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**Interinstitutional File:  
2012/0360 (COD)**

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**JUSTCIV 285  
EJUSTICE 109  
CODEC 2225**

**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	10284/14 JUSTCIV 134 EJUSTICE 54 CODEC 1366 + ADD 1 + COR 1 13276/14 JUSTCIV 224 EJUSTICE 80 CODEC 1835 + COR 1
No. Cion doc.:	17883/12 JUSTCIV 365 CODEC 3077 + ADD 1 + ADD 2
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings <b>[First reading]</b> - Political agreement

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**I. INTRODUCTION**

1. By letter of 13 December 2012, the Commission forwarded to the Council a proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings (the "proposed Regulation"). The proposed Regulation is aimed at modifying Council Regulation (EC) No 1346/2000 on insolvency proceedings (the "current Insolvency Regulation").

2. The proposed Regulation is aimed at making cross-border insolvency proceedings more effective with a view to ensuring the smooth functioning of the internal market and its resilience in economic crises. This objective is in line with the European Union's current political priorities to promote economic recovery and sustainable growth, a higher investment rate and the preservation of employment, as set out in the Europe 2020 strategy, and to safeguard the development and the survival of businesses, as stated in the Small Business Act.
3. As part of the overall Justice for Growth Programme, the proposed Regulation is an important element of the broad European Union response to the significant economic difficulties being experienced by many companies and citizens throughout the Union.
4. In accordance with Article 3 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 to the Treaty on the Functioning of the European Union, the United Kingdom<sup>1</sup> and Ireland<sup>2</sup> have notified their wish to take part in the adoption and application of the proposed Regulation.
5. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of the proposed Regulation and will not be bound by it or subject to its application.
6. The European Economic and Social Committee adopted its opinion on the proposed Regulation on 22 May 2013.
7. On 5 and 6 June 2014, the Council (Justice and Home Affairs) reached an agreement (the "general approach")<sup>3</sup> on the normative part of the proposed Regulation and called for work on the remaining recitals and Annexes to be finalised at technical level as soon as possible.

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<sup>1</sup> See 6106/13 JUSTCIV 81 CODEC 811.

<sup>2</sup> See 8325/13 JUSTCIV 79 CODEC 777.

<sup>3</sup> See 10284/14 JUSTCIV 134 EJUSTICE 54 CODEC 1366 + ADD 1 + COR 1.

8. Owing to the importance of efficient cross-border insolvency proceedings for the European economy and in response to the European Council's call for a swift examination, the Presidency has put the examination of the proposed Insolvency Regulation at the top of its agenda.
9. On 9 and 10 October 2014, the Council finalised the general approach, reaching agreement on the recitals and annexes<sup>1</sup>.

## **II. STATE OF PLAY**

### **a) Negotiations with the European Parliament**

10. On 5 February 2014, during its plenary session, the European Parliament adopted its position at first reading on the proposed Regulation and the accompanying legislative resolution<sup>2</sup>.
11. On the basis of the June and October 2014 general approach, the Presidency has been in contact with the European Parliament, with a view to reaching an early second reading agreement before the end of the year.
12. Two trilogues were held, on 15 October and 10 November 2014, during which the representatives of the Presidency and of the European Parliament had the opportunity to set out the cardinal points of their positions and explore the possibilities for finding compromise. The discussions resulted in a considerable convergence of views between the European Parliament and the Council on a draft compromise package, which is set out in the text contained in the Addendum to this Note (the "compromise package").
13. On 11 November 2014, the rapporteur (Mr. Tadeusz Zwiefka) reported back to the European Parliament's Committee on Legal Affairs on the positive outcome of the negotiations with the Council and informed them that the compromise package would be endorsed by the said Committee at its forthcoming meeting on 1 and 2 December 2014.

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<sup>1</sup> See 13276/14 JUSTCIV 224 EJUSTICE 80 CODEC 1835 + COR 1.

<sup>2</sup> See 5910/14 CODEC 2041 JUSTCIV 19 PE 50.

**b) Recast**

13. On 10 November 2014, during the second trilogue, it was also agreed that the proposed Insolvency Regulation should be presented as a recast of the current Insolvency Regulation.
14. On 12 November 2014, the Presidency transmitted to the Member States the recast version of the proposed Regulation, amended in the light of the negotiations with the European Parliament, and asked for their comments on the aspects related to the recast, by 17 November 2014. A limited number of corrections were received from the Member States and the text has been amended accordingly.
15. The compromise package set out in the Addendum to this Note reflects the agreement reached with the European Parliament, both on the substance and with respect to the use of the recasting technique.

**c) Follow-up**

16. After the endorsement of the compromise package by the European Parliament's Committee on Legal Affairs on 1 and 2 December 2014, the Council (Justice and Home Affairs) will be called on to reach a political agreement on the compromise package at its session on 4 and 5 December 2014.
17. After legal-linguistic revision, the Council (Justice and Home Affairs) will adopt its position at first reading as an "A" item at a forthcoming Council session. Subsequently, the Council's position will be communicated to the European Parliament with a view to an approval by the plenary, without amendments in second reading.

**III. CONCLUSION**

14. Coreper/Council is therefore invited:
  - (a) to confirm the agreement reached with the European Parliament on the compromise package set out in Addendum 1 of document 15414/14 JUSTCIV 285 EJUSTICE 109 CODEC 2225;

- (b) to adopt a political agreement on the compromise package, subject to receipt of a letter from the Chair of the European Parliament's Committee on Legal Affairs confirming that the compromise package is acceptable to the European Parliament;
  - (c) to initiate the legal-linguistic revision of the compromise package; and
  - (d) to submit the compromise package, as finalised by the legal-linguistic experts, and accompanied by the statement of the Council's reasons, as an "A" item, to the Council for adoption of its position at first reading at one of its forthcoming sessions.
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15414/14  
ADD 1

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**Interinstitutional File:  
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**JUSTCIV 285  
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**ADDENDUM TO NOTE**

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From : Presidency

To : Coreper/Council

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No. prev. doc.: 10284/14 JUSTCIV 134 EJUSTICE 54 CODEC 1366 + ADD 1 + COR 1  
13276/14 JUSTCIV 224 EJUSTICE 80 CODEC 1835 + COR 1

No. Cion prop.: 17833/12 JUSTCIV 365 CODEC 3077 + ADD 1 + ADD 2

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
amending Council Regulation (EC) No 1346/2000 on insolvency proceedings  
**[First reading]**  
- Political agreement

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1. Delegations will find in the Annex the text of the abovementioned proposal, amended in the light of the outcome of the negotiations with the European Parliament, which the Presidency proposes in view of the adoption of a political agreement by the Council (Justice and Home Affairs), at its meeting on 4 and 5 December 2014.
2. The abovementioned proposal is presented as a recast of the Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (the "Insolvency Regulation"). Changes compared to the text of the Insolvency Regulation are **in bold**<sup>1</sup>.

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<sup>1</sup> The text **in bold** has been drafted on the basis of document 10284/14 JUSTCIV 134 EJUSTICE 54 CODEC 1366 + ADD 1 + COR 1 and document 13276/14 JUSTCIV 224 EJUSTICE 80 CODEC 1835 + COR 1, taking into account the minor technical adjustments set out in document 14891/14 JUSTCIV 267 EJUSTICE 102 CODEC 2141 and the outcome of the negotiations with the European Parliament as regards recitals 21, 30 and Article 3(1).

~~COUNCIL~~ REGULATION (~~EC~~) (EU) No ~~1346/2000~~ **OF THE EUROPEAN PARLIAMENT**  
**AND OF THE COUNCIL of 29 May 2000** on insolvency proceedings

(recast)

THE EUROPEAN PARLIAMENT AND COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the~~ on the Functioning of the European ~~Community~~  
Union, and in particular Articles ~~61(e) and 67(1)~~ **81** thereof,

~~Having regard to the initiative of the Federal Republic of Germany and the Republic of~~  
~~Finland,~~

Having regard to the proposal from the European Commission,

~~Having regard to the opinion of the European Parliament,~~

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

Having regard to the opinion of the **European** Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

After consulting the European Data Protection Supervisor<sup>3</sup>,

Whereas:

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<sup>2</sup> OJ C ..., ..., p. ....

<sup>3</sup> OJ C ..., ..., p. ....

- (1) **On 12 December 2012, the Commission adopted a report on the application of Council Regulation (EC) No 1346/2000 on insolvency proceedings. The report concluded 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. Since the Regulation has already been amended several times<sup>4</sup> and further amendments are to be made, that Regulation should be recast in the interest of clarity.**
- (2) The European Union has set out the aim of establishing an area of freedom, security and justice.
- (3) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively and this Regulation needs to be adopted in order to achieve this objective which comes within the scope of judicial cooperation in civil matters within the meaning of Article ~~65~~ 81 of the Treaty.
- (4) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by ~~Community~~ **Union** law. While the insolvency of such undertakings also affects the proper functioning of the internal market, there is a need for a ~~Community~~ **Union** act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.
- (5) **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).**
- ~~(5) **These objectives cannot be achieved to a sufficient degree at national level and action at Community level is therefore justified.**~~<sup>5</sup>

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<sup>4</sup> See Annex C.

<sup>5</sup> See new recital 80.



~~(6) In accordance with the principle of proportionality this Regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings. In addition, this Regulation should contain provisions regarding the recognition of those judgments and the applicable law which also satisfy that principle.~~

(6) This Regulation should encompass provisions governing jurisdiction for opening insolvency proceedings and actions which are deriving directly from the insolvency proceedings and are closely linked 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.

(7) Bankruptcy, proceedings relating to 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 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>6</sup>. These proceedings should be covered by the present Regulation. The interpretation of this Regulation should as much as possible avoid regulatory loopholes between the two instruments.

However, the mere fact that a national procedure is not listed in Annex A to this Regulation should not imply that this procedure is covered by Council Regulation (EC) No 1215/2012.

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<sup>6</sup> OJ L 351, 20.12.2012, p. 1.

- (8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a ~~Community~~ **Union** law measure which is binding and directly applicable in Member States.
- (9) **This Regulation should apply to insolvency proceedings which fulfill 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 regarding whether the conditions set out in this Regulation are fulfilled. When a national insolvency procedure is not listed in Annex A, that procedure should not be covered by the scope of this Regulation.**

- (10) **The scope of this Regulation should extend to proceedings which promote the rescue of economically viable but distressed businesses and give a second chance to entrepreneurs. It should notably extend to proceedings which provide for the restructuring of a debtor at a stage where there is only a likelihood of insolvency and proceedings which leave the debtor fully or partially in control of his assets and affairs. It should also extend to proceedings providing for a debt discharge or a debt adjustment of consumers and self-employed persons, for example by reducing the amount to be paid by the debtor or by extending the payment period granted to him. Since these proceedings do not necessarily entail the appointment of an insolvency practitioner, 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 other interested parties.**

- (11) **This Regulation should also apply to procedures which grant a temporary moratorium on enforcement actions brought by individual creditors where such actions may adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. Such procedures should not be detrimental to the general body of creditors and should be preliminary to other procedures covered by the scope of this Regulation if no agreement on a restructuring plan can be reached.**
- (12) **This Regulation should apply to proceedings the opening of which is subject to publicity in order to allow creditors to become aware of the proceedings and to lodge their claims, thereby ensuring the collective nature of the proceedings, and in order to give creditors the possibility to challenge the jurisdiction of the court which has opened the proceedings.**

**Accordingly, this Regulation should not encompass insolvency proceedings which are confidential. While these proceedings may play an important role in some Member States, their confidential nature makes it impossible for a creditor or a court located in another Member State to know that such proceedings have been opened, thereby making it difficult to provide for the recognition of their effects EU-wide.**

- (13) **The collective proceedings which are covered by the scope of application of this Regulation should include all or a significant part of the creditors to whom the debtor owes all or a substantial proportion of his outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected. This should also include proceedings which involve only the financial creditors of the debtor. Proceedings which do not include all the debtor's creditors should be proceedings aimed at rescuing the debtor. The proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of his assets should include all the debtor's creditors. Moreover, the fact that some insolvency proceedings for natural persons exclude specific categories of claims, such as maintenance claims, from the possibility of a debt-discharge should not mean that such proceedings are not collective.**
- (14) **This Regulation should also apply to proceedings that, under the law of some Member States, are opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order confirming the continuation of the proceedings on a non-interim basis. Except for being labelled as "interim", these proceedings should meet all other requisites of this Regulation.**
- (15) **This Regulation should apply to proceedings which are based on a law relating to insolvency. However, proceedings that are based on general company law not designed exclusively for insolvency situations should not be considered to be based on a law relating to insolvency. Similarly, the purpose of adjustment of debt should not include specific proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never makes provisions for payment to creditors.**

- (16) **The Regulation's scope should extend to proceedings which are triggered by situations in which the debtor faces non-financial difficulties, provided however, that these difficulties give rise to a real and serious threat to the debtor's actual or future ability to pay his debts as they fall due. The time horizon relevant for the determination of such threat may extend to a period of several months or even longer in order to account for cases where the debtor is faced with non-financial difficulties threatening his going concern and, in the medium term, his liquidity. This might be the case, for example, if the debtor has lost a contract which is of key importance to him.**
- (17) **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.**
- (18) **Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and other firms, institutions or undertakings to the extent these are covered by Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions<sup>7</sup> (as amended) 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.**
- (19) **Insolvency proceedings do not necessarily involve the intervention of a judicial authority; therefore, the expression 'court' in this Regulation should, in certain provisions, 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.**

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<sup>7</sup> OJ L 125, 5.5.2001, p. 15.

- (20) **Insolvency practitioners are defined in this Regulation and listed in Annex B. Insolvency practitioners who are appointed without the involvement of a judicial body should, under national law, be appropriately regulated and authorised to act in insolvency proceedings, and the national regulatory framework should provide for proper arrangements to deal with potential conflict of interests.**
- (21) 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. **At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level.** 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.
- (22) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of his main interests. These proceedings have universal scope and aim at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Secondary proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main proceedings satisfy the need for unity in the ~~Community~~ **Union**.

- (23) **Where main proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in the light of the case law of the Court of Justice of the European Union.**
- (24) This Regulation applies only to proceedings where the centre of the debtor's main interests is located in the ~~Community~~ **Union**.
- (25) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State must be established by the national law of the Member State concerned.
- (26) **Before opening insolvency proceedings, the competent court should examine of its own motion whether the debtor's centre of main interests or establishment is actually located within its jurisdiction.**
- (27) **When determining whether the centre of main interest is ascertainable by third parties, special consideration should be given to the creditors and their perception as to where a debtor conducts the administration of his interests. This may require, in the event of a shift of centre of main interest, informing creditors of the new location from which the debtor is carrying out his activities in due course, e.g. by drawing attention to the change of address in commercial correspondence, or making the new location public through other appropriate means.**
- (28) **This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.**

- (29) **Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interest should be rebuttable, and the court should carefully assess whether the debtor's centre of main interest is genuinely located in that Member State.**

**In the case of a company, it should be possible to rebut this presumption if the company's central administration is located in another Member State than its registered office 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.**

**In the case of an individual not exercising an independent business or professional activity, it should be possible to rebut this presumption for example if the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or if it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and if such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.**

- (30) **With the same objective of preventing fraudulent or abusive forum shopping, the presumptions that the centre of main interests is at the place of the registered office, the individual's principal place of business or the individual's habitual residence, respectively, should not apply where, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated his registered office or principal place of business to another Member State within a period of three months prior to the request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within a period of six months prior to the request for opening insolvency proceedings.**



- (31) **In all instances, 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 the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.**
- (32) **When the court seised of the request to open insolvency proceedings finds that the centre of main interest is not located on its territory, it should not open main insolvency proceedings.**
- (33) **In addition, any creditor of the debtor should have an effective remedy against the decision opening insolvency proceedings. The consequences of a challenge of the decision opening insolvency proceedings should be governed by national law.**
- ~~(13) **The 'centre of main interests' should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.**~~
- (34) **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 actions include avoidance actions against defendants in other Member States and actions concerning obligations that arise in the course of the insolvency proceedings, such as advance payment for costs of the proceedings. In contrast, actions for the performance of the obligations under a contract concluded by the debtor prior to the opening of proceedings do not derive directly from the proceedings. Where such an action is related with another action based on general civil and commercial law, the insolvency practitioner should be able to bring both actions in the courts of the defendant's domicile if he considers it more efficient to bring the action in that forum. This could, for example, be the case if the insolvency practitioner 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.**

- (35) The court having jurisdiction to open the main insolvency proceedings should be enabled to order provisional and protective measures from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are very important to guarantee the effectiveness of the insolvency proceedings. In that connection this Regulation should afford different possibilities. On the one hand, the court competent for the main insolvency proceedings should be able also to order provisional protective measures covering assets situated in the territory of other Member States. On the other hand, an ~~liquidator~~ **insolvency practitioner** temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those States.
- (36) **Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and public authorities or to cases where main proceedings cannot be opened under the law of the Member State where the debtor has the centre of his main interest. The reason for this restriction is that cases where territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary.**
- (37) Following the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment is not restricted by this Regulation. The ~~liquidator~~ **insolvency practitioner** in the main proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.

