

# Reform of the EU Insolvency Regulation

The Commission's proposal to amend the Insolvency Regulation addresses many of the issues identified as problematic in a 2011 resolution of Parliament, in particular group insolvency, but does not go as far as harmonising national rules.

## Background

The [Regulation](#) on insolvency proceedings, applicable since 2002 to all Member States (MS) except for Denmark, lays down rules on jurisdiction of courts, recognition of judgments and applicable law in cross-border insolvency proceedings, but does not apply to debt adjustment and reorganisation. The key connecting factor used in the Regulation is the insolvent debtor's "[centre of main interests](#)" (COMI). COMI has raised many doubts in practice, and its open-ended nature is considered to enable "[forum shopping](#)".

In October 2011, the Parliament adopted an initiative [report](#) on insolvency proceedings, calling for partial harmonisation of insolvency law, a reformulation of COMI to prevent fraudulent forum-shopping, enactment of rules on insolvency of groups of companies and the creation of an EU insolvency register.

## Commission proposal

In December 2012, the Commission adopted a [proposal](#) to amend the Regulation. It would broaden its scope to cover not only bankruptcy, but also restructuring aimed at avoiding liquidation. A new, more precise definition of COMI would be introduced, codifying the clarifications from the [case-law](#) of the Court of Justice. Upon the lodging of insolvency proceedings, a court would have to verify whether it is competent under the Regulation, and foreign creditors would have the possibility to challenge that finding. The proposal would also address the issue of publicity and transparency, by obliging MS to create insolvency registers, embedded in the [e-Justice](#) portal, and to publish relevant court decisions. New, detailed rules would oblige courts and liquidators from different MS to cooperate closely to coordinate insolvency proceedings in different countries. A new chapter would address the issue of insolvency of a firm belonging to a group of companies, enabling a coordinated restructuring plan for the entire group. Finally, the proposal would abolish the requirement that [secondary proceedings](#) must also be winding-up proceedings. The proposal does not envisage harmonisation of national insolvency procedures, but in an accompanying [communication](#) the Commission announced that it will analyse the impact of divergences between national insolvency laws.

## Stakeholder and expert views

In a joint [position paper](#), the City of London Law Society, Insolvency Lawyers' Association and the Association of Business Recovery Professionals welcomed the proposal, considering that it would make cross-border insolvency proceedings more efficient and quicker. The European Private Equity & Venture Capital Association [considered](#) that differences between national insolvency procedures justify the need to harmonise some of its aspects. This view is shared by an expert, who also [urged](#) that COMI be abandoned altogether. However, another expert [underlined](#) the political dimension of insolvency law, claiming it would be unfeasible to harmonise rules which reflect choices favouring different categories of creditors.

## European Parliament

In May 2013, the EP's Impact Assessment Unit positively [evaluated](#) the Commission's impact assessment. In December 2013, the Committee on Legal Affairs adopted its first-reading [report](#) (rapporteur: Klaus-Heiner Lehne, EPP, Germany), welcoming the proposal. A number of amendments were tabled, aimed at removing ambiguities and aligning the text with other EU legal acts, as well as enhancing the coordination of insolvency proceedings in a group of companies by providing for special "group coordination proceedings".

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140736REV1

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