvency proceedings had been opened.' [Am. 65]
The following article is inserted:

'Article 44a
Information on national insolvency law

1. The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC*, with a view to making the information available to the public, a description of their national insolvency law and procedures, in particular relating to the matters listed in Article 4(2).

2. The Member States shall update that information regularly.


Article 45 is replaced by the following:

'Article 45
Amendment of the Annexes

1. The Commission shall be empowered to adopt delegated acts to amend Annexes A and C in accordance with the procedure laid down in this Article and Article 45a.
2. In order to trigger an amendment of Annex A, Member States shall notify the Commission of their national rules on insolvency proceedings which they want to have included in Annex A meet the criteria set out in Article 1, accompanied by a short description. The Commission shall examine whether the notified rules comply with the conditions set out in Article 1 and, where this is the case, shall amend Annex A by means of delegated acts. [Am. 66]

2a. Member States shall notify the Commission of any substantial changes affecting their national rules on insolvency proceedings. The Commission shall examine whether the amended rules comply with the conditions set out in Article 1, and, where they do comply therewith, shall amend Annex A by means of delegated acts.’ [Am. 67]
The following articles are inserted:

'Article 45a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of powers referred to in Article 45 shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of powers referred to in Article 45 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 45 shall enter into force if no objection has been expressed by the European Parliament or the Council within a period of two months after notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.
Article 45b

Power to adopt implementing acts

1. The power to adopt implementing acts is conferred on the Commission for the following purposes:

   (a) to provide for the interconnection of insolvency registers as referred to in Article 20b; and

   (b) to establish and subsequently amend the forms referred to in Articles 40 and 41.

2. In adopting or amending the implementing acts referred to in paragraph 1, the Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.'

(49) In Article 46, the date '1 June 2012' is replaced by '.....[10 years after its entry into application]'.

(50) The following article is inserted:

'Article 46a
Data protection

1. Member States shall apply the National rules transposing Directive 95/46/EC shall apply to the processing of personal data carried out in the Member States pursuant to this Regulation, provided that the processing operations referred to in Article 3(2) of Directive 95/46/EC are not affected. [Am. 68]
2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.'

(51) Annex B is deleted.

(51a) In Annex C, the section entitled ‘DEUTSCHLAND’ is replaced by the following:

'DEUTSCHLAND

– Konkursverwalter

– Vergleichsverwalter

– Sachwalter (nach der Vergleichsordnung)

– Verwalter

– Insolvenzverwalter
This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from ..., with the exception of Article 44a, which shall apply from …++. 

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ..., 

For the European Parliament For the Council

The President The President

+ 24 months after the entry into force of this Regulation.
++ 12 months after the entry into force of this Regulation.