- (38) **This Regulation should provide for rules to localise the debtor's assets, and these rules should apply when determining which assets belong to the main or secondary proceedings, or to situations involving third parties' rights in rem. In particular, this Regulation should specify that European patents with unitary effect, a Community trade mark or any other similar rights, such as the Community plant variety rights or Community designs, should only be included in the main proceedings.**
- (39) Secondary insolvency proceedings may serve different purposes, besides the protection of local interests. Cases may arise where the **insolvency** estate of the debtor is too complex to administer as a unit or where differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening to the other States where the assets are located. For this reason the ~~liquidator~~ **insolvency practitioner** in the main proceedings may request the opening of secondary proceedings when the efficient administration of the **insolvency** estate so requires.
- (40) **Secondary proceedings may also hamper the efficient administration of the insolvency estate. Therefore, this Regulation sets out two specific situations in which the court seized with a request to open secondary proceedings should be able, on request of the insolvency practitioner in main proceedings, to postpone or refuse the opening of such proceedings. First, this Regulation confers on the insolvency practitioner in main proceedings the possibility to give an undertaking to local creditors that they will be treated as if secondary proceedings had been opened. This undertaking has to fulfill a number of conditions set out in the Regulation, in particular, it has to be approved by a qualified majority of local creditors. Where such an undertaking has been given, the court seized with a request to open secondary proceedings should be able to refuse the opening when it is satisfied that this undertaking adequately protects the general interests of local creditors. When assessing these interests, the court should take into account the fact that the undertaking has been approved by a qualified majority of local creditors.**

- (41) **For the purpose of that undertaking, the assets and rights located in the Member State where the debtor has an establishment should form a sub-category of the insolvency estate, and, when distributing them or the proceeds resulting from their realisation, the insolvency practitioner in the main proceedings should respect the priority rights that creditors would have had if secondary proceedings had been opened in that Member State.**
- (42) **National law should apply, as appropriate, for the approval of the undertaking. In particular, where under national law the voting rules for adopting a restructuring plan requires the prior approval of creditors' claims, these claims should be deemed to be approved for the purpose of voting on the undertaking. Where there are different procedures for the adoption of restructuring plans under national law, Member States should designate the specific procedure which should be relevant in this context.**
- (43) **In addition, this Regulation should provide for the possibility that the court temporarily stays the opening of secondary proceedings, when a temporary moratorium of individual enforcement proceedings has been granted in the main proceedings, in order to preserve the efficiency of such moratorium. The court should be able to grant the temporary stay if it is satisfied that suitable measures are in place to protect the interest of local creditors. In that case, all creditors that could be affected by the outcome of the negotiations on a restructuring plan should be informed of the negotiations and be allowed to participate in them.**

**In order to ensure an effective protection of local interests, the insolvency practitioner of 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 afterwards secondary proceedings were opened.**

- (44) **Nothing in this Regulation should prevent the courts of the Member State in which secondary proceedings have been opened from sanctioning the debtor's directors for any violation of their duties, provided that those courts have jurisdiction to address such disputes under their national law.**
- (45) **Main insolvency proceedings and secondary proceedings can contribute to the efficient administration of the debtor's insolvency estate or to the effective realisation of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings. The main condition here is that the various insolvency practitioners 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 insolvency practitioner in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. In particular, the insolvency practitioner 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, insolvency practitioners 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 organisations active in the area of insolvency law, and in particular relevant guidelines prepared by UNCITRAL.**

- (46) **In view of such cooperation, insolvency practitioners and courts may enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, where this is compatible with the rules applicable to each of the proceedings. Such agreements and protocols may vary in form (written or oral) and scope (ranging from generic to specific) and may be entered into by different parties. Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved, where the national law so requires. They may reflect agreement between the parties to take, or refrain from taking, certain steps or actions.**
- (47) **Similarly, the courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor or for different members of a group of companies, provided that this is compatible with the rules applicable to each of the proceedings, in particular with the requirements concerning qualification and licensing of the insolvency practitioner, if any.**
- (48) **This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies.**

- (49) **Where insolvency proceedings have been opened for several companies of the same group, there should be proper cooperation between the actors involved in these proceedings. The various insolvency practitioners and the courts involved should therefore be under a similar obligation to cooperate and communicate with each other as those involved in main and secondary proceedings relating to the same debtor. Cooperation between the insolvency practitioners should never go against the interests of the creditors in each of the proceedings and such cooperation should be aimed at finding a solution that would leverage synergies across the group.**
- (50) **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 these companies is located in a single Member State. In such situations, the court should also be able to appoint, if appropriate, the same insolvency practitioner in all proceedings concerned, provided that this is not incompatible with the rules applicable to them.**
- (51) **With a view to further improving the coordination of the insolvency of members of a group of companies, and to allow for coordinated restructuring of the group, this Regulation should introduce procedural rules on the coordination of the insolvency of members of a group of companies. This coordination should strive to ensure the efficiency of the coordination, whilst at the same time respecting each group member's separate legal personality.**

**(52) An insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group should be able to request the opening of group coordination proceedings. However, where the law applicable to the insolvency so requires, this insolvency practitioner should obtain the necessary authorisation before making such a request. The request should specify essential elements of the coordination, in particular an outline of the coordination plan, a proposal who should be appointed as coordinator and an outline of the estimated costs of the coordination.**

**(53) In order to ensure the voluntary nature of group coordination proceedings the insolvency practitioners involved should be able to object to their participation in the proceedings within a specified time period.**

**In order to allow the insolvency practitioners involved to take an informed decision on the participation in the coordination proceedings, the insolvency practitioners involved should be informed at an early stage of the essential elements of the coordination. However, an insolvency practitioner who initially objected to the inclusion in the coordination proceedings should be able to subsequently request to participate in them. In such a case, the coordinator should take a decision on the admissibility of such a request. All insolvency practitioners, including the requesting insolvency practitioner, should be informed of the coordinator's decision and should have the possibility to contest that decision before the court which has opened the coordination proceedings.**

**(54) Group coordination proceedings should always strive to facilitate the effective administration of the insolvency proceedings of the group members, and have a generally positive impact on the creditors. This Regulation should therefore ensure that the court with which a request for group coordination proceedings has been filed makes an assessment of these criteria prior to opening group coordination proceedings.**



**(55) In the same line, the advantages of group coordination proceedings should never be outweighed by the costs of these proceedings. Therefore, it is necessary to ensure that the costs of the coordination, and the share that each group member will bear are adequate, proportional and reasonable, to be determined in accordance with the national law of the Member State where group coordination proceedings have been opened. The insolvency practitioners involved should also have the possibility of controlling these costs from the early stage of the proceedings. Where the national law so requires, this may involve the insolvency practitioner seeking the approval of a court or creditors committee.**

**Where the coordinator estimates that the fulfilment of his tasks requires a significant increase in the costs compared to the initially estimated costs and, in any case, where the costs exceed 10% of the estimated costs, the coordinator should be authorised by the court which has opened the coordination proceedings to exceed such costs. Before taking its decision, the court which has opened the coordination proceedings should give the possibility to the participating insolvency practitioners to be heard before it in order to communicate their observations on the opportunity of the coordinator's request.**

**(56) For members of a group of companies which are not participating in group coordination proceedings, this regulation should also provide for an alternative mechanism to achieve a coordinated restructuring of the group. An insolvency practitioner appointed in proceedings relating to a member of a group of companies should have standing to request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to other members of the group which are not subject to group coordination proceedings. Such a stay may only be requested if a restructuring plan is presented for the members of the group concerned, that this plan would be to the benefit of the creditors in the proceedings in respect of which the stay is requested and that the stay is necessary to ensure that the plan can be properly implemented.**

- (57) **Nothing in this Regulation should prevent Member States from establishing national rules which would supplement the rules on cooperation, communication and coordination with regard to the insolvency of members of groups of companies set out in this Regulation, provided that the scope of application of those national rules is limited to the domestic area and that their application would not impair the efficiency of the rules of this Regulation.**
- (58) **The rules on cooperation, communication and coordination in the framework of the insolvency of members of a group of companies provided for in this Regulation should only apply to the extent that proceedings relating to different members of the same group of companies have been opened in more than one Member State.**
- (59) **Every creditor, who has his habitual residence, domicile or registered office in the Union, should have the right to lodge his claims in each of the insolvency proceedings pending in the Union relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. Nothing in this Regulation should prevent the insolvency practitioner from lodging claims on behalf of certain groups of creditors, for example employees, where the national law so provides. However, in order to ensure equal treatment of creditors, the distribution of proceeds must be coordinated. Every creditor should be able to keep what he has received in the course of insolvency proceedings but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.**

- (60) **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 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters<sup>8</sup> 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. The consequences of the incomplete filing of the standard forms are left to national law.**
- (61) This Regulation should provide for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the State in which the proceedings were opened extend to all other Member States. Recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise the court's decision.

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<sup>8</sup> OJ L 324, 10.12.2007, p. 79.

- (62) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main proceedings and for local proceedings; the *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.
- (63) Automatic recognition of insolvency proceedings to which the law of the opening State normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provisions should be made for a number of exceptions to the general rule.
- (64) There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since these are of considerable importance for the granting of credit. The basis, validity and extent of such a right in rem should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of the right in rem should therefore be able to continue to assert his right to segregation or separate settlement of the collateral security. Where assets are subject to rights in rem under the *lex situs* in one Member State but the main proceedings are being carried out in another Member State, the ~~liquidator~~ **insolvency practitioner** in the main proceedings should be able to request the opening of secondary proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there. If a secondary proceeding is not opened, the surplus on sale of the asset covered by rights in rem must be paid to the ~~liquidator~~ **insolvency practitioner** in the main proceedings.

- (65) **This Regulation makes several provisions for a court to order a stay of opening proceedings or a stay of enforcement proceedings. Any such stay should not affect the rights in rem of creditors or third parties.**
- (66) If a set-off is not permitted under the law of the opening State, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off will acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.
- (67) There is also a need for special protection in the case of payment systems and financial markets. This applies for example to the position-closing agreements and netting agreements to be found in such systems as well as to the sale of securities and to the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems<sup>9</sup>. For such transactions, the only law which is material should thus be that applicable to the system or market concerned. This provision is intended to prevent the possibility of mechanisms for the payment and settlement of transactions provided for in the payment and set-off systems or on the regulated financial markets of the Member States being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules in this Regulation.

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<sup>9</sup> OJ L 166, 11.6.1998, p. 45.

**(68) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment must be determined by the law applicable to the agreement in accordance with the general rules on conflict of law. Moreover, in cases where the termination of employment contracts requires the approval by a court or administrative authority, the Member State in which an establishment of the debtor is located should retain jurisdiction to grant such approval even if no insolvency proceedings have been opened in that Member State.**

**Any other insolvency-law questions, such as whether the employees' claims are protected by preferential rights and what status such preferential rights may have, should be determined by the law of the Member State in which insolvency proceedings (main or secondary) have been opened except in cases where an undertaking to avoid secondary proceedings has been given in accordance with the provisions of this Regulation.**

**(69) The law applicable to the effects of insolvency proceedings on a pending lawsuit or pending arbitral proceeding concerning an asset or right which forms part of the debtor's insolvency estate should be the law of the Member State where that lawsuit is pending or where the arbitration has its seat. This provision should, however, not affect national rules on recognition and enforcement of arbitral awards.**

**(70) The necessary flexibility should be provided regarding certain rules of this Regulation, in order to take account of the specific procedural rules of court systems in certain Member States. Accordingly, references in this Regulation to notice being given by a judicial body of a Member State include, where a Member State's procedural rules so require, an order by that judicial body directing notice to be given.**

- (71) **For business considerations, the main content of the decision opening the proceedings should be published in another Member State at the request of the insolvency practitioner. If there is an establishment in the Member State concerned, such publication should be mandatory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.**
- (72) **In order to improve the information of 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 via the e-Justice portal. Member States should be free to publish relevant information in several registers and it should be possible to interconnect more than one register per Member State.**
- (73) **This Regulation should determine the minimum amount of information to be published in the registers. Member States should not be precluded from including additional information. When the debtor is an individual, the registers should only have to indicate a registration number if the debtor is exercising an independent business or professional activity. The registration number should be understood as the unique registration number of his independent business or professional activity published in the trade register, if any.**
- (74) **Information on certain aspects of the proceedings is essential for creditors, such as time limits for lodging claims or for challenging decisions. This Regulation should, however, not impose on Member States to calculate these time limits on an individual basis. Member States should be allowed to fulfil their obligations by adding hyperlinks to the e-Justice Portal where self-explanatory information will be given on the criteria for calculating those time-limits.**

(75) **In order to grant sufficient protection to the information relating to individuals not exercising an independent business or professional activity, Member States should be able to make access to that information subject to supplementary search criteria such as the debtor's personal identification number, his address, his date of birth or the district of the competent court or to make access conditional upon a request to a competent authority or upon the verification of a legitimate interest.**

**Member States should also be allowed not to include information on individuals not exercising an independent business or professional activity in their insolvency registers. In such a case, Member States should ensure that the relevant information is given to the creditors by individual notice and that claims of creditors who have not received the information are not affected by the proceedings.**

(76) It may be the case that some of the persons concerned are not in fact aware that proceedings have been opened and act in good faith in a way that conflicts with the new situation. In order to protect such persons who make a payment to the debtor because they are unaware that foreign proceedings have been opened when they should in fact have made the payment to the foreign ~~liquidator~~ **insolvency practitioner**, it should be provided that such a payment is to have a debt-discharging effect.

~~(31) **This Regulation should include Annexes relating to the organisation of insolvency proceedings. As these Annexes relate exclusively to the legislation of Member States, there are specific and substantiated reasons for the Council to reserve the right to amend these Annexes in order to take account of any amendments to the domestic law of the Member States.**~~



- (77) **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 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>10</sup>.**
- (78) **This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.**
- (79) **Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>11</sup> and Regulation 45/2001/EC of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>12</sup> apply to the processing of personal data within the framework of this Regulation, as modified.**
- (80) **This Regulation is without prejudice to Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.**

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<sup>10</sup> OJ L 55, 28.2.2011, p. 13.

<sup>11</sup> OJ L 281, 23.11.1995, p. 31.

<sup>12</sup> OJ L 8, 12.1.2001, p. 1.

- (81) **Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.**
- (82) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty ~~establishing~~ **on the Functioning of the European Community Union**, have given notice of their wish to take part in the adoption and application of this Regulation.
- (83) Denmark, 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 ~~establishing~~ **on the Functioning of the European Community Union**, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

*Article 1*

Scope

1. **This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on a law relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation,**
  - (a) **the debtor is totally or partially divested of his assets and an insolvency practitioner is appointed,**
  - (b) **the assets and affairs of the debtor are subject to control or supervision by a court or**
  - (c) **a temporary stay of individual enforcement proceedings is granted by a court or by operation of law in order to allow for negotiations between the debtor and his creditors, provided that the proceedings in which the stay is granted (i) provide for suitable measures to protect the general body of creditors and (ii) are preliminary to one of the proceedings referred to under points (a) or (b) if no agreement is reached.**

**Where the proceedings referred to in this paragraph may be commenced in situations where there is only a likelihood of insolvency, their purpose must be to avoid the debtor's insolvency or the cessation of his business activities.**

**The proceedings referred to in this paragraph are listed in Annex A.**

2. **This Regulation shall not apply to the proceedings referred to in paragraph 1 concerning**
- (a) **insurance undertakings,**
  - (b) **credit institutions,**
  - (c) **investment firms and other firms, institutions and undertakings to the extent these are covered by Directive 2001/24/EC as amended, and**
  - (d) **collective investment undertakings.**

*Article 2*

Definitions

**For the purposes of this Regulation:**

- (1) **"collective proceedings" means proceedings which include all or a significant part of the debtor's creditors provided that, in the latter case, the proceedings do not affect the claims of those creditors which are not involved in them;**
- (2) **"collective investment undertakings" means undertakings for collective investment in transferable securities (UCITS) as defined by Directive 2009/65/EC and alternative investment funds (AIFs) as defined by Directive 2011/61/EU;**
- (3) **"debtor in possession" means a debtor in respect of whom insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where therefore the debtor remains totally or at least partially in control of his assets and affairs;**

- (4) **"insolvency proceedings" means the proceedings listed in Annex A;**
- (5) **"insolvency practitioner" means any person or body whose function, including on an interim basis, is**
- (i) to verify and admit claims submitted in insolvency proceedings;**
  - (ii) to represent the collective interest of the creditors;**
  - (iii) to administer, either in full or in part, assets of which the debtor has been divested;**
  - (iv) to liquidate the assets referred to in (iii); or**
  - (v) to supervise the administration of the debtor's affairs.**

**Those persons and bodies are listed in Annex B;**

- (6) **"court" means**
- (i) in Articles 1(1)(b) and (c), 4(2), 5, 6, 21(3), 24(2)(j), 36, 39, and 61 to 77, the judicial body of a Member State;**
  - (ii) in all other articles, 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;**
- (7) **"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 an insolvency practitioner.**

- (8) **"the time of the opening of proceedings" means the time at which the judgment opening insolvency proceedings becomes effective, whether it is final or not;**
- (9) **"the Member State in which assets are situated" means, in the case of:**
- (i) **registered shares in companies other than those referred to in (ii), the Member State within the territory of which the company having issued the shares has its registered office;**
  - (ii) **financial instruments, the 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;**
  - (iii) **cash held in accounts with a credit institution, the Member State indicated in the account's IBAN, or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located;**
  - (iv) **property and rights ownership of or entitlement to which is entered in a public register other than those referred to in paragraph (i), the Member State under the authority of which the register is kept,**
  - (v) **European patents, the Member State for which the European patent is granted,**
  - (vi) **copyright and related rights, the Member State within the territory of which the owner of such rights has his habitual residence or registered office,**

**(vii) tangible property, other than that referred to in paragraphs (i) to (iv), the Member State within the territory of which the property is situated,**

**(viii) claims against third parties other than those relating to assets referred to in subparagraph (iii), 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);**

- (10) "establishment" means any place of operations where the debtor carries out or has carried out in the three months prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets;**
- (11) "local creditors" means the creditors whose claims against the debtor arose from or in connection with the operation of an establishment situated in a Member State other than the one where the debtor's centre of main interests is located;**
- (12) "group of companies" means a parent undertaking and all its subsidiary undertakings;**
- (13) "parent undertaking" means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which is preparing consolidated financial statements in accordance with Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, shall be deemed to be a parent undertaking.**

*Article 3*

International jurisdiction

- 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.**

**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. This presumption shall only apply if the registered office has not been moved to another Member State within a period of 3 months prior to the request for the opening of insolvency proceedings.**

**In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. This presumption shall only apply if the individual's principal place of business has not been moved to another Member State within a period of 3 months prior to the request for the opening of insolvency proceedings.**

**In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within a period of 6 months prior to the request for the opening of insolvency proceedings.**



2. Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.
3. **Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary proceedings.**
4. **The territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:**
  - (a) **where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or**
  - (b) **where the opening of territorial insolvency proceedings is requested by:**
    - (i) **a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or**
    - (ii) **a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.**

**When main insolvency proceedings are opened, the territorial insolvency proceedings become secondary proceedings.**

## *Article 4*

### **Examination as to jurisdiction**

- 1. The court seized of a request to open insolvency proceedings shall of its own motion 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. Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or 3(2).**

## *Article 5*

### **Judicial review of the decision to open main proceedings**

- 1. The debtor or any creditor may challenge before a court the decision opening main proceedings on grounds of international jurisdiction.**
- 2. The decision opening main proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than the lack of jurisdiction, where the national law so provides.**

*Article 6*

**Jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them**

- 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, such as avoidance actions.**
  
- 2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the insolvency practitioner 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 these courts have jurisdiction pursuant to the rules of Regulation (EU) No 1215/2012. The same shall apply to the debtor in possession, provided that he is able under national law to bring actions on behalf of the insolvency estate.**
  
- 3. For the purpose of 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.**

*Article 47*

Law applicable

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened, hereafter referred to as the ‘State of the opening of proceedings’.
2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. It shall determine in particular:
  - (a) against which debtors insolvency proceedings may be brought on account of their capacity;
  - (b) the assets which form part of the **insolvency** estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
  - (c) the respective powers of the debtor and the ~~liquidator~~ **insolvency practitioner**;
  - (d) the conditions under which set-offs may be invoked;
  - (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
  - (f) **the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits;**

- (g) the claims which are to be lodged against the debtor's **insolvency** estate and the treatment of claims arising after the opening of insolvency proceedings;
- (h) the rules governing the lodging, verification and admission of claims;
- (i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
- (j) the conditions for and the effects of closure of insolvency proceedings, in particular by composition;
- (k) creditors' rights after the closure of insolvency proceedings;
- (l) who is to bear the costs and expenses incurred in the insolvency proceedings;
- (m) **the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.**

*Article 8*

Third parties' rights in rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:
  - (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
  - (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
  - (c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
  - (d) a right in rem to the beneficial use of assets.
3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.
4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article ~~4~~7(2)(m).

*Article ~~6~~9*

Set-off

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.
2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article ~~4~~7(2)(m).

## *Article 7 10*

### Reservation of title

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of opening of proceedings.
2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.
3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article ~~4~~7(2)(m).

## *Article 8 11*

### Contracts relating to immovable property

1. The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated.
2. **The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where (a) the law of the Member State applicable to those contracts requires that such a contract may only be terminated or modified with the approval of the court opening insolvency proceedings and (b) no insolvency proceedings have been opened in that Member State.**

*Article ~~9~~ 12*

Payment systems and financial markets

1. Without prejudice to Article ~~5~~ 8, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.
2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

*Article ~~10~~ 13*

Contracts of employment

1. The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.
2. **The courts of the Member State in which secondary proceedings could be opened shall retain jurisdiction to approve the termination or modification of the contracts referred to in this Article even if no insolvency proceedings have been opened in that Member State.**

**The same shall apply to an authority competent under national law to approve the termination or modification of the contracts referred to in this Article.**



*Article ~~11~~ 14*

Effects on rights subject to registration

The effects of insolvency proceedings on the rights of the debtor in immoveable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

*Article ~~12~~ 15*

**European patents with unitary effect and Community trade marks**

**For the purposes of this Regulation, a European patent with unitary effect, a Community trade mark or any other similar right established by Union law may be included only in the proceedings referred to in Article 3(1).**

*Article ~~13~~ 16*

Detrimental acts

Article ~~4~~7(2)(m) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

- the said act is subject to the law of a Member State other than that of the State of the opening of proceedings, and
- that law does not allow any means of challenging that act in the relevant case.

*Article ~~14~~ 17*

Protection of third-party purchasers

Where, by an act concluded after the opening of insolvency proceedings, the debtor disposes, for consideration, of:

- an immoveable asset, or
- a ship or an aircraft subject to registration in a public register, or
- securities whose existence presupposes registration in a register laid down by law,

the validity of that act shall be governed by the law of the State within the territory of which the immoveable asset is situated or under the authority of which the register is kept.

*Article ~~15~~ 18*

**Effects of insolvency proceedings on pending lawsuits  
or arbitral proceedings**

**The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceeding concerning an asset or a right which forms part of the debtor's insolvency estate 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.**

## CHAPTER II

### RECOGNITION OF INSOLVENCY PROCEEDINGS

#### *Article ~~16~~ 19*

##### Principle

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings.

This rule shall also apply where, on account of his capacity, insolvency proceedings cannot be brought against the debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

#### *Article ~~17~~ 20*

##### Effects of recognition

1. The judgment opening the proceedings referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.
2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of the creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

Powers of the ~~liquidator~~ insolvency practitioner

1. **The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(1) 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 nor any 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~~ 8 and ~~7~~ 10, he may in particular remove the debtor's assets from the territory of the Member State in which they are situated.**
2. The ~~liquidator~~ insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. He may also bring any action to set aside which is in the interests of the creditors.
3. In exercising his powers, the ~~liquidator~~ insolvency practitioner shall comply with the law of the Member State within the territory of which he intends to take action, in particular with regard to procedures for the realisation of assets. **Those powers may not include coercive measures, unless ordered by a court of that Member State, or the right to rule on legal proceedings or disputes.**

*Article ~~19~~ 22*

Proof of the ~~liquidator~~ **insolvency practitioner's** appointment

The ~~liquidator~~ **insolvency practitioner's** appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which he intends to act may be required. No legalisation or other similar formality shall be required.

*Article ~~20~~ 23*

Return and imputation

1. A creditor who, after the opening of the proceedings referred to in Article 3(1) obtains by any means, in particular through enforcement, total or partial satisfaction of his claim on the assets belonging to the debtor situated within the territory of another Member State, shall return what he has obtained to the ~~liquidator~~ **insolvency practitioner**, subject to **Articles ~~5~~ 8 and ~~7~~ 10**.
2. In order to ensure equal treatment of creditors a creditor who has, in the course of insolvency proceedings, obtained a dividend on his claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

## *Article 24*

### **Establishment of insolvency registers**

- 1. Member States shall establish and maintain in their territory one or several registers in which information concerning insolvency proceedings is published ("insolvency registers"). This information shall be published as soon as possible after the opening of such proceedings.**
  
- 2. The information referred to in paragraph 1 shall be made publicly available, subject to the conditions laid down in Article 27, and shall include the following ("mandated information"):**
  - (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 referred to in Annex A opened and, where applicable, any relevant subtype of such proceedings opened in accordance with national law;**
  - (d) whether jurisdiction for opening proceedings is based on Article 3 (1), 3 (2) or 3 (4);**
  - (e) if the debtor is a company or a legal person, its name, registration number, registered office or, if different, postal address;**
  - (f) if the debtor is an individual whether or not exercising an independent business or professional activity, his name, registration number, if any, and postal address or, where the address is protected, his place and date of birth;**
  - (g) the name, postal address or email address of the insolvency practitioner appointed in the proceedings, if any;**

- (h) the time limit for lodging claims, if any, or a referral to the criteria for calculating this time limit;**
- (i) the date of closing main proceedings, if any;**
- (j) the court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with Article 5, or a referral to the criteria for calculating this time limit.**

**3. Paragraph 2 shall not preclude Member States from including documents or additional information in their national insolvency registers, such as insolvency-related directors' disqualifications.**

**4. Member States are not obliged to include the information referred to in paragraph 1 concerning individuals not exercising an independent business or professional activity in the insolvency registers, nor to make such information publicly available through the system of interconnection of these registers, provided that foreign known creditors are informed, pursuant to Article 54, of the elements referred to under point j of paragraph 2.**

**Where a Member State makes use of the possibility referred to in paragraph 4, subparagraph 1, the insolvency proceedings shall not affect the claims of the foreign creditors who have not received the information referred to in the first subparagraph.**

**5. The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 55 (6).**

## *Article 25*

### **Interconnection of insolvency registers**

- 1. The Commission shall establish a decentralised system for the interconnection of insolvency registers by means of implementing act. This system shall be composed of the insolvency registers and the European e-Justice Portal which shall serve as central public electronic access point to information from the system. The system shall provide a search service in all the official languages of the institutions of the Union in order to make available the mandated information and any other documents or information included in the insolvency registers which the Member States choose to make available through the European e-Justice Portal.**
  
- 2. By means of implementing act in accordance with the procedure referred to in Article 87, the Commission shall adopt the following by.....[48 months after the entry into force of the Regulation]:**
  - (a) 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;**
  
  - (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;**
  
  - (c) minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 24;**
  
  - (d) minimum criteria for the presentation of the results of such searches based on the information set out in Article 24;**
  
  - (e) the modalities and the technical conditions of availability of services provided by the system of interconnection; and**
  
  - (f) a glossary containing a basic explanation of the national insolvency procedures listed in Annex A.**



## *Article 26*

### **Costs of establishing and interconnecting insolvency registers**

- 1. The establishment, maintenance 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 establishing and adjusting its national insolvency registers to make them interoperable with the European e-Justice Portal, as well as the costs to administer, operate and maintain those registers. This shall be without prejudice to the possibility to apply for grants to support such activities under the European Union's financial programmes.**

## *Article 27*

### **Conditions of access to information through the system of interconnection**

- 1. Member States shall ensure that the mandated information referred to in points (a) to (j) of Article 24(2) is available free of charge via the system of interconnected insolvency registers.**
- 2. This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 24(3) via the system of interconnected insolvency registers.**
- 3. Member States may make access to mandated information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, subject to supplementary search criteria relating to the debtor in addition to the minimum criteria referred to in Article 25(2)(c).**

- 4. Member States may require that access to the information referred to in paragraph 3 be made conditional upon a request to the competent authority. Member States may make access conditional upon the verification of the existence of a legitimate interest for accessing such information. The requesting person shall be able to submit the request for information electronically by means of a standard form via the e-Justice Portal. If a legitimate interest is required, the requesting persons shall be allowed to justify his request by electronic copies of relevant documents. The requesting person shall be provided with an answer by the competent authority within 3 working days.**

**The requesting person shall not be obliged to provide translations of the documents justifying his request nor to bear any costs of translation which the competent authority may incur.**

*Article ~~21~~ 28*

**Publication in another Member State**

- 1. The insolvency practitioner or the debtor in possession shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing the insolvency practitioner 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 Member State. Such publication shall specify, where appropriate, the insolvency practitioner appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).**
- 2. The insolvency practitioner or the debtor in possession may request that the information referred to in paragraph 1 of this Article be published in any other Member State where the insolvency practitioner or the debtor in possession deems it necessary in accordance with the publication procedures provided for in that State.**

*Article ~~22~~ 29*

**Registration in public registers of another Member State**

- 1. Where the law of a Member State in which an establishment of the debtor is located and this establishment has been entered into a public register of that Member State or in which immovable property belonging to the debtor is located requires information on the opening of insolvency proceedings referred to in Article 28 to be published in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all the necessary measures to ensure such a registration.**
- 2. The insolvency practitioner or the debtor in possession may request such registration in any other Member State, provided that the registration is allowed by the law of the Member State where the register is kept.**

*Article ~~23~~ 30*

Costs

The costs of the publication and registration provided for in Articles ~~21~~ 28 and ~~22~~ 29 shall be regarded as costs and expenses incurred in the proceedings.

*Article ~~24~~ 31*

Honouring of an obligation to a debtor

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the ~~liquidator~~ **insolvency practitioner** in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.
2. Where such an obligation is honoured before the publication provided for in Article ~~21~~ **28** 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.

*Article ~~25~~ 32*

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~~ 19 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 39 to 57, with the exception of Articles 45 and 46 of Regulation (EU) No 1215/2012.**

**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 the Regulation referred to in paragraph 1 provided that the Regulation is applicable.**

*Article ~~26~~ 33*

Public policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

### CHAPTER III

#### SECONDARY INSOLVENCY PROCEEDINGS

*Article ~~27~~ 34*

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. Where the main proceedings required that the debtor is insolvent, the debtor's insolvency shall not be re-examined in the Member State where secondary proceedings may be opened. 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.**

*Article ~~28~~ 35*

Applicable law

Save as otherwise provided in this Regulation, the law applicable to secondary proceedings shall be that of the Member State within the territory of which the secondary proceedings are opened.

*Article 36*

**Right to give an undertaking in order to avoid secondary proceedings**

- 1. In order to avoid the opening of secondary proceedings, the insolvency practitioner in the main proceedings may give a unilateral undertaking ("the undertaking") in respect of the assets located in the Member State in which secondary proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, he will comply with the distribution and priority rights under national law that creditors would have if secondary proceedings were opened in that Member State. The undertaking shall specify the factual assumptions on which it is based, in particular with respect to the value of the assets located in the Member State concerned and the options available to realise such assets.**
- 2. Where an undertaking has been given in accordance with this Article, the law applicable to the distribution of proceeds from the realisation of assets referred to in paragraph 1, the ranking of creditors' claims and the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the Member State in which secondary proceedings could have been opened. The relevant point in time for determining the assets referred to in paragraph 1 shall be the moment when the undertaking is given.**

- 3. 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, or, where there are several official languages in that Member State, the official language or one of the official languages of the place where secondary proceedings could have been opened.**
- 4. The undertaking shall be made in writing. It shall be subject to other form requirements, if any, and approval requirements as to distributions, if any, of the State of the opening of the main proceedings.**
- 5. The undertaking shall be approved by the known local creditors. The rules on qualified majority and voting that apply for the adoption of restructuring plans under the law of the Member State where secondary proceedings could have been opened shall also apply for the approval of the undertaking. Where so allowed by national law creditors should be able to participate in the vote by distance means of communication. The insolvency practitioner shall inform the known local creditors of the undertaking, the rules and modalities for its approval and of the approval or rejection of the undertaking.**
- 6. The undertaking given and approved in accordance with this Article shall be binding on the estate. If secondary proceedings are opened in accordance with Articles 37 and 38, the insolvency practitioner in the main proceedings shall transfer any assets which he removed from the territory of that Member State after the undertaking has been given or, in case these assets have already been realised, their proceeds, to the insolvency practitioner in the secondary proceedings.**

- 7. Where the insolvency practitioner has given an undertaking, he shall inform local creditors about the intended distributions prior to distributing the assets and proceeds referred to in paragraph 1. If the information does not comply with the terms of the undertaking or the applicable law, any local creditor may challenge such distribution before the courts of the Member State in which main proceedings have been opened in order to obtain a distribution in accordance with the terms of the undertaking and the applicable law. In such case, no distribution shall take place until the court has taken a decision on the challenge.**
- 8. Local creditors may apply to the courts of the Member State in which main proceedings have been opened in order to require the insolvency practitioner in the main proceedings to take any suitable measures necessary to ensure compliance with the terms of the undertaking available under the law of the Member State of the opening of main proceedings.**
- 9. Local creditors may also apply to the courts of the Member State in which secondary proceedings would have been opened in order to require the court to take provisional or protective, measures to ensure compliance by the insolvency practitioner with the terms of the undertaking.**
- 10. The insolvency practitioner shall be liable for any damage caused to local creditors as a consequence of his non-compliance with the obligations and requirements set out in this Article.**
- 11. For the purpose of this Article, an authority which is established in the Member State where secondary proceedings could have been opened and which is obliged under Directive 2008/94/EC to guarantee payment of employees' outstanding claims resulting from contracts of employment or employment relationships shall be deemed to be a "local creditor", where the national law so provides.**



*Article ~~29~~ 37*

**Right to request the opening of secondary proceedings**

- 1. The opening of secondary proceedings may be requested by:**
  - (a) the insolvency practitioner in the main proceedings;**
  - (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested.**
- 2. Where an undertaking has become binding in accordance with Article 36, the request for opening secondary proceedings must be lodged within 30 days of having received notice of the approval of the undertaking.**

*Article 38*

**Decision to open secondary proceedings**

- 1. The court seized of a request to open secondary proceedings shall immediately give notice to the insolvency practitioner or the debtor in possession in the main proceedings and give him an opportunity to be heard on the request.**
- 2. Where the insolvency practitioner in the main proceedings has given an undertaking in accordance with Article 36, the court referred to in paragraph 1 shall at the request of the insolvency practitioner not open secondary proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditors.**

**3. Where a temporary stay of individual enforcement proceedings has been granted in order to allow for negotiations between the debtor and his creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary proceedings for a period not longer than three months, provided that suitable measures are in place to protect the interests of local creditors.**

**The court referred to in paragraph 1 may order protective measures to protect the interest of local creditors by requiring the insolvency practitioner or the debtor in possession not to remove or dispose of any assets which are located in the Member State where his establishment is located unless this is done in the ordinary course of business. The court may also order other measures to protect the interest of local creditors during a stay unless this is incompatible with the national rules on civil procedure.**

**The stay of the opening of secondary proceedings shall be revoked by the court of its own motion or at the request of any creditor if during the stay an agreement in the negotiations referred to in the first subparagraph has been concluded.**

**The stay may be revoked by the court of its own motion or at the request of any creditor if the continuation of the stay is detrimental to the creditor's rights, in particular if the negotiations have been disrupted or it has become evident that they are unlikely to be concluded or if the insolvency practitioner or the debtor in possession infringed the prohibition to dispose of his assets or to remove them from the territory of the Member State where the establishment is located.**

4. **At the request of the insolvency practitioner in the main proceedings, the court referred to in paragraph 1 may open a type of insolvency proceedings referred to in Annex A other than the one initially requested provided that the conditions for opening this other type of procedure under national law are fulfilled and that this procedure is the most appropriate taking account of the interests of the local creditors and of coherence between the main and secondary insolvency proceedings. The second sentence of Article 34 shall apply.**

*Article 39*

**Judicial review of the decision to open secondary proceedings**

**The insolvency practitioner in the main proceedings may challenge the decision to open secondary proceedings before the courts of the Member State where secondary proceedings have been opened, on the ground that the court did not comply with the conditions and requirements of Article 38.**

*Article ~~39~~ 40*

**Advance payment of costs and expenses**

Where the law of the Member State in which the opening of secondary proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

*Article 41*

**Cooperation and communication between insolvency practitioners**

- 1. The insolvency practitioner in the main proceedings and the insolvency practitioner or practitioners in secondary proceedings concerning the same debtor shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings. Such cooperation may take any form, including the conclusion of agreements or protocols.**
  
- 2. In implementing the cooperation set out in paragraph 1, the insolvency practitioners shall:**
  - (a) as soon as possible 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 insolvency practitioner in the secondary proceedings shall give the insolvency practitioner in the main proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary proceedings.**
  
- 3. Paragraphs 1 and 2 shall apply mutatis mutandis to situations where, in the main or in the secondary insolvency proceedings or in one of the territorial insolvency proceedings concerning the same debtor and opened at the same point in time, the debtor remains in possession of his assets.**

## *Article 42*

### **Cooperation and communication between courts**

- 1. In order to facilitate the coordination of main and territorial or 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 such cooperation is not incompatible with the rules applicable to each of the proceedings. For this purpose, the courts may, where appropriate, appoint an independent person or body acting on its instructions, provided that this is not incompatible with the rules applicable to them.**
- 2. In implementing the cooperation set out in paragraph 1, the courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with, or request information or assistance directly from each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.**
- 3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern**
  - (a) coordination in the appointment of the insolvency practitioners;**
  - (b) communication of information by any means considered appropriate by the court;**
  - (c) coordination of the administration and supervision of the debtor's assets and affairs;**
  - (d) coordination of the conduct of hearings;**
  - (e) coordination in the approval of protocols, where necessary.**

### *Article 43*

#### **Cooperation and communication between insolvency practitioners and courts**

- 1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings opened with respect to the same debtor,**
  - (a) an insolvency practitioner 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;**
  - (b) an insolvency practitioner in territorial or secondary 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, and**
  - (c) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open other territorial or secondary proceedings is pending or which has opened such proceedings;**

**in each case to the extent that such cooperation and communication are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interests.**
- 2. The cooperation referred to in paragraph 1 may be implemented by any appropriate means such as those set out in Article 42 (3).**

*Article 44*

**Costs of cooperation and communication**

**Articles 42 and 43 may not lead to courts charging costs to each other for cooperation and communication.**

*Article ~~32~~ 45*

Exercise of creditors' rights

1. Any creditor may lodge his claim in the main proceedings and in any secondary proceedings.
2. The ~~liquidators~~ **insolvency practitioners** in the main and any secondary proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served thereby, subject to the right of creditors to oppose that or to withdraw the lodgement of their claims where the law applicable so provides.
3. The ~~liquidator~~ **insolvency practitioner** in the main or secondary proceedings shall be empowered to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

**Stay of the process of realisation of assets**

1. The court, which opened the secondary proceedings, shall stay the process of ~~liquidation~~ **realisation of assets** in whole or in part on receipt of a request from the ~~liquidator~~ **insolvency practitioner** in the main proceedings, provided that in that event it may require the ~~liquidator~~ **insolvency practitioner** in the main proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary proceedings and of individual classes of creditors. Such a request from the ~~liquidator~~ **insolvency practitioner** may be rejected only if it is manifestly of no interest to the creditors in the main proceedings. Such a stay of the process of ~~liquidation~~ **realisation of assets** may be ordered for up to three months. It may be continued or renewed for similar periods.
2. The court referred to in paragraph 1 shall terminate the stay of the process of ~~liquidation~~ **realisation of assets**:
  - at the request of the ~~liquidator~~ **insolvency practitioner** in the main proceedings,
  - of its own motion, at the request of a creditor or at the request of the ~~liquidator~~ **insolvency practitioner** in the secondary proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main proceedings or in the secondary proceedings.



*Article ~~34~~ 47*

**Power of the insolvency practitioner to propose restructuring plans**

- 1. Where the law of the Member State where secondary proceedings have been opened allows for such proceedings to be closed without liquidation by a rescue plan, a composition or a comparable measure, the insolvency practitioner in the main proceedings shall be empowered to propose such a measure himself in accordance with the procedure of that Member State.**
- 2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary proceedings, such as a stay of payment or discharge of debt, may not have effect in respect of the debtor's assets not covered by those proceedings without the consent of all the creditors having an interest.**

*Article 48*

**Impact of closure of insolvency proceedings**

- 1. Without prejudice to Article 49, the closure of insolvency proceedings shall not prevent the continuation of other insolvency proceedings concerning the same debtor which are still open at that point in time.**
- 2. Where insolvency proceedings concerning a legal person or a company in the Member State of that person's or company's registered office would entail the dissolution of the legal person or of the company, that legal person or company shall not cease to exist until such time as any other insolvency proceedings concerning the same debtor have been closed or the insolvency practitioner or practitioners in such proceedings have given consent to the dissolution.**

*Article ~~35~~ 49*

Assets remaining in the secondary proceedings

If by the **liquidation realisation** of assets in the secondary proceedings it is possible to meet all claims allowed under those proceedings, the **liquidator insolvency practitioner** appointed in those proceedings shall immediately transfer any assets remaining to the **liquidator insolvency practitioner** in the main proceedings.

*Article ~~36~~ 50*

Subsequent opening of the main proceedings

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles ~~31 to 35~~ **41, 45 to 47 and 49** shall apply to those opened first, in so far as the progress of those proceedings so permits.

*Article ~~37~~ 51*

**Conversion of secondary proceedings**

- 1. At the request of the insolvency practitioner in the main proceedings the court of the Member State where secondary proceedings have been opened may order the conversion of the secondary proceedings into another type of insolvency proceedings referred to in Annex A, provided that the conditions for opening this other type of procedure under national law are fulfilled and that this other type of procedure is the most appropriate for taking account of the interests of the local creditors and of coherence between the main and secondary insolvency proceedings.**
- 2. When considering the request, the court may seek information from the insolvency practitioners involved in both proceedings.**

*Article ~~38~~52*

Preservation measures

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of the debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

CHAPTER IV

PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS

*Article ~~39~~53*

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 creditor"), may lodge claims in the insolvency proceedings by any means of communication, 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 sole purpose of lodging of claims.**

Article ~~40~~ 54

Duty to inform creditors

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the ~~liquidator~~ **insolvency practitioner** appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States.
2. That information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims and the other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need lodge their claims. **The notice shall also include a copy of the standard form for lodging of claims referred to in Article 55 or information on where that form is available.**
3. **The information referred to in this Article shall be provided using the standard notice form to be established in accordance with Article 88. The form shall be published in the European e-Justice Portal and shall bear the heading "Notice of insolvency proceedings" in all the official languages of the institutions of the Union. It shall be transmitted in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that State has indicated it can accept in accordance with Article 55(5) if it can be assumed that that language is easier to understand for the foreign creditors.**
4. **In insolvency proceedings relating to an individual not exercising a business or professional activity, the use of the standard form referred to in this Article shall not be obligatory provided that creditors are not required to lodge their claims in order to have their debts taken into account in the proceedings.**

**Procedure for lodging claims**

- 1. Any foreign creditor may lodge his claim using the standard claims form to be established in accordance with Article 88. The form shall bear the heading "Lodgment of claims" in all the official languages of the institutions of the Union.**
- 2. The standard claims form referred to in paragraph 1 shall include the following information:**
  - (a) the name, postal address, email address, if any, personal identification number, if any, and bank details of the creditor referred to in paragraph 1;**
  - (b) the amount of the claim, specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;**
  - (c) if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest;**
  - (d) if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of these costs;**
  - (e) the nature of the claim;**
  - (f) whether any preferential creditor status is claimed and the basis of such a claim;**

- (g) 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, the date on which the security was granted and, where the security has been registered, the registration number; and**
- (h) whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened, the date on which they arose and the amount net of set-off claimed.**

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

- 3. The standard claims form shall indicate that the provision of information concerning the bank details and the personal identification number of the creditor referred to in paragraph 2(a) is not compulsory.**
- 4. When a creditor lodges his claim by other means than the standard form referred to in paragraph 1, his claim shall contain the information referred to in paragraph 2.**
- 5. Claims may be lodged in any official language of the Union. The court, the insolvency practitioner or the debtor in possession may require the creditor to provide a translation in the official language of the Member State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that Member State has indicated it can accept. Each Member State shall indicate whether it accepts any official language of the institutions of the Union other than its own for the purpose of the lodging of claims.**

6. Claims shall be lodged within the period stipulated by the law of the Member State of the opening of insolvency proceedings. In the case of a foreign creditor, that period shall not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the Member State of opening. Where a Member State is relying on Article 24(4), that period shall not be less than 30 days following a creditor having been informed pursuant to Article 54.
7. Where the court, the insolvency practitioner or the debtor in possession has doubts in relation to 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.

~~Article 42~~

**Languages**

- ~~1. The information provided for in Article 40 shall be provided in the official language or one of the official languages of the State of the opening of proceedings. For that purpose a form shall be used bearing the heading ‘Invitation to lodge a claim. Time limits to be observed’ in all the official languages of the institutions of the European Union.~~
- ~~2. Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings may lodge his claim in the official language or one of the official languages of that other State. In that event, however, the lodgement of his claim shall bear the heading ‘Lodgement of claim’ in the official language or one of the official languages of the State of the opening of proceedings. In addition, he 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.~~

## CHAPTER V

### INSOLVENCY PROCEEDINGS OF MEMBERS OF A GROUP OF COMPANIES

#### *Section 1 Cooperation and communication*

#### *Article 56*

#### **Cooperation and communication between insolvency practitioners**

- 1. Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent such cooperation is appropriate to facilitate the effective administration of these proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interests. That cooperation may take any form, including the conclusion of agreements or protocols.**
  
- 2. In implementing the cooperation set out in paragraph 1, the insolvency practitioners shall**
  - (a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;**
  
  - (b) consider whether possibilities exist for coordinating the administration and supervision of the affairs of the group members which are subject to insolvency proceedings, and if so, coordinate such administration and supervision;**
  
  - (c) consider whether possibilities exist for restructuring group members which are subject to insolvency proceedings and, if so, coordinate with respect to the proposal and negotiation of a coordinated restructuring plan;**



**For the purposes of points (b) and (c), all or some of the insolvency practitioners referred to in paragraph 1 may agree to grant additional powers to an insolvency practitioner appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings. They may also agree on the allocation of certain tasks amongst them, where such allocation of tasks is permitted by the rules applicable to each of the proceedings.**

*Article 57*

**Cooperation and communication between courts**

- 1. Where insolvency proceedings relate to two or more members of a group of companies, a court 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 such cooperation is appropriate to facilitate the effective administration of the proceedings, is not incompatible with the rules applicable to them and does not entail any conflict of interests. For this purpose, the courts may, where appropriate, appoint an independent person or body to act on its instructions, provided that this is not incompatible with the rules applicable to them.**
- 2. In implementing the cooperation set out in paragraph 1, the courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with each other, or request information or assistance directly from each other, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.**

- 3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate, including**
- (a) coordination in the appointment of the insolvency practitioners;**
  - (b) communication of information by any means considered appropriate by the court;**
  - (c) coordination of the administration and supervision of the assets and affairs of the members of the group;**
  - (d) coordination of the conduct of hearings;**
  - (e) coordination in the approval of protocols where necessary.**

*Article 58*

**Cooperation and communication between insolvency practitioners and courts**

**An insolvency practitioner appointed in insolvency proceedings concerning a member of a group of companies**

- (a) 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; and**
- (b) 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,**

**to the extent such cooperation and communication are appropriate to facilitate the effective administration of the proceedings, do not entail any conflict of interests and are not incompatible with the rules applicable to them.**

### *Article 59*

#### **Costs of cooperation and communication in proceedings concerning members of a group of companies**

The costs of the cooperation and communication provided for in Articles 56 to 60 incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

### *Article 60*

#### **Powers of the insolvency practitioner in proceedings concerning members of a group of companies**

1. **An insolvency practitioner appointed in insolvency proceedings opened with respect to a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings,**
  - (a) **be heard in any of the proceedings opened with respect to any other member of the same group;**
  - (b) **request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:**
    - (i) **a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under Article 56(2)(c) and presents reasonable chance of success;**
    - (ii) **such a stay is necessary in order to ensure the proper implementation of the plan;**

- (iii) the plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and**
  - (iv) neither the insolvency proceedings in which the insolvency practitioner referred to in paragraph 1 of this Article has been appointed nor the proceedings with respect to which the stay is requested are subject to coordination under Section 2 of this chapter;**
- (c) apply for the opening of group coordination proceedings in accordance with Article 61.**

**2. The court having opened proceedings referred to in point (b) of paragraph 1 shall stay any measure related to the realisation of the assets in the proceedings in whole or in part if satisfied that the conditions referred to in paragraph 1(b) are fulfilled.**

**Before ordering the stay, the court shall hear the insolvency practitioner appointed in the proceedings for which the stay is requested. Such a stay may be ordered for any period, not exceeding three months, which the court considers appropriate and which is compatible with the rules applicable to the proceedings.**

**The court ordering the stay may require the insolvency practitioner referred to in paragraph 1 to take any suitable measure available under national law to guarantee the interests of the creditors in the proceedings.**

**The court may extend the duration of the stay by such further period or periods as it considers appropriate and which are compatible with the rules applicable to the proceedings provided that the conditions referred to in sub-paragraphs (ii) to (iv) of paragraph 1(b) continue to be fulfilled and the total duration of the stay (the initial period together with any such extensions) does not exceed six months.**

## *Section 2: Coordination*

### *2.1 Procedure*

#### *Article 61*

##### **Request to open group coordination proceedings**

- 1. Group coordination proceedings may be requested at any court having jurisdiction over the insolvency proceedings of a member of the group by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.**
- 2. This request shall be made in accordance with the conditions provided by law of the proceedings in which the insolvency practitioner has been appointed.**
- 3. The request referred to in paragraph 1 shall be accompanied by:**
  - (a) a proposal as to the person to be nominated as the coordinator, details of his eligibility pursuant to Article 71, details of his qualifications and his written agreement to act as coordinator;**
  - (b) an outline of the proposed group coordination and in particular the reasons why the conditions set out in Article 63(1) are fulfilled;**
  - (c) a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;**
  - (d) an outline of the estimated costs of the proposed group coordination and the estimation of the share to be paid by each member of the group.**

## *Article 62*

### **Priority rule**

**Without prejudice to Article 66, where the opening of group coordination proceedings is requested at courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court.**

## *Article 63*

### **Notice by the court seised**

- 1. The court seised of a request to open group coordination proceedings shall as soon as possible give notice of the request for the opening of group coordination proceedings and of the proposed coordinator to the insolvency practitioners appointed in relation to the members of the group as indicated in the request referred to in Article 61(3)(c), if it is satisfied that**
  - (a) the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;**
  - (b) no creditor of any group member anticipated to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and**
  - (c) the proposed coordinator fulfils the requirements set out in Article 71.**
- 2. The notice referred to in paragraph 1 shall list the elements referred to in Article 61 (3) (a) to (d).**
- 3. The notice referred to in paragraph 1 shall be sent by registered letter attested by an acknowledgment of receipt.**
- 4. The court seised shall give the insolvency practitioners involved the opportunity to be heard.**

## *Article 64*

### **Objections by the insolvency practitioners**

- 1. An insolvency practitioner appointed in respect of any group member may object to respectively:**
  - (a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which he has been appointed or;**
  - (b) the person proposed as a coordinator.**
  
- 2. Objections pursuant to paragraph 1 shall be lodged with the court referred to in Article 63 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1.**

**The objection may be made by means of the standard form established in accordance with Article 88.**
  
- 3. Prior to taking the decision to participate or not to participate in the coordination in accordance with paragraph 1, an insolvency practitioner shall obtain any approval which may be required under the law of the Member State of the opening the insolvency proceedings for which he has been appointed.**

*Article 65*

**Consequences of the objection to the inclusion in group coordination**

- 1. Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which he has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.**
- 2. The powers of the court referred to in Article 68 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.**

*Article 66*

**Choice of court for group coordination proceedings**

- 1. Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member State having jurisdiction is the most appropriate for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.**
- 2. The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 68.**
- 3. Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.**
- 4. The request for the opening of coordination proceedings shall be submitted to the court agreed in accordance with Article 61.**



*Article 67*

**Consequences of objections to the proposed coordinator**

**Where objections to the person of the proposed coordinator have been received from an insolvency practitioner who is not also objecting to the inclusion in the group coordination proceedings of the member in respect of which he has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner or practitioners to submit a new request in accordance with Article 61(3).**

*Article 68*

**Decision to open group coordination proceedings**

- 1. After the period referred to in Article 64(2) has elapsed, the court may open group coordination proceedings, where it is satisfied that the conditions of Article 63(1) are met. In such a case, the court shall**
  - (a) appoint a coordinator;**
  - (b) decide on the outline of the coordination;**
  - (c) decide on the estimation of costs and the share to be paid by the group members.**
- 2. The decision opening group coordination proceedings shall be brought to the notice of the participating insolvency practitioners and of the coordinator.**

## *Article 69*

### **Subsequent opt-in by insolvency practitioners**

- 1. Any insolvency practitioner may request, after the court decision referred to in Article 68, and in accordance with its national law, the inclusion of the proceedings in respect of which he has been appointed, where**
  - (a) there has been an objection to the inclusion of insolvency proceedings within the group coordination proceedings, or**
  - (b) insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.**
  
- 2. Without prejudice to paragraph 4, the coordinator may accede to such a request after consulting the insolvency practitioners involved if**
  - (a) he is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in Article 63 (1) (a) and (b) are met; or**
  - (b) all insolvency practitioners involved agree under the conditions provided by their national law.**
  
- 3. The coordinator shall inform the court and the participating insolvency practitioners of his decision pursuant to paragraph 2 and of the reasons on which it is based.**
  
- 4. Any participating insolvency practitioner or any insolvency practitioner whose request for inclusion in the group coordination proceedings has been rejected may challenge the decision referred to in paragraph 2 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.**

## *Article 70*

### **Recommendations and group coordination plan**

- 1. When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to under Article 72(1).**
- 2. An insolvency practitioner is not obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan.**

**In such a case, he shall give reasons for not doing so to the persons or bodies that he is to report to under his national law, and to the coordinator.**

### *2.2 General provisions*

## *Article 71*

### **The coordinator**

- 1. The group coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.**
- 2. The group coordinator must not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.**

## *Article 72*

### **Tasks and obligations of the coordinator**

- 1. The coordinator shall**
  - (a) identify and outline recommendations for the coordinated conduct of the insolvency proceedings;**
  - (b) propose 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 contain proposals for**
    - (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 as regards intra-group transactions and avoidance actions;**
    - (iii) agreements between the insolvency practitioners of the insolvent group members.**
  
- 2. The coordinator may also:**
  - (a) be heard and participate, in particular by attending creditors' meetings, in any of the proceedings opened with respect to any member of the group;**
  - (b) mediate any dispute arising between two or more insolvency practitioners of group members;**
  - (c) present and explain his group coordination plan to the persons or bodies that he is to report to under his national law;**

- (d) **request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and**
  - (e) **request a stay for a period of up to six month of the proceedings opened with respect to any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested, or request the cessation of any existing stay. This request shall be made to the court that opened the proceedings for which a stay is requested.**
- 3. **The plan referred to in paragraph 1(b) must not include recommendations as to any consolidation of proceedings or insolvency estates.**
- 4. **The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.**
- 5. **The coordinator shall perform his duties impartially and with due care.**
- 6. **Where the coordinator estimates that the fulfilment of his tasks requires a significant increase in the costs compared to the cost estimate referred to in Article 61(3)(d), and in any case, where the costs exceed 10% of the estimated costs, the coordinator shall**
  - (a) **inform without delay the participating insolvency practitioners, and**
  - (b) **seek the prior approval of the court opening coordination proceedings.**

### *Article 73*

#### **Languages**

- 1. The coordinator shall communicate with the insolvency practitioner of a participating group member in the language agreed with the insolvency practitioner or, in the absence of an agreement, in the official language or one of the official languages of the institutions of the European Union of the court which opened the proceedings in respect of that group member.**
- 2. The coordinator shall communicate with a court in the official language of that court.**

### *Article 74*

#### **Cooperation between the insolvency practitioners and the coordinator**

- 1. The insolvency practitioners appointed in relation to members of the group and the coordinator shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings.**
- 2. In particular, the insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his tasks.**

### *Article 75*

#### **Revocation of the coordinator**

**The court shall revoke the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member if**

- (a) the coordinator acts to the detriment of the creditors of a participating group member; or**
- (b) the coordinator fails to comply with his obligations under this Chapter.**

*Article 76*

**Debtor in possession**

**In this Chapter, the provisions applicable to the insolvency practitioner shall apply as appropriate to the debtor in possession.**

*Article 77*

**Costs and distribution**

- 1. The remuneration for the coordinator shall be adequate, proportional to the tasks fulfilled and reflect reasonable expenses.**
- 2. When having completed his tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.**
- 3. In the absence of objections by the insolvency practitioners within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.**
- 4. In the case of an objection, the court that has opened the group coordination proceedings shall, upon application of the coordinator or any participating insolvency practitioner, decide on the costs and the share to be paid by each member in accordance with the criteria set out in paragraph 1 and taking into account the estimation of costs referred to in Articles 68(1) and, where applicable, 72(6).**
- 5. Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.**

## **CHAPTER VI**

### **DATA PROTECTION**

#### *Article 78*

##### **Data protection**

- 1. National rules implementing Directive 95/46/EC shall apply to the processing of personal data carried out in the Member States pursuant to this Regulation, provided that processing operations referred to in Article 3(2) of Directive 95/46/EC are not concerned.**
- 2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.**

#### *Article 79*

##### **Responsibilities of Member States regarding the processing of personal data in national insolvency registers**

- 1. Each Member State shall communicate to the Commission the name of the natural or legal person, public authority, agency or any other body designated by national law to exercise the functions of controller in accordance with Article 2(d) of Directive 95/46/EC, with a view to its publication on the European E-justice portal.**
- 2. Member States shall provide that the technical measures to ensure the security of personal data processed in their national insolvency registers referred to in Article 24 are implemented.**



- 3. Member States shall be responsible for verifying that the controller, designated by national law in accordance with Article 2(d) of Directive 95/46/EC, ensures compliance with the principles of data quality, in particular the accuracy and the updating of data stored in national insolvency registers.**
- 4. Member States shall be responsible, in accordance with Directive 95/46/EC, for the collection and storage of data in national databases and for decisions taken to make such data available in the interconnected register that can be consulted via the European e-Justice Portal.**
- 5. As part of the information that should be provided to data subjects to enable them to exercise their rights, and in particular the right to erasure of data, Member States shall inform data subjects of the accessibility period set for personal data stored in insolvency registers.**

*Article 80*

**Responsibilities of the Commission in connection with the processing of personal data**

- 1. The Commission shall exercise the responsibilities of controller pursuant to Article 2(d) of Regulation 45/2001/EC in accordance with its respective responsibilities defined in this Article.**
- 2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.**
- 3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity for any transmission to and from the European E-Justice Portal.**
- 4. The obligations of the Commission shall not affect the responsibilities of the Member States and other bodies for the content and operation of the interconnected national databases run by them.**

### *Article 81*

#### **Information obligations**

**Without prejudice to the other information to be given to data subjects in accordance with Articles 11 and 12 of Regulation 45/2001/EC, the Commission shall inform the data subjects, by means of publication through the European E-justice portal, about its role in the processing of the data and the purposes for which these data will be processed.**

### *Article 82*

#### **Storage of personal data**

**As regards information from interconnected national databases, no personal data relating to the data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national databases operated by the Member States or other bodies.**

### *Article 83*

#### **Access to personal data via the European E-justice portal**

**Personal data stored in the national insolvency registers referred to in Article 24 shall be accessible via the European e-Justice portal as long as they remain accessible under national law.**

## CHAPTER ~~V~~ VII

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article ~~43~~ 84*

##### Applicability in time

1. The provisions of this Regulation shall apply only to insolvency proceedings opened after its entry into ~~force~~ **application**. Acts done by a debtor before the entry into ~~force~~ **application** of this Regulation shall continue to be governed by the law which was applicable to them at the time they were done.
2. **Notwithstanding Article 90, Regulation 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before .....[date of entry into application of this Regulation].**

#### *Article ~~44~~ 85*

##### Relationship to Conventions

1. ~~After its entry into force,~~ **This Regulation replaces, in respect of the matters referred to therein, in the relations between Member States, the Conventions concluded between two or more Member States, in particular:**
  - (a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;
  - (b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;

- (c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;
- (d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;
- (e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;
- (f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
- (g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;
- (h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;
- (i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;
- (j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;
- (k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990;
- (l) the Convention between the Federative People's Republic of Yugoslavia and the Kingdom of Greece on the Mutual Recognition and Enforcement of Judgments, signed at Athens on 18 June 1959;

- (m) the Agreement between the Federative People's Republic of Yugoslavia and the Republic of Austria on the Mutual Recognition and Enforcement of Arbitral Awards and Arbitral Settlements in Commercial Matters, signed at Belgrade on 18 March 1960;
- (n) the Convention between the Federative People's Republic of Yugoslavia and the Republic of Italy on Mutual Judicial Cooperation in Civil and Administrative Matters, signed at Rome on 3 December 1960;
- (o) the Agreement between the Socialist Federative Republic of Yugoslavia and the Kingdom of Belgium on Judicial Cooperation in Civil and Commercial Matters, signed at Belgrade on 24 September 1971;
- (p) the Convention between the Governments of Yugoslavia and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Paris on 18 May 1971;
- (q) the Agreement between the Czechoslovak Socialist Republic and the Hellenic Republic on Legal Aid in Civil and Criminal Matters, signed at Athens on 22 October 1980, still in force between the Czech Republic and Greece;
- (r) the Agreement between the Czechoslovak Socialist Republic and the Republic of Cyprus on Legal Aid in Civil and Criminal Matters, signed at Nicosia on 23 April 1982, still in force between the Czech Republic and Cyprus;
- (s) the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of France on Legal Aid and the Recognition and Enforcement of Judgments in Civil, Family and Commercial Matters, signed at Paris on 10 May 1984, still in force between the Czech Republic and France;
- (t) the Treaty between the Czechoslovak Socialist Republic and the Italian Republic on Legal Aid in Civil and Criminal Matters, signed at Prague on 6 December 1985, still in force between the Czech Republic and Italy;

- (u) the Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships, signed at Tallinn on 11 November 1992;
- (v) the Agreement between Estonia and Poland on Granting Legal Aid and Legal Relations on Civil, Labour and Criminal Matters, signed at Tallinn on 27 November 1998;
- (w) the Agreement between the Republic of Lithuania and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters, signed in Warsaw on 26 January 1993;
- (x) the Convention between Socialist Republic of Romania and the Hellenic Republic on legal assistance in civil and criminal matters and its Protocol, signed at Bucharest on 19 October 1972;
- (y) the Convention between Socialist Republic of Romania and the French Republic on legal assistance in civil and commercial matters, signed at Paris on 5 November 1974;
- (z) the Agreement between the People's Republic of Bulgaria and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters, signed at Athens on 10 April 1976;
- (aa) the Agreement between the People's Republic of Bulgaria and the Republic of Cyprus on Legal Assistance in Civil and Criminal Matters, signed at Nicosia on 29 April 1983;

- (ab) the Agreement between the Government of the People's Republic of Bulgaria and the Government of the French Republic on Mutual Legal Assistance in Civil Matters, signed at Sofia on 18 January 1989;
  - (ac) the Treaty between Romania and the Czech Republic on judicial assistance in civil matters, signed at Bucharest on 11 July 1994;
  - (ad) the Treaty between Romania and Poland on legal assistance and legal relations in civil cases, signed at Bucharest on 15 May 1999.
2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of ~~this~~ Regulation (EC) No 1346/2000.
3. This Regulation shall not apply:
- (a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that State with one or more third countries before the entry into force of ~~this~~ Regulation (EC) No 1346/2000;
  - (b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time ~~this~~ Regulation (EC) No 1346/2000 entered into force.

## *Article 86*

### **Information on national and Union 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 short description of their national legislation and procedures relating to insolvency, in particular relating to the matters listed in Article 7(2).**
- 2. The Member States shall update that information regularly.**
- 3. The Commission shall make information concerning this Regulation available to the public.**

## ~~*Article 45*~~

### ~~**Amendment of the Annexes**~~

~~**The Council, acting by qualified majority on the initiative of one of its members or on a proposal from the Commission, may amend the Annexes.**~~

## *Article 87*

### **Establishment of the interconnection of registers**

- 1. The Commission shall adopt implementing acts establishing the interconnection of insolvency registers as referred to in Article 25. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation 182/2011 of the European Parliament and of the Council.**
- 2. In adopting or amending the implementing acts referred to in paragraph 1, the Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011.**



*Article 88*

**Establishment and subsequent amendment of standard forms**

- 1. The Commission shall adopt implementing acts establishing and, where necessary, amending the forms referred to in Articles 27(4), 54, 55 and 64(2). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 4 of Regulation (EU) No 182/2011.**
- 2. In adopting or amending the implementing acts referred to in paragraph 1, the Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011.**

*Article ~~46~~ 89*

**Review clause**

- 1. No later than ... ten years after its entry in application, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied if need be by a proposal for adaptation of this Regulation.**
- 2. No later than five years after its entry in application the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of the group coordination proceedings. The report shall be accompanied if need be by a proposal for adaptation of this Regulation.**

3. **No later than 1 January 2016 after the entry into force, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the cross-border issues in the area of directors' liability and disqualifications.**
4. **No later than 3 years after the entry into application, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the issue of abusive forum shopping.**

*Article 90*

**Repeal**

1. **Regulation 1346/2000 is repealed.**
2. **References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex D.**

*Article ~~47~~ 91*

Entry into force

- 1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.**
- 2. It shall apply from .....[24 months after the entry into force of the Regulation] with the exception of**
  - (a) Article 86 concerning information on national and Union insolvency law, which shall apply from...[12 months after its entry into force];**
  - (b) Article 24(1) concerning the establishment of insolvency registers at national level, which shall apply from ....[36 months after its entry into force]; and**
  - (c) Article 25 concerning the interconnection of the national insolvency registers which shall apply from ....[48 months after its entry into force].**
- 3. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.**

**Done at Strasbourg,**

*For the European Parliament*

*For the Council*

*The President*

*The President*

## ANNEX A

Insolvency proceedings referred to in Article 2(~~a~~ 5)

### BELGIQUE/BELGIË

- Het faillissement/La faillite,
- De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,
- **De gerechtelijke reorganisatie door een minnelijk akkoord/ La réorganisation judiciaire par accord amiable,**
- De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,
- De collectieve schuldenregeling/Le règlement collectif de dettes,
- De vrijwillige vereffening/La liquidation volontaire,
- De gerechtelijke vereffening/La liquidation judiciaire,
- De voorlopige ontneming van beheer, bepaald in artikel 8 van de faillissementswet/Le dessaisissement provisoire, visé à l'article 8 de la loi sur les faillites,

### БЪЛГАРИЯ

- Производство по несъстоятелност,

## ČESKÁ REPUBLIKA

- Konkurs,
- Reorganizace,
- Oddlužení,

## DEUTSCHLAND

- Das Konkursverfahren,
- Das gerichtliche Vergleichsverfahren,
- Das Gesamtvollstreckungsverfahren,
- Das Insolvenzverfahren,

## EESTI

- Pankrotimenetus,
- **Võlgade ümberkujundamise menetlus,**

## ÉIRE/IRELAND

- Compulsory winding-up by the court,
- Bankruptcy,
- The administration in bankruptcy of the estate of persons dying insolvent,
- Winding-up in bankruptcy of partnerships,
- Creditors' voluntary winding-up (with confirmation of a court),
- Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,
- ~~Company~~ Examinership,
- Debt Relief Notice,
- Debt Settlement Arrangement,
- Personal Insolvency Arrangement,

## ΕΛΛΑΔΑ

- Η πτώχευση,
- Η ειδική εκκαθάριση εν λειτουργία,
- Σχέδιο αναδιοργάνωσης,
- Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,
- **Διαδικασία Εξυγίανσης,**

## ESPAÑA

- Concurso,
- **Procedimiento de homologación de acuerdos de refinanciación,**
- **Procedimiento de acuerdos extrajudiciales de pago,**
- **Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,**

## FRANCE

- Sauvegarde,
- **Sauvegarde accélérée,**
- **Sauvegarde financière accélérée,**
- Redressement judiciaire,
- Liquidation judiciaire,

## HRVATSKA

- Stečajni postupak,

## ITALIA

- Fallimento,
- Concordato preventivo,
- Liquidazione coatta amministrativa,
- Amministrazione straordinaria,
- **Accordi di ristrutturazione,**
- **Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano),**
- **Liquidazione dei beni,**

## ΚΥΠΡΟΣ

- Υποχρεωτική εκκαθάριση από το Δικαστήριο,
- Εκούσια εκκαθάριση από μέλη,
- Εκούσια εκκαθάριση από πιστωτές
- Εκκαθάριση με την εποπτεία του Δικαστηρίου,
- Διάταγμα Παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,
- Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,



## LATVIJA

- Tiesiskās aizsardzības process,
- Juridiskās personas maksātnespējas process,
- Fiziskās personas maksātnespējas process,

## LIETUVA

- Īmonēs restruktūrizavimo byla,
- Īmonēs bankroto byla,
- Īmonēs bankroto procesas ne teismo tvarka,
- Fizinio asmens bankroto byla,

## LUXEMBOURG

- Faillite,
- Gestion contrôlée,
- Concordat préventif de faillite (par abandon d'actif),
- Régime spécial de liquidation du notariat,
- Procédure de règlement collectif des dettes dans le cadre du surendettement,

## MAGYARORSZÁG

- Csődeljárás,
- Felszámolási eljárás,

## MALTA

- Xoljiment,
- Amministrazzjoni,
- Stralċ volontarju mill-membri jew mill-kredituri,
- Stralċ mill-Qorti,
- Falliment f'każ ta' **kummerċjant**,
- **Proċedura biex kumpanija tirkupra'**,

## NEDERLAND

- Het faillissement,
- De surséance van betaling,
- De schuldsaneringsregeling natuurlijke personen,

## ÖSTERREICH

- Das Konkursverfahren (Insolvenzverfahren),
- Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),
- Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),
- Das Schuldenregulierungsverfahren,
- Das Abschöpfungsverfahren,
- Das Ausgleichsverfahren,

## POLSKA

- Postępowanie naprawcze,
- Upadłość obejmująca likwidację,
- Upadłość z możliwością zawarcia układu,

## PORTUGAL

- Processo de insolvência,
- Processo especial de revitalização,

## ROMÂNIA

- Procedura insolvenței,
- Reorganizarea judiciară,
- Procedura falimentului,
- **Concordatul preventiv,**

## SLOVENIJA

- **Postopek preventivnega prestrukturiranja,**
- Postopek prisilne poravnave,
- **Postopek poenostavljene prisilne poravnave,**
- **Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja and postopek stečaja zapuščine,**

## SLOVENSKO

- Konkurzné konanie,
- Reštrukturalizačné konanie,
- **Oddženie,**

## SUOMI/FINLAND

- Konkurssi/konkurs,
- Yrityssaneeraus/företagssanering,
- **Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,**

## SVERIGE

- Konkurs,
- Företagsrekonstruktion,
- **Skuldsanering,**

## UNITED KINGDOM

- Winding-up by or subject to the supervision of the court,
- Creditors' voluntary winding-up (with confirmation by the court),
- Administration, including appointments made by filing prescribed documents with the court,
- Voluntary arrangements under insolvency legislation,
- Bankruptcy or sequestration."

## ANNEX € B

Liquidators referred to in Article 2(6)

### BELGIQUE/BELGIË

- De curator/Le curateur,
- De gedelegeerd rechter/Le juge-délégué,
- De gerechtsmandataris/Le mandataire de justice,
- De schuldbemiddelaar/Le médiateur de dettes,
- De vereffenaar/Le liquidateur,
- De voorlopige bewindvoerder/L'administrateur provisoire,

### БЪЛГАРИЯ

- Назначен предварително временен синдик,
- Временен синдик,
- (Постоянен) синдик,
- Служебен синдик,

## ČESKÁ REPUBLIKA

- Insolvenční správce,
- Předběžný insolvenční správce,
- Oddělený insolvenční správce,
- Zvláštní insolvenční správce,
- Zástupce insolvenčního správce,

## DEUTSCHLAND

- Konkursverwalter,
- Vergleichsverwalter,
- Sachwalter (nach der Vergleichsordnung),
- Verwalter,
- Insolvenzverwalter,
- Sachwalter (nach der Insolvenzordnung),
- Treuhänder,
- Vorläufiger Insolvenzverwalter,
- **Vorläufiger Sachwalter,**

## EESTI

- Pankrotihaldur,
- Ajutine pankrotihaldur,
- Usaldusisik,

## ÉIRE/IRELAND

- Liquidator,
- Official Assignee,
- Trustee in bankruptcy,
- Provisional Liquidator,
- Examiner,
- Personal Insolvency Practitioner,
- Insolvency Service,

## ΕΛΛΑΔΑ

- Ο σύνδικος,
- Ο εισηγητής,
- Η επιτροπή των πιστωτών,
- Ο ειδικός εκκαθαριστής,



## ESPAÑA

- Administrador concursal,
- **Mediador concursal,**

## FRANCE

- Mandataire judiciaire,
- Liquidateur,
- Administrateur judiciaire,
- Commissaire à l'exécution du plan,

## HRVATSKA

- Stečajni upravitelj,
- Privremeni stečajni upravitelj,
- Stečajni povjerenik,
- Povjerenik,

## ITALIA

- Curatore,
- Commissario giudiziale,
- Commissario straordinario,
- Commissario liquidatore,
- Liquidatore giudiziale,
- **Professionista nominato dal Tribunale,**
- **Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore,**
- **Liquidatore,**

## KYΠΡΟΣ

- Εκκαθαριστής και Προσωρινός Εκκαθαριστής,
- Επίσημος Παραλήπτης,
- Διαχειριστής της Πτώχευσης,

## LATVIJA

- Maksātnespējas procesa administrators,

## LIETUVA

- Bankroto administratorius,
- Restruktūrizavimo administratorius,

## LUXEMBOURG

- Le curateur,
- Le commissaire,
- Le liquidateur,
- Le conseil de gérance de la section d'assainissement du notariat,
- Le liquidateur dans le cadre du surendettement,

## MAGYARORSZÁG

- Vagyongfelügyelő,
- Felszámoló,

## MALTA

- Amministratur Proviżorju,
- Riċevitur Uffiċjali,
- Stralċjarju,
- Manager Speċjali,
- Kuraturi f'każ ta' proċeduri ta' falliment,
- **Kontrolur Speċjali,**

## NEDERLAND

- De curator in het faillissement,
- De bewindvoerder in de surséance van betaling,
- De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,

## ÖSTERREICH

- Masseverwalter,
- Sanierungsverwalter,
- Ausgleichsverwalter,
- Besonderer Verwalter,
- Einstweiliger Verwalter,
- Sachwalter,
- Treuhänder,
- Insolvenzgericht,
- Konkursgericht,

## POLSKA

- Syndyk,
- Nadzorca sądowy,
- Zarządca,

## PORTUGAL

- Administrador de insolvência,
- Administrador judicial provisório,

## ROMÂNIA

- Practician în insolvență,
- **Administrator concordatar,**
- Administrator judiciar,
- Lichidator **judiciar,**

## SLOVENIJA

- **Upravitelj,**

## SLOVENSKO

- Predbežný správca,
- Správca,

## SUOMI/FINLAND

- Pesänhoitaja/boförvaltare,
- Selvittäjä/utredare,

## SVERIGE

- Förvaltare,
- Rekonstruktör,

## UNITED KINGDOM

- Liquidator,
- Supervisor of a voluntary arrangement,
- Administrator,
- Official Receiver,
- Trustee,
- Provisional Liquidator,
- **Interim Receiver,**
- Judicial factor.

*ANNEX C*

**Repealed Regulation with list of the successive amendments thereto**

**Council Regulation (EC) No 1346/2000**

**(OJ L 160, 30.6.2000, p.1)**

**Council Regulation (EC) No 603/2005**

**(OJ L 100, 20.4.2005, p. 1)**

**Council Regulation (EC) No 694/2006**

**(OJ L 121, 6.5.2006, p. 1)**

**Council Regulation (EC) No 1791/2006**

**(OJ L 363, 20.12.2006, p. 1)**

**Council Regulation (EC) No 681/2007**

**(OJ L 159, 20.6.2007, p. 1)**

**Council Regulation (EC) No 788/2008**

**(OJ L 213, 8.8.2008, p. 1)**



**Implementing Regulation of the Council (EU) No 210/2010**

(OJ L 65, 13.3.2010, p. 1)

**Council Implementing Regulation (EU) No 583/2011**

(OJ L 160, 18.6.2011, p. 52)

**Council Regulation (EU) No 517/2013**

(OJ L 158, 10.6.2013, p. 1)

**Council Implementing Regulation (EU) No 663/2014**

(OJ L 179, 19.6.2014, p. 4)

**Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded**

(OJ L 236, 23.9.2003, p. 33)

*ANNEX D*

**Correlation table**

<b>Regulation 1346/2000</b>	<b>This Regulation</b>
<b>Article 1</b>	<b>Article 1</b>
<b>Article 2, introductory words</b>	<b>Article 2, introductory words</b>
<b>Article 2, point (a)</b>	<b>Article 2, point (4)</b>
<b>Article 2, point (b)</b>	<b>Article 2, point (5)</b>
<b>Article 2, point (c)</b>	-
<b>Article 2, point (d)</b>	<b>Article 2, point (6)</b>
<b>Article 2, point (e)</b>	<b>Article 2, point (7)</b>
<b>Article 2, point (f)</b>	<b>Article 2, point (8)</b>
<b>Article 2, point (g), introductory words</b>	<b>Article 2, point (9), introductory words</b>
<b>Article 2, point (g), first indent</b>	<b>Article 2, point (9)(vii)</b>
<b>Article 2, point (g), second indent</b>	<b>Article 2, point (9)(iv)</b>
<b>Article 2, point (g), third indent</b>	<b>Article 2, point (9)(viii)</b>
<b>Article 2, point (h)</b>	<b>Article 2, point 10</b>
-	<b>Article 2, points (1) to (3) and (11) to (13)</b>
-	<b>Article 2, point (10)(i) to (iii), (v), (vi)</b>
<b>Article 3</b>	<b>Article 3</b>
-	<b>Article 4</b>
-	<b>Article 5</b>
-	<b>Article 6</b>
<b>Article 4</b>	<b>Article 7</b>
<b>Article 5</b>	<b>Article 8</b>
<b>Article 6</b>	<b>Article 9</b>

<b>Article 7</b>	<b>Article 10</b>
<b>Article 8</b>	<b>Article 11(1)</b>
-	<b>Article 11(2)</b>
<b>Article 9</b>	<b>Article 12</b>
<b>Article 10</b>	<b>Article 13(1)</b>
-	<b>Article 13(2)</b>
<b>Article 11</b>	<b>Article 14</b>
<b>Article 12</b>	<b>Article 15</b>
<b>Article 13</b>	<b>Article 16</b>
<b>Article 14</b>	<b>Article 17</b>
<b>Article 15</b>	<b>Article 18</b>
<b>Article 16</b>	<b>Article 19</b>
<b>Article 17</b>	<b>Article 20</b>
<b>Article 18</b>	<b>Article 21</b>
<b>Article 19</b>	<b>Article 22</b>
<b>Article 20</b>	<b>Article 23</b>
-	<b>Article 24</b>
-	<b>Article 25</b>
-	<b>Article 26</b>
-	<b>Article 27</b>
<b>Article 21(1)</b>	<b>Article 28(2)</b>
<b>Article 21(2)</b>	<b>Article 28(1)</b>
<b>Article 22</b>	<b>Article 29</b>
<b>Article 23</b>	<b>Article 30</b>
<b>Article 24</b>	<b>Article 31</b>

<b>Article 25</b>	<b>Article 32</b>
<b>Article 26</b>	<b>Article 33</b>
<b>Article 27</b>	<b>Article 34</b>
<b>Article 28</b>	<b>Article 35</b>
-	<b>Article 36</b>
<b>Article 29</b>	<b>Article 37(1)</b>
-	<b>Article 37(2)</b>
-	<b>Article 38</b>
-	<b>Article 39</b>
<b>Article 30</b>	<b>Article 40</b>
<b>Article 31</b>	<b>Article 41</b>
-	<b>Article 42</b>
-	<b>Article 43</b>
-	<b>Article 44</b>
<b>Article 32</b>	<b>Article 45</b>
<b>Article 33</b>	<b>Article 46</b>
<b>Article 34(1)</b>	<b>Article 47(1)</b>
<b>Article 34(2)</b>	<b>Article 47(2)</b>
<b>Article 34(3)</b>	-
-	<b>Article 48</b>
<b>Article 35</b>	<b>Article 49</b>
<b>Article 36</b>	<b>Article 50</b>
<b>Article 37</b>	<b>Article 51</b>
<b>Article 38</b>	<b>Article 52</b>
<b>Article 39</b>	<b>Article 53</b>

<b>Article 40</b>	<b>Article 54</b>
<b>Article 41</b>	<b>Article 55</b>
<b>Article 42</b>	-
-	<b>Article 56</b>
-	<b>Article 57</b>
-	<b>Article 58</b>
-	<b>Article 59</b>
-	<b>Article 60</b>
-	<b>Article 61</b>
-	<b>Article 62</b>
-	<b>Article 63</b>
-	<b>Article 64</b>
-	<b>Article 65</b>
-	<b>Article 66</b>
-	<b>Article 67</b>
-	<b>Article 68</b>
-	<b>Article 69</b>
-	<b>Article 70</b>
-	<b>Article 71</b>
-	<b>Article 72</b>
-	<b>Article 73</b>
-	<b>Article 74</b>
-	<b>Article 75</b>
-	<b>Article 76</b>
-	<b>Article 77</b>

-	<b>Article 78</b>
-	<b>Article 79</b>
-	<b>Article 80</b>
-	<b>Article 81</b>
-	<b>Article 82</b>
-	<b>Article 83</b>
<b>Article 43</b>	<b>Article 84(1)</b>
-	<b>Article 84(2)</b>
<b>Article 44</b>	<b>Article 85</b>
-	<b>Article 86</b>
<b>Article 45</b>	-
-	<b>Article 87</b>
-	<b>Article 88</b>
<b>Article 46</b>	<b>Article 89(1)</b>
-	<b>Article 89(2) to (4)</b>
-	<b>Article 90</b>
<b>Article 47</b>	<b>Article 91</b>
<b>Annex A</b>	<b>Annex A</b>
<b>Annex B</b>	-
<b>Annex C</b>	<b>Annex B</b>
-	<b>Annex C</b>
-	<b>Annex D</b>



Council of the  
European Union

Brussels, 17 March 2015  
(OR. en)

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**Interinstitutional File:  
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### **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: Position of the Council at first reading with a view to the adoption of a  
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL on insolvency proceedings (recast)  
- Adopted by the Council on 12 March 2015

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**REGULATION (EU) 2015/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of ...

**on insolvency proceedings**  
**(recast)**

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 Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ C 271, 19.9.2013, p. 55.

<sup>2</sup> Position of the European Parliament of 5 February 2014 [(not yet published in the Official Journal)] and position of the Council at first reading of 12 March 2015 [(not yet published in the Official Journal)]. Position of the European Parliament of ... [(not yet published in the Official Journal)].



Whereas:

- (1) On 12 December 2012, the Commission adopted a report on the application of Council Regulation (EC) No 1346/2000<sup>1</sup>. The report concluded that the Regulation is functioning well in general but that it would be desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings. Since that Regulation has been amended several times and further amendments are to be made, it should be recast in the interest of clarity.
- (2) The Union has set the objective of establishing an area of freedom, security and justice.
- (3) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively. This Regulation needs to be adopted in order to achieve that objective, which falls within the scope of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty.
- (4) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Union law. The insolvency of such undertakings also affects the proper functioning of the internal market, and there is a need for a Union act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.

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<sup>1</sup> Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).

- (5) It is necessary for the proper functioning of the internal market to avoid incentives for 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).
- (6) This Regulation should include provisions governing jurisdiction for opening insolvency proceedings and actions which are directly derived from insolvency proceedings and are closely linked 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 lay down rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies.
- (7) Bankruptcy, proceedings relating to 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 Regulation (EU) No 1215/2012 of the European Parliament and of the Council<sup>1</sup>. Those proceedings should be covered by this Regulation. The interpretation of this Regulation should as much as possible avoid regulatory loopholes between the two instruments. However, the mere fact that a national procedure is not listed in Annex A to this Regulation should not imply that it is covered by Regulation (EU) No 1215/2012.

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<sup>1</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

- (8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Union measure which is binding and directly applicable in Member States.
- (9) This Regulation should apply to insolvency proceedings which meet the conditions set out in it, 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. In respect of the national procedures contained 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 met. National insolvency procedures not listed in Annex A should not be covered by this Regulation.

- (10) The scope of this Regulation should extend to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs. It should, in particular, extend to proceedings which provide for restructuring of a debtor at a stage where there is only a likelihood of insolvency, and to proceedings which leave the debtor fully or partially in control of its assets and affairs. It should also extend to proceedings providing for a debt discharge or a debt adjustment in relation to consumers and self-employed persons, for example by reducing the amount to be paid by the debtor or by extending the payment period granted to the debtor. Since such proceedings do not necessarily entail the appointment of an insolvency practitioner, 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 other interested parties.
- (11) This Regulation should also apply to procedures which grant a temporary stay on enforcement actions brought by individual creditors where such actions could adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. Such procedures should not be detrimental to the general body of creditors and, if no agreement on a restructuring plan can be reached, should be preliminary to other procedures covered by this Regulation.
- (12) This Regulation should apply to proceedings the opening of which is subject to publicity in order to allow creditors to become aware of the proceedings and to lodge their claims, thereby ensuring the collective nature of the proceedings, and in order to give creditors the opportunity to challenge the jurisdiction of the court which has opened the proceedings.

- (13) Accordingly, insolvency proceedings which are confidential should be excluded from the scope of this Regulation. While such proceedings may play an important role in some Member States, their confidential nature makes it impossible for a creditor or a court located in another Member State to know that such proceedings have been opened, thereby making it difficult to provide for the recognition of their effects throughout the Union.
- (14) The collective proceedings which are covered by this Regulation should include all or a significant part of the creditors to whom a debtor owes all or a substantial proportion of the debtor's outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected. Proceedings which involve only the financial creditors of a debtor should also be covered. Proceedings which do not include all the creditors of a debtor should be proceedings aimed at rescuing the debtor. Proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of the debtor's assets should include all the debtor's creditors. Moreover, the fact that some insolvency proceedings for natural persons exclude specific categories of claims, such as maintenance claims, from the possibility of a debt-discharge should not mean that such proceedings are not collective.
- (15) This Regulation should also apply to proceedings that, under the law of some Member States, are opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order confirming the continuation of the proceedings on a non-interim basis. Although labelled as "interim", such proceedings should meet all other requirements of this Regulation.

- (16) This Regulation should apply to proceedings which are based on laws relating to insolvency. However, proceedings that are based on general company law not designed exclusively for insolvency situations should not be considered to be based on laws relating to insolvency. Similarly, the purpose of adjustment of debt should not include specific proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never makes provision for payment to creditors.
- (17) This Regulation's scope should extend to proceedings which are triggered by situations in which the debtor faces non-financial difficulties, provided that such difficulties give rise to a real and serious threat to the debtor's actual or future ability to pay its debts as they fall due. The time frame relevant for the determination of such threat may extend to a period of several months or even longer in order to account for cases in which the debtor is faced with non-financial difficulties threatening the status of its business as a going concern and, in the medium term, its liquidity. This may be the case, for example, where the debtor has lost a contract which is of key importance to him.
- (18) 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.

- (19) Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and other firms, institutions or undertakings covered by Directive 2001/24/EC of the European Parliament and of the Council<sup>1</sup> and collective investment undertakings should be excluded from the scope of this Regulation, as they are all subject to special arrangements and the national supervisory authorities have wide-ranging powers of intervention.
- (20) Insolvency proceedings do not necessarily involve the intervention of a judicial authority. Therefore, the term 'court' in this Regulation should, in certain provisions, 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.
- (21) Insolvency practitioners are defined in this Regulation and listed in Annex B. Insolvency practitioners who are appointed without the involvement of a judicial body should, under national law, be appropriately regulated and authorised to act in insolvency proceedings. The national regulatory framework should provide for proper arrangements to deal with potential conflicts of interest.

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<sup>1</sup> Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions (OJ L 125, 5.5.2001, p. 15).

- (22) 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 throughout the Union. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing national laws on security interests to be found in the Member States. Furthermore, the preferential rights enjoyed by some creditors in insolvency proceedings are, in some cases, completely different. At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level. This Regulation should take account of such differing national laws in two different ways. On the one hand, provision should be made for special rules on the 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 the opening of proceedings should also be allowed alongside main insolvency proceedings with universal scope.
- (23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the Union.



- (24) Where main insolvency proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary insolvency proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in accordance with the case-law of the Court of Justice of the European Union.
- (25) This Regulation applies only to proceedings in respect of a debtor whose centre of main interests is located in the Union.
- (26) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State should be established by the national law of the Member State concerned.
- (27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction.
- (28) When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to the change of address in commercial correspondence, or by making the new location public through other appropriate means.

- (29) This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.
- (30) Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of a Member State should carefully assess whether the centre of the debtor's main interests is genuinely located in that Member State. In the case of a company, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of its registered office, and where 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. In the case of an individual not exercising an independent business or professional activity, it should be possible to rebut this presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and where such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.

- (31) With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the centre of main interests is at the place of the registered office, at the individual's principal place of business or at the individual's habitual residence should not apply where, respectively, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated its registered office or principal place of business to another Member State within the three-month period prior to the request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within the six-month period prior to the request for opening insolvency proceedings.
- (32) In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.
- (33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings.
- (34) In addition, any creditor of the debtor should have an effective remedy against the decision to open insolvency proceedings. The consequences of any challenge to the decision to open insolvency proceedings should be governed by national law.

- (35) The courts of the Member State within the territory of which insolvency proceedings have been opened should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them. Such actions should include avoidance actions against defendants in other Member States and actions concerning obligations that arise in the course of the insolvency proceedings, such as advance payment for costs of the proceedings. In contrast, actions for the performance of the obligations under a contract concluded by the debtor prior to the opening of proceedings do not derive directly from the proceedings. Where such an action is related to another action based on general civil and commercial law, the insolvency practitioner should be able to bring both actions in the courts of the defendant's domicile if he considers it more efficient to bring the action in that forum. This could, for example, be the case where the insolvency practitioner 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.
- (36) The court having jurisdiction to open the main insolvency proceedings should be able to order provisional and protective measures as from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are important to guarantee the effectiveness of the insolvency proceedings. In that connection, this Regulation should provide for various possibilities. On the one hand, the court competent for the main insolvency proceedings should also be able to order provisional protective measures covering assets situated in the territory of other Member States. On the other hand, an insolvency practitioner temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those Member States.

- (37) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and public authorities, or to cases in which main insolvency proceedings cannot be opened under the law of the Member State where the debtor has the centre of its main interests. The reason for this restriction is that cases in which territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary.
- (38) Following the opening of the main insolvency proceedings, this Regulation does not restrict the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment. The insolvency practitioner in the main insolvency proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.
- (39) This Regulation should provide for rules to determine the location of the debtor's assets, which should apply when determining which assets belong to the main or secondary insolvency proceedings, or to situations involving third parties' rights in rem. In particular, this Regulation should provide that European patents with unitary effect, a Community trade mark or any other similar rights, such as Community plant variety rights or Community designs, should only be included in the main insolvency proceedings.

- (40) Secondary insolvency proceedings can serve different purposes, besides the protection of local interests. Cases may arise in which the insolvency estate of the debtor is too complex to administer as a unit, or the differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening of proceedings to the other Member States where the assets are located. For that reason, the insolvency practitioner in the main insolvency proceedings may request the opening of secondary insolvency proceedings where the efficient administration of the insolvency estate so requires.
- (41) Secondary insolvency proceedings may also hamper the efficient administration of the insolvency estate. Therefore, this Regulation sets out two specific situations in which the court seised of a request to open secondary insolvency proceedings should be able, at the request of the insolvency practitioner in the main insolvency proceedings, to postpone or refuse the opening of such proceedings.
- (42) First, this Regulation confers on the insolvency practitioner in main insolvency proceedings the possibility of giving an undertaking to local creditors that they will be treated as if secondary insolvency proceedings had been opened. That undertaking has to meet a number of conditions set out in this Regulation, in particular, that it be approved by a qualified majority of local creditors. Where such an undertaking has been given, the court seised of a request to open secondary insolvency proceedings should be able to refuse that request if it is satisfied that the undertaking adequately protects the general interests of local creditors. When assessing those interests, the court should take into account the fact that the undertaking has been approved by a qualified majority of local creditors.

- (43) For the purposes of giving an undertaking to local creditors, the assets and rights located in the Member State where the debtor has an establishment should form a sub-category of the insolvency estate, and, when distributing them or the proceeds resulting from their realisation, the insolvency practitioner in the main insolvency proceedings should respect the priority rights that creditors would have had if secondary insolvency proceedings had been opened in that Member State.
- (44) National law should be applicable, as appropriate, in relation to the approval of an undertaking. In particular, where under national law the voting rules for adopting a restructuring plan require the prior approval of creditors' claims, those claims should be deemed to be approved for the purpose of voting on the undertaking. Where there are different procedures for the adoption of restructuring plans under national law, Member States should designate the specific procedure which should be relevant in this context.
- (45) Second, this Regulation should provide for the possibility that the court temporarily stays the opening of secondary insolvency proceedings, when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings, in order to preserve the efficiency of the stay granted in the main insolvency proceedings. The court should be able to grant the temporary stay if it is satisfied that suitable measures are in place to protect the general interest of local creditors. In such a case, all creditors that could be affected by the outcome of the negotiations on a restructuring plan should be informed of the negotiations and be allowed to participate in them.

- (46) In order to ensure effective protection of local interests, the insolvency practitioner in the main insolvency proceedings should not be able to realise or re-locate, in an abusive manner, assets situated in the Member State where an establishment is located, in particular, with the purpose of frustrating the possibility that such interests can be effectively satisfied if secondary insolvency proceedings are opened subsequently.
- (47) This Regulation should not prevent the courts of a Member State in which secondary insolvency proceedings have been opened from sanctioning a debtor's directors for violation of their duties, provided that those courts have jurisdiction to address such disputes under their national law.
- (48) Main insolvency proceedings and secondary insolvency proceedings can contribute to the efficient administration of the debtor's insolvency estate or to the effective realisation of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings. Proper cooperation implies the various insolvency practitioners and the courts involved cooperating closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the insolvency practitioner in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. In particular, the insolvency practitioner 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. When cooperating, insolvency practitioners 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 organisations active in the area of insolvency law, and in particular the relevant guidelines prepared by the United Nations Commission on International Trade Law (UNCITRAL).



- (49) In light of such cooperation, insolvency practitioners and courts should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, where this is compatible with the rules applicable to each of the proceedings. Such agreements and protocols may vary in form, in that they may be written or oral, and in scope, in that they may range from generic to specific, and may be entered into by different parties. Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements may establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved, where the national law so requires. They may reflect an agreement between the parties to take, or to refrain from taking, certain steps or actions.
- (50) Similarly, the courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor or for different members of a group of companies, provided that this is compatible with the rules applicable to each of the proceedings, in particular with any requirements concerning the qualification and licensing of the insolvency practitioner.
- (51) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies.

- (52) Where insolvency proceedings have been opened for several companies of the same group, there should be proper cooperation between the actors involved in those proceedings. The various insolvency practitioners and the courts involved should therefore be under a similar obligation to cooperate and communicate with each other as those involved in main and secondary insolvency proceedings relating to the same debtor. Cooperation between the insolvency practitioners should not run counter to the interests of the creditors in each of the proceedings, and such cooperation should be aimed at finding a solution that would leverage synergies across the group.
- (53) The introduction of rules on the insolvency proceedings of groups of companies should not limit the possibility for 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. In such cases, the court should also be able to appoint, if appropriate, the same insolvency practitioner in all proceedings concerned, provided that this is not incompatible with the rules applicable to them.
- (54) With a view to further improving the coordination of the insolvency proceedings of members of a group of companies, and to allow for a coordinated restructuring of the group, this Regulation should introduce procedural rules on the coordination of the insolvency proceedings of members of a group of companies. Such coordination should strive to ensure the efficiency of the coordination, whilst at the same time respecting each group member's separate legal personality.

- (55) An insolvency practitioner appointed in insolvency proceedings opened in relation to a member of a group of companies should be able to request the opening of group coordination proceedings. However, where the law applicable to the insolvency so requires, that insolvency practitioner should obtain the necessary authorisation before making such a request. The request should specify the essential elements of the coordination, in particular an outline of the coordination plan, a proposal as to whom should be appointed as coordinator and an outline of the estimated costs of the coordination.
- (56) In order to ensure the voluntary nature of group coordination proceedings, the insolvency practitioners involved should be able to object to their participation in the proceedings within a specified time period. In order to allow the insolvency practitioners involved to take an informed decision on participation in the group coordination proceedings, they should be informed at an early stage of the essential elements of the coordination. However, any insolvency practitioner who initially objects to inclusion in the group coordination proceedings should be able to subsequently request to participate in them. In such a case, the coordinator should take a decision on the admissibility of the request. All insolvency practitioners, including the requesting insolvency practitioner, should be informed of the coordinator's decision and should have the opportunity of challenging that decision before the court which has opened the group coordination proceedings.

- (57) Group coordination proceedings should always strive to facilitate the effective administration of the insolvency proceedings of the group members, and to have a generally positive impact for the creditors. This Regulation should therefore ensure that the court with which a request for group coordination proceedings has been filed makes an assessment of those criteria prior to opening group coordination proceedings.
- (58) The advantages of group coordination proceedings should not be outweighed by the costs of those proceedings. Therefore, it is necessary to ensure that the costs of the coordination, and the share of those costs that each group member will bear, are adequate, proportionate and reasonable, and are determined in accordance with the national law of the Member State in which group coordination proceedings have been opened. The insolvency practitioners involved should also have the possibility of controlling those costs from an early stage of the proceedings. Where the national law so requires, controlling costs from an early stage of proceedings could involve the insolvency practitioner seeking the approval of a court or creditors' committee.
- (59) Where the coordinator considers that the fulfilment of his tasks requires a significant increase in costs compared to the initially estimated costs and, in any case, where the costs exceed 10 % of the estimated costs, the coordinator should be authorised by the court which has opened the group coordination proceedings to exceed such costs. Before taking its decision, the court which has opened the group coordination proceedings should give the possibility to the participating insolvency practitioners to be heard before it in order to allow them to communicate their observations on the appropriateness of the coordinator's request.

- (60) For members of a group of companies which are not participating in group coordination proceedings, this Regulation should also provide for an alternative mechanism to achieve a coordinated restructuring of the group. An insolvency practitioner appointed in proceedings relating to a member of a group of companies should have standing to request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to other members of the group which are not subject to group coordination proceedings. It should only be possible to request such a stay if a restructuring plan is presented for the members of the group concerned, if the plan is to the benefit of the creditors in the proceedings in respect of which the stay is requested, and if the stay is necessary to ensure that the plan can be properly implemented.
- (61) This Regulation should not prevent Member States from establishing national rules which would supplement the rules on cooperation, communication and coordination with regard to the insolvency of members of groups of companies set out in this Regulation, provided that the scope of application of those national rules is limited to the national jurisdiction and that their application would not impair the efficiency of the rules laid down by this Regulation.
- (62) The rules on cooperation, communication and coordination in the framework of the insolvency of members of a group of companies provided for in this Regulation should only apply to the extent that proceedings relating to different members of the same group of companies have been opened in more than one Member State.

- (63) Any creditor which has its habitual residence, domicile or registered office in the Union should have the right to lodge its claims in each of the insolvency proceedings pending in the Union relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. This Regulation should not prevent the insolvency practitioner from lodging claims on behalf of certain groups of creditors, for example employees, where the national law so provides. However, in order to ensure the equal treatment of creditors, the distribution of proceeds should be coordinated. Every creditor should be able to keep what he has received in the course of insolvency proceedings, but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.
- (64) 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<sup>1</sup> 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 institutions of the Union should facilitate the task of creditors when lodging claims in proceedings opened in another Member State. The consequences of the incomplete filing of the standard forms should be a matter for national law.

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<sup>1</sup> Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

- (65) This Regulation should provide for the immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States. The recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise that court's decision.
- (66) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main insolvency proceedings and for local proceedings. The *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.

- (67) Automatic recognition of insolvency proceedings to which the law of the State of the opening of proceedings normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provision should be made for a number of exceptions to the general rule.
- (68) There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since such rights are of considerable importance for the granting of credit. The basis, validity and extent of rights in rem should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of a right in rem should therefore be able to continue to assert its right to segregation or separate settlement of the collateral security. Where assets are subject to rights in rem under the *lex situs* in one Member State but the main insolvency proceedings are being carried out in another Member State, the insolvency practitioner in the main insolvency proceedings should be able to request the opening of secondary insolvency proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there. If secondary insolvency proceedings are not opened, any surplus on the sale of an asset covered by rights in rem should be paid to the insolvency practitioner in the main insolvency proceedings.
- (69) This Regulation lays down several provisions for a court to order a stay of opening proceedings or a stay of enforcement proceedings. Any such stay should not affect the rights in rem of creditors or third parties.



- (70) If a set-off of claims is not permitted under the law of the State of the opening of proceedings, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off would acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.
- (71) There is also a need for special protection in the case of payment systems and financial markets, for example in relation to the position-closing agreements and netting agreements to be found in such systems, as well as the sale of securities and the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council<sup>1</sup>. For such transactions, the only law which is relevant should be that applicable to the system or market concerned. That law is intended to prevent the possibility of mechanisms for the payment and settlement of transactions, and provided for in payment and set-off systems or on the regulated financial markets of the Member States, being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules laid down in this Regulation.

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<sup>1</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

- (72) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment should be determined by the law applicable to the relevant employment agreement, in accordance with the general rules on conflict of laws. Moreover, in cases where the termination of employment contracts requires approval by a court or administrative authority, the Member State in which an establishment of the debtor is located should retain jurisdiction to grant such approval even if no insolvency proceedings have been opened in that Member State. Any other questions relating to the law of insolvency, such as whether the employees' claims are protected by preferential rights and the status such preferential rights may have, should be determined by the law of the Member State in which the insolvency proceedings (main or secondary) have been opened, except in cases where an undertaking to avoid secondary insolvency proceedings has been given in accordance with this Regulation.
- (73) The law applicable to the effects of insolvency proceedings on any pending lawsuit or pending arbitral proceedings concerning an asset or right which forms part of the debtor's insolvency estate should be the law of the Member State where the lawsuit is pending or where the arbitration has its seat. However, this rule should not affect national rules on recognition and enforcement of arbitral awards.

- (74) In order to take account of the specific procedural rules of court systems in certain Member States flexibility should be provided with regard to certain rules of this Regulation. Accordingly, references in this Regulation to notice being given by a judicial body of a Member State should include, where a Member State's procedural rules so require, an order by that judicial body directing that notice be given.
- (75) For business considerations, the main content of the decision opening the proceedings should be published, at the request of the insolvency practitioner, in a Member State other than that of the court which delivered that decision. If there is an establishment in the Member State concerned, such publication should be mandatory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.
- (76) In order to improve the provision of information to relevant creditors and courts and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register. 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 such insolvency registers via the European e-Justice Portal. Member States should be free to publish relevant information in several registers and it should be possible to interconnect more than one register per Member State.

- (77) This Regulation should determine the minimum amount of information to be published in the insolvency registers. Member States should not be precluded from including additional information. Where the debtor is an individual, the insolvency registers should only have to indicate a registration number if the debtor is exercising an independent business or professional activity. That registration number should be understood to be the unique registration number of the debtor's independent business or professional activity published in the trade register, if any.
- (78) Information on certain aspects of insolvency proceedings is essential for creditors, such as time limits for lodging claims or for challenging decisions. This Regulation should, however, not require Member States to calculate those time-limits on a case-by-case basis. Member States should be able to fulfil their obligations by adding hyperlinks to the European e-Justice Portal, where self-explanatory information on the criteria for calculating those time-limits is to be provided.
- (79) In order to grant sufficient protection to information relating to individuals not exercising an independent business or professional activity, Member States should be able to make access to that information subject to supplementary search criteria such as the debtor's personal identification number, address, date of birth or the district of the competent court, or to make access conditional upon a request to a competent authority or upon the verification of a legitimate interest.

- (80) Member States should also be able not to include in their insolvency registers information on individuals not exercising an independent business or professional activity. In such cases, Member States should ensure that the relevant information is given to the creditors by individual notice, and that claims of creditors who have not received the information are not affected by the proceedings.
- (81) It may be the case that some of the persons concerned are not aware that insolvency proceedings have been opened, and act in good faith in a way that conflicts with the new circumstances. In order to protect such persons who, unaware that foreign proceedings have been opened, make a payment to the debtor instead of to the foreign insolvency practitioner, provision should be made for such a payment to have a debt-discharging effect.
- (82) 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<sup>1</sup>.

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<sup>1</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (83) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.
- (84) Directive 95/46/EC of the European Parliament and of the Council<sup>1</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>2</sup> apply to the processing of personal data within the framework of this Regulation.
- (85) This Regulation is without prejudice to Regulation (EEC, Euratom) No 1182/71 of the Council<sup>3</sup>.
- (86) Since the objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the creation of a legal framework for the proper administration of cross-border insolvency proceedings, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

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<sup>1</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>2</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>3</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p.1).

- (87) In accordance with Article 3 and Article 4a(1) of Protocol No 21 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 notified their wish to take part in the adoption and application of this Regulation.
- (88) In accordance with Articles 1 and 2 of Protocol No 22 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 taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (89) The European Data Protection Supervisor was consulted and delivered an opinion on 27 March 2013<sup>1</sup>,

HAVE ADOPTED THIS REGULATION:

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<sup>1</sup> OJ C 358, 7.12.2013, p. 15.

# CHAPTER I

## GENERAL PROVISIONS

### *Article 1*

#### *Scope*

1. This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:
  - (a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;
  - (b) the assets and affairs of a debtor are subject to control or supervision by a court; or
  - (c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).

Where the proceedings referred to in this paragraph may be commenced in situations where there is only a likelihood of insolvency, their purpose shall be to avoid the debtor's insolvency or the cessation of the debtor's business activities.

The proceedings referred to in this paragraph are listed in Annex A.



2. This Regulation shall not apply to proceedings referred to in paragraph 1 that concern:
- (a) insurance undertakings;
  - (b) credit institutions;
  - (c) investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC; or
  - (d) collective investment undertakings.

*Article 2*  
*Definitions*

For the purposes of this Regulation:

- (1) "collective proceedings" means proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them;
- (2) "collective investment undertakings" means undertakings for collective investment in transferable securities (UCITS) as defined by Directive 2009/65/EC of the European Parliament and of the Council<sup>1</sup> and alternative investment funds (AIFs) as defined by Directive 2011/61/EU of the European Parliament and of the Council<sup>2</sup>;

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<sup>1</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

<sup>2</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (3) "debtor in possession" means a debtor in respect of which insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where, therefore, the debtor remains totally or at least partially in control of its assets and affairs;
- (4) "insolvency proceedings" means the proceedings listed in Annex A;
- (5) "insolvency practitioner" means any person or body whose function, including on an interim basis, is to:
- (i) verify and admit claims submitted in insolvency proceedings;
  - (ii) represent the collective interest of the creditors;
  - (iii) administer, either in full or in part, assets of which the debtor has been divested;
  - (iv) liquidate the assets referred to in point (iii); or
  - (v) supervise the administration of the debtor's affairs.

The persons and bodies referred to in the first subparagraph are listed in Annex B;

- (6) "court" means:
- (i) in points (b) and (c) of Article 1(1), Article 4(2), Articles 5 and 6, Article 21(3), point (j) of Article 24(2), Articles 36 and 39, and Articles 61 to 77, the judicial body of a Member State;

- (ii) in all other articles, 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;
- (7) "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 of a court to appoint an insolvency practitioner;
- (8) "the time of the opening of proceedings" means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not;
- (9) "the Member State in which assets are situated" means, in the case of:
  - (i) registered shares in companies other than those referred to in point (ii), the Member State within the territory of which the company having issued the shares has its registered office;
  - (ii) financial instruments, the 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;

- (iii) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN, or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located;
- (iv) property and rights, ownership of or entitlement to which is entered in a public register other than those referred to in point (i), the Member State under the authority of which the register is kept;
- (v) European patents, the Member State for which the European patent is granted;
- (vi) copyright and related rights, the Member State within the territory of which the owner of such rights has its habitual residence or registered office;
- (vii) tangible property, other than that referred to in points (i) to (iv), the Member State within the territory of which the property is situated;
- (viii) claims against third parties, other than those relating to assets referred to in point (iii), the Member State within the territory of which the third party required to meet the claims has the centre of its main interests, as determined in accordance with Article 3(1);

- (10) "establishment" means any place of operations where a debtor carries out or has carried out in the three month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets;
- (11) "local creditor" means a creditor whose claims against a debtor arose from or in connection with the operation of an establishment situated in a Member State other than the Member State in which the centre of the debtor's main interests is located;
- (12) "foreign creditor" means a creditor which has its 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;
- (13) "group of companies" means a parent undertaking and all its subsidiary undertakings;
- (14) "parent undertaking" means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council<sup>1</sup> shall be deemed to be a parent undertaking.

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<sup>1</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

*Article 3*  
*International jurisdiction*

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

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. That presumption shall only apply if the registered office has not been moved to another Member State within the three-month period prior to the request for the opening of insolvency proceedings.

In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the three-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the six-month period prior to the request for the opening of insolvency proceedings.

2. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.
3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.
4. The territorial insolvency proceedings referred to in paragraph 2 may only be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 where
  - (a) insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

- (b) the opening of territorial insolvency proceedings is requested by:
  - (i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or
  - (ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.

When main insolvency proceedings are opened, the territorial insolvency proceedings shall become secondary insolvency proceedings.

#### *Article 4*

##### *Examination as to jurisdiction*

1. A court seised of a request to open insolvency proceedings shall of its own motion 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. Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

#### *Article 5*

##### *Judicial review of the decision to open main insolvency proceedings*

1. The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.
2. The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides.

#### *Article 6*

##### *Jurisdiction for actions*

##### *deriving directly from insolvency proceedings and closely linked with them*

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, such as avoidance actions.

2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the insolvency practitioner may bring both actions before the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, before the courts of the Member State within the territory of which any of them is domiciled, provided that those courts have jurisdiction pursuant to Regulation (EU) No 1215/2012.

The first subparagraph shall apply to the debtor in possession, provided that national law allows the debtor in possession to bring actions on behalf of the insolvency estate.

3. For the purpose of 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.

#### *Article 7*

#### *Applicable law*

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened (the "State of the opening of proceedings").

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. In particular, it shall determine the following:
- (a) the debtors against which insolvency proceedings may be brought on account of their capacity;
  - (b) the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
  - (c) the respective powers of the debtor and the insolvency practitioner;
  - (d) the conditions under which set-offs may be invoked;
  - (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
  - (f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits;
  - (g) the claims which are to be lodged against the debtor's insolvency estate and the treatment of claims arising after the opening of insolvency proceedings;
  - (h) the rules governing the lodging, verification and admission of claims;

- (i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
- (j) the conditions for, and the effects of closure of, insolvency proceedings, in particular by composition;
- (k) creditors' rights after the closure of insolvency proceedings;
- (l) who is to bear the costs and expenses incurred in the insolvency proceedings;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.

*Article 8*

*Third parties' rights in rem*

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets, both specific assets and collections of indefinite assets as a whole which change from time to time, belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall, in particular, mean:
  - (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
  - (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
  - (c) the right to demand assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
  - (d) a right in rem to the beneficial use of assets.
3. The right, recorded in a public register and enforceable against third parties, based on which a right in rem within the meaning of paragraph 1 may be obtained shall be considered to be a right in rem.
4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

*Article 9*

*Set-off*

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of a debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.
2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

*Article 10*

*Reservation of title*

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect sellers' rights that are based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of the opening of proceedings.
2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

### *Article 11*

#### *Contracts relating to immovable property*

1. The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated.
2. The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where:
  - (a) the law of the Member State applicable to those contracts requires that such a contract may only be terminated or modified with the approval of the court opening insolvency proceedings; and
  - (b) no insolvency proceedings have been opened in that Member State.

### *Article 12*

#### *Payment systems and financial markets*

1. Without prejudice to Article 8, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.

2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

### *Article 13*

#### *Contracts of employment*

1. The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.
2. The courts of the Member State in which secondary insolvency proceedings may be opened shall retain jurisdiction to approve the termination or modification of the contracts referred to in this Article even if no insolvency proceedings have been opened in that Member State.

The first subparagraph shall also apply to an authority competent under national law to approve the termination or modification of the contracts referred to in this Article.

### *Article 14*

#### *Effects on rights subject to registration*

The effects of insolvency proceedings on the rights of a debtor in immovable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.



*Article 15*

*European patents with unitary effect and Community trade marks*

For the purposes of this Regulation, a European patent with unitary effect, a Community trade mark or any other similar right established by Union law may be included only in the proceedings referred to in Article 3(1).

*Article 16*

*Detrimental acts*

Point (m) of Article 7(2) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

- (a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and
- (b) the law of that Member State does not allow any means of challenging that act in the relevant case.

*Article 17*

*Protection of third-party purchasers*

Where, by an act concluded after the opening of insolvency proceedings, a debtor disposes, for consideration, of:

- (a) an immovable asset,
- (b) a ship or an aircraft subject to registration in a public register, or
- (c) securities the existence of which requires registration in a register laid down by law,

the validity of that act shall be governed by the law of the State within the territory of which the immovable asset is situated or under the authority of which the register is kept.

*Article 18*

*Effects of insolvency proceedings on pending lawsuits  
or arbitral proceedings*

The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceedings concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat.

## CHAPTER II

### RECOGNITION OF INSOLVENCY PROCEEDINGS

#### *Article 19*

#### *Principle*

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings.

The rule laid down in the first subparagraph shall also apply where, on account of a debtor's capacity, insolvency proceedings cannot be brought against that debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

*Article 20*  
*Effects of recognition*

1. The judgment opening insolvency proceedings as referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under the law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.
2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

*Article 21*  
*Powers of the insolvency practitioner*

1. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on it, 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 8 and 10, the insolvency practitioner may, in particular, remove the debtor's assets from the territory of the Member State in which they are situated.

2. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. The insolvency practitioner may also bring any action to set aside which is in the interests of the creditors.
3. In exercising its powers, the insolvency practitioner shall comply with the law of the Member State within the territory of which it intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures, unless ordered by a court of that Member State, or the right to rule on legal proceedings or disputes.

#### *Article 22*

##### *Proof of the insolvency practitioner's appointment*

The insolvency practitioner's appointment shall be evidenced by a certified copy of the original decision appointing it or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which it intends to act may be required. No legalisation or other similar formality shall be required.

*Article 23*

*Return and imputation*

1. A creditor who, after the opening of the proceedings referred to in Article 3(1), obtains by any means, in particular through enforcement, total or partial satisfaction of its claim on the assets belonging to a debtor situated within the territory of another Member State, shall return what it has obtained to the insolvency practitioner, subject to Articles 8 and 10.
2. In order to ensure the equal treatment of creditors, a creditor who has, in the course of insolvency proceedings, obtained a dividend on its claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

*Article 24*

*Establishment of insolvency registers*

1. Member States shall establish and maintain in their territory one or several registers in which information concerning insolvency proceedings is published ("insolvency registers"). That information shall be published as soon as possible after the opening of such proceedings.

2. The information referred to in paragraph 1 shall be made publicly available, subject to the conditions laid down in Article 27, and shall include the following ("mandatory information"):
- (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 referred to in Annex A that were opened and, where applicable, any relevant subtype of such proceedings opened in accordance with national law;
  - (d) whether jurisdiction for opening proceedings is based on Article 3(1), 3(2) or 3(4);
  - (e) if the debtor is a company or a legal person, the debtor's name, registration number, registered office or, if different, postal address;
  - (f) if the debtor is an individual whether or not exercising an independent business or professional activity, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;
  - (g) the name, postal address or email address of the insolvency practitioner, if any, appointed in the proceedings ;
  - (h) the time limit for lodging claims, if any, or a reference to the criteria for calculating that time limit;

- (i) the date of closing main insolvency proceedings, if any;
  - (j) the court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with Article 5, or a reference to the criteria for calculating that time limit.
3. Paragraph 2 shall not preclude Member States from including documents or additional information in their national insolvency registers, such as directors' disqualifications related to insolvency.
4. Member States shall not be obliged to include in the insolvency registers the information referred to in paragraph 1 of this Article in relation to individuals not exercising an independent business or professional activity, or to make such information publicly available through the system of interconnection of those registers, provided that known foreign creditors are informed, pursuant to Article 54, of the elements referred to under point (j) of paragraph 2 of this Article.

Where a Member State makes use of the possibility referred to in the first subparagraph, the insolvency proceedings shall not affect the claims of foreign creditors who have not received the information referred to in the first subparagraph.

5. The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 55(6).



*Article 25*

*Interconnection of insolvency registers*

1. The Commission shall establish a decentralised system for the interconnection of insolvency registers by means of implementing acts. That system shall be composed of the insolvency registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system. The system shall provide a search service in all the official languages of the institutions of the Union in order to make available the mandatory information and any other documents or information included in the insolvency registers which the Member States choose to make available through the European e-Justice Portal.
  
2. By means of implementing acts in accordance with the procedure referred to in Article 87, the Commission shall adopt the following by.....\*:
  - (a) 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;
  
  - (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;

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\* OJ: Please insert date : 48 months after the entry into force of this Regulation.

- (c) minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 24;
- (d) minimum criteria for the presentation of the results of such searches based on the information set out in Article 24;
- (e) the means and the technical conditions of availability of services provided by the system of interconnection; and
- (f) a glossary containing a basic explanation of the national insolvency proceedings listed in Annex A.

### *Article 26*

#### *Costs of establishing and interconnecting insolvency registers*

1. The establishment, maintenance 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 establishing and adjusting its national insolvency registers to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those registers. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.

## *Article 27*

### *Conditions of access to information via the system of interconnection*

1. Member States shall ensure that the mandatory information referred to in points (a) to (j) of Article 24(2) is available free of charge via the system of interconnection of insolvency registers.
2. This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 24(3) via the system of interconnection of insolvency registers.
3. Member States may make access to mandatory information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, subject to supplementary search criteria relating to the debtor in addition to the minimum criteria referred to in point (c) of Article 25(2).
4. Member States may require that access to the information referred to in paragraph 3 be made conditional upon a request to the competent authority. Member States may make access conditional upon the verification of the existence of a legitimate interest for accessing such information. The requesting person shall be able to submit the request for information electronically by means of a standard form via the European e-Justice Portal. Where a legitimate interest is required, it shall be permissible for the requesting person to justify his request by electronic copies of relevant documents. The requesting person shall be provided with an answer by the competent authority within three working days.

The requesting person shall not be obliged to provide translations of the documents justifying his request, nor to bear any costs of translation which the competent authority may incur.

*Article 28*

*Publication in another Member State*

1. The insolvency practitioner or the debtor in possession shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing the insolvency practitioner 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 Member State. Such publication shall specify, where appropriate, the insolvency practitioner appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).
2. The insolvency practitioner or the debtor in possession may request that the information referred to in paragraph 1 be published in any other Member State where the insolvency practitioner or the debtor in possession deems it necessary in accordance with the publication procedures provided for in that Member State.

*Article 29*

*Registration in public registers of another Member State*

1. Where the law of a Member State in which an establishment of the debtor is located and this establishment has been entered into a public register of that Member State, or the law of a Member State in which immovable property belonging to the debtor is located, requires information on the opening of insolvency proceedings referred to in Article 28 to be published in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all the necessary measures to ensure such a registration.
2. The insolvency practitioner or the debtor in possession may request such registration in any other Member State, provided that the law of the Member State where the register is kept allows such registration.

*Article 30*

*Costs*

The costs of the publication and registration provided for in Articles 28 and 29 shall be regarded as costs and expenses incurred in the proceedings.

### *Article 31*

#### *Honouring of an obligation to a debtor*

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the insolvency practitioner in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of the proceedings.
2. Where such an obligation is honoured before the publication provided for in Article 28 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.

### *Article 32*

#### *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 19 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 39 to 44 and 47 to 57 of Regulation (EU) No 1215/2012.

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 of this Article shall be governed by Regulation (EU) No 1215/2012 provided that that Regulation is applicable.

### *Article 33*

#### *Public policy*

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

## **CHAPTER III**

### **SECONDARY INSOLVENCY PROCEEDINGS**

#### *Article 34*

##### *Opening of proceedings*

Where main insolvency proceedings have been opened by a court of a Member State and recognised in another Member State, a court of that other Member State which has jurisdiction pursuant to Article 3(2) may open secondary insolvency proceedings in accordance with the provisions set out in this Chapter. Where the main insolvency proceedings required that the debtor be insolvent, the debtor's insolvency shall not be re-examined in the Member State in which secondary insolvency proceedings may be opened. The effects of secondary insolvency proceedings shall be restricted to the assets of the debtor situated within the territory of the Member State in which those proceedings have been opened.

#### *Article 35*

##### *Applicable law*

Save as otherwise provided for in this Regulation, the law applicable to secondary insolvency proceedings shall be that of the Member State within the territory of which the secondary insolvency proceedings are opened.



*Article 36*

*Right to give an undertaking in order to avoid secondary insolvency proceedings*

1. In order to avoid the opening of secondary insolvency proceedings, the insolvency practitioner in the main insolvency proceedings may give a unilateral undertaking (the "undertaking") in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, he will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that Member State. The undertaking shall specify the factual assumptions on which it is based, in particular in respect of the value of the assets located in the Member State concerned and the options available to realise such assets.
2. Where an undertaking has been given in accordance with this Article, the law applicable to the distribution of proceeds from the realisation of assets referred to in paragraph 1, to the ranking of creditors' claims, and to the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the Member State in which secondary insolvency proceedings could have been opened. The relevant point in time for determining the assets referred to in paragraph 1 shall be the moment at which the undertaking is given.

3. The undertaking shall be made in the official language or one of the official languages of the Member State where secondary insolvency proceedings could have been opened, or, where there are several official languages in that Member State, the official language or one of the official languages of the place in which secondary insolvency proceedings could have been opened.
4. The undertaking shall be made in writing. It shall be subject to any other requirements relating to form and approval requirements as to distributions, if any, of the State of the opening of the main insolvency proceedings.
5. The undertaking shall be approved by the known local creditors. The rules on qualified majority and voting that apply to the adoption of restructuring plans under the law of the Member State where secondary insolvency proceedings could have been opened shall also apply to the approval of the undertaking. Creditors shall be able to participate in the vote by distance means of communication, where national law so permits. The insolvency practitioner shall inform the known local creditors of the undertaking, of the rules and procedures for its approval, and of the approval or rejection of the undertaking.
6. An undertaking given and approved in accordance with this Article shall be binding on the estate. If secondary insolvency proceedings are opened in accordance with Articles 37 and 38, the insolvency practitioner in the main insolvency proceedings shall transfer any assets which it removed from the territory of that Member State after the undertaking was given or, where those assets have already been realised, their proceeds, to the insolvency practitioner in the secondary insolvency proceedings.

7. Where the insolvency practitioner has given an undertaking, it shall inform local creditors about the intended distributions prior to distributing the assets and proceeds referred to in paragraph 1. If that information does not comply with the terms of the undertaking or the applicable law, any local creditor may challenge such distribution before the courts of the Member State in which main insolvency proceedings have been opened in order to obtain a distribution in accordance with the terms of the undertaking and the applicable law. In such cases, no distribution shall take place until the court has taken a decision on the challenge.
8. Local creditors may apply to the courts of the Member State in which main insolvency proceedings have been opened, in order to require the insolvency practitioner in the main insolvency proceedings to take any suitable measures necessary to ensure compliance with the terms of the undertaking available under the law of the State of the opening of main insolvency proceedings.
9. Local creditors may also apply to the courts of the Member State in which secondary insolvency proceedings could have been opened in order to require the court to take provisional or protective measures to ensure compliance by the insolvency practitioner with the terms of the undertaking.
10. The insolvency practitioner shall be liable for any damage caused to local creditors as a result of its non-compliance with the obligations and requirements set out in this Article.

11. For the purpose of this Article, an authority which is established in the Member State where secondary insolvency proceedings could have been opened and which is obliged under Directive 2008/94/EC of the European Parliament and of the Council<sup>1</sup> to guarantee the payment of employees' outstanding claims resulting from contracts of employment or employment relationships shall be considered to be a local creditor, where the national law so provides.

*Article 37*

*Right to request the opening of secondary insolvency proceedings*

1. The opening of secondary insolvency proceedings may be requested by:
  - (a) the insolvency practitioner in the main insolvency proceedings;
  - (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary insolvency proceedings is requested.
2. Where an undertaking has become binding in accordance with Article 36, the request for opening secondary insolvency proceedings shall be lodged within 30 days of having received notice of the approval of the undertaking.

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<sup>1</sup> Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36).

*Article 38*

*Decision to open secondary insolvency proceedings*

1. A court seized of a request to open secondary insolvency proceedings shall immediately give notice to the insolvency practitioner or the debtor in possession in the main insolvency proceedings and give him an opportunity to be heard on the request.
2. Where the insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court referred to in paragraph 1 of this Article shall, at the request of the insolvency practitioner, not open secondary insolvency proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditors.
3. Where a temporary stay of individual enforcement proceedings has been granted in order to allow for negotiations between the debtor and its creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary insolvency proceedings for a period not exceeding three months, provided that suitable measures are in place to protect the interests of local creditors.

The court referred to in paragraph 1 may order protective measures to protect the interests of local creditors by requiring the insolvency practitioner or the debtor in possession not to remove or dispose of any assets which are located in the Member State where its establishment is located unless this is done in the ordinary course of business. The court may also order other measures to protect the interest of local creditors during a stay, unless this is incompatible with the national rules on civil procedure.

The stay of the opening of secondary insolvency proceedings shall be lifted by the court of its own motion or at the request of any creditor if, during the stay, an agreement in the negotiations referred to in the first subparagraph has been concluded.

The stay may be lifted by the court of its own motion or at the request of any creditor if the continuation of the stay is detrimental to the creditor's rights, in particular if the negotiations have been disrupted or it has become evident that they are unlikely to be concluded, or if the insolvency practitioner or the debtor in possession has infringed the prohibition on disposal of its assets or on removal of them from the territory of the Member State where the establishment is located.

4. At the request of the insolvency practitioner in the main insolvency proceedings, the court referred to in paragraph 1 may open a type of insolvency proceedings as listed in Annex A other than the type initially requested, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings. The second sentence of Article 34 shall apply.

#### *Article 39*

##### *Judicial review of the decision to open secondary insolvency proceedings*

The insolvency practitioner in the main insolvency proceedings may challenge the decision to open secondary insolvency proceedings before the courts of the Member State in which secondary insolvency proceedings have been opened on the ground that the court did not comply with the conditions and requirements of Article 38.

*Article 40*

*Advance payment of costs and expenses*

Where the law of the Member State in which the opening of secondary insolvency proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

*Article 41*

*Cooperation and communication between insolvency practitioners*

1. The insolvency practitioner in the main insolvency proceedings and the insolvency practitioner or practitioners in secondary insolvency proceedings concerning the same debtor shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings. Such cooperation may take any form, including the conclusion of agreements or protocols.
2. In implementing the cooperation set out in paragraph 1, the insolvency practitioners shall:
  - (a) as soon as possible 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 a 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 insolvency practitioner in the secondary insolvency proceedings shall give the insolvency practitioner in the main insolvency proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary insolvency proceedings.
3. Paragraphs 1 and 2 shall apply mutatis mutandis to situations where, in the main or in the secondary insolvency proceedings or in any territorial insolvency proceedings concerning the same debtor and open at the same time, the debtor remains in possession of its assets.

*Article 42*

*Cooperation and communication between courts*

1. In order to facilitate the coordination of main, territorial 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 a request to open insolvency proceedings is pending, or which has opened such proceedings, to the extent that such cooperation is not incompatible with the rules applicable to each of the proceedings. For that purpose, the courts may, where appropriate, appoint an independent person or body acting on its instructions, provided that it is not incompatible with the rules applicable to them.



2. In implementing the cooperation set out in paragraph 1, the courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with, or request information or assistance directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.
3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:
  - (a) coordination in the appointment of the insolvency practitioners;
  - (b) communication of information by any means considered appropriate by the court;
  - (c) coordination of the administration and supervision of the debtor's assets and affairs;
  - (d) coordination of the conduct of hearings;
  - (e) coordination in the approval of protocols, where necessary.

### *Article 43*

#### *Cooperation and communication between insolvency practitioners and courts*

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings opened in respect of the same debtor:
  - (a) an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings;

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

to the extent that such cooperation and communication are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interest.

2. The cooperation referred to in paragraph 1 may be implemented by any appropriate means, such as those set out in Article 42(3).

#### *Article 44*

#### *Costs of cooperation and communication*

The requirements laid down in Articles 42 and 43 shall not result in courts charging costs to each other for cooperation and communication.

*Article 45*

*Exercise of creditors' rights*

1. Any creditor may lodge its claim in the main insolvency proceedings and in any secondary insolvency proceedings.
2. The insolvency practitioners in the main and any secondary insolvency proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served by doing so, subject to the right of creditors to oppose such lodgment or to withdraw the lodgment of their claims where the law applicable so provides.
3. The insolvency practitioner in the main or secondary insolvency proceedings shall be entitled to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

*Article 46*

*Stay of the process of realisation of assets*

1. The court which opened the secondary insolvency proceedings shall stay the process of realisation of assets in whole or in part on receipt of a request from the insolvency practitioner in the main insolvency proceedings. In such a case, it may require the insolvency practitioner in the main insolvency proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary insolvency proceedings and of individual classes of creditors. Such a request from the insolvency practitioner may be rejected only if it is manifestly of no interest to the creditors in the main insolvency proceedings. Such a stay of the process of realisation of assets may be ordered for up to three months. It may be continued or renewed for similar periods.
2. The court referred to in paragraph 1 shall terminate the stay of the process of realisation of assets:
  - (a) at the request of the insolvency practitioner in the main insolvency proceedings;
  - (b) of its own motion, at the request of a creditor or at the request of the insolvency practitioner in the secondary insolvency proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main insolvency proceedings or in the secondary insolvency proceedings.

#### *Article 47*

##### *Power of the insolvency practitioner to propose restructuring plans*

1. Where the law of the Member State where secondary insolvency proceedings have been opened allows for such proceedings to be closed without liquidation by a restructuring plan, a composition or a comparable measure, the insolvency practitioner in the main insolvency proceedings shall be empowered to propose such a measure in accordance with the procedure of that Member State.
2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary insolvency proceedings, such as a stay of payment or discharge of debt, shall have no effect in respect of assets of a debtor that are not covered by those proceedings, without the consent of all the creditors having an interest.

#### *Article 48*

##### *Impact of closure of insolvency proceedings*

1. Without prejudice to Article 49, the closure of insolvency proceedings shall not prevent the continuation of other insolvency proceedings concerning the same debtor which are still open at that point in time.

2. Where insolvency proceedings concerning a legal person or a company in the Member State of that person's or company's registered office would entail the dissolution of the legal person or of the company, that legal person or company shall not cease to exist until any other insolvency proceedings concerning the same debtor have been closed, or the insolvency practitioner or practitioners in such proceedings have given consent to the dissolution.

*Article 49*

*Assets remaining in the secondary insolvency proceedings*

If, by the liquidation of assets in the secondary insolvency proceedings, it is possible to meet all claims allowed under those proceedings, the insolvency practitioner appointed in those proceedings shall immediately transfer any assets remaining to the insolvency practitioner in the main insolvency proceedings.

*Article 50*

*Subsequent opening of the main insolvency proceedings*

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 41, 45, 46, 47 and 49 shall apply to those opened first, in so far as the progress of those proceedings so permits.

## *Article 51*

### *Conversion of secondary insolvency proceedings*

1. At the request of the insolvency practitioner in the main insolvency proceedings, the court of the Member State in which secondary insolvency proceedings have been opened may order the conversion of the secondary insolvency proceedings into another type of insolvency proceedings listed in Annex A, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.
2. When considering the request referred to in paragraph 1, the court may seek information from the insolvency practitioners involved in both proceedings.

## *Article 52*

### *Preservation measures*

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of a debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that Member State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

**CHAPTER IV**  
**PROVISION OF INFORMATION FOR CREDITORS**  
**AND LODGEMENT OF THEIR CLAIMS**

*Article 53*

*Right to lodge claims*

Any foreign creditor, may lodge claims in insolvency proceedings by any means of communication, which are accepted by the law of the State of the opening of proceedings. Representation by a lawyer or another legal professional shall not be mandatory for the sole purpose of lodging of claims.

*Article 54*

*Duty to inform creditors*

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the insolvency practitioner appointed by that court shall immediately inform the known foreign creditors.



2. The information referred to in paragraph 1, provided by an individual notice, shall in particular include time limits, the penalties laid down with regard to those time limits, the body or authority empowered to accept the lodgement of claims and any other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims. The notice shall also include a copy of the standard form for lodging of claims referred to in Article 55 or information on where that form is available.
3. The information referred to in paragraphs 1 and 2 of this Article shall be provided using the standard notice form to be established in accordance with Article 88. The form shall be published in the European e-Justice Portal and shall bear the heading "Notice of insolvency proceedings" in all the official languages of the institutions of the Union. It shall be transmitted in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that State has indicated it can accept, in accordance with Article 55(5), if it can be assumed that that language is easier to understand for the foreign creditors.
4. In insolvency proceedings relating to an individual not exercising a business or professional activity, the use of the standard form referred to in this Article shall not be obligatory if creditors are not required to lodge their claims in order to have their claims taken into account in the proceedings.

*Article 55*

*Procedure for lodging claims*

1. Any foreign creditor may lodge its claim using the standard claims form to be established in accordance with Article 88. The form shall bear the heading "Lodgment of claims" in all the official languages of the institutions of the Union.
2. The standard claims form referred to in paragraph 1 shall include the following information:
  - (a) the name, postal address, email address, if any, personal identification number, if any, and bank details of the foreign creditor referred to in paragraph 1;
  - (b) the amount of the claim, specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;
  - (c) if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest;
  - (d) if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of those costs;
  - (e) the nature of the claim;

- (f) whether any preferential creditor status is claimed and the basis of such a claim;
- (g) 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 being invoked, the date on which the security was granted and, where the security has been registered, the registration number; and
- (h) whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened, the date on which they arose and the amount net of set-off claimed.

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

3. The standard claims form shall indicate that the provision of information concerning the bank details and the personal identification number of the creditor referred to in point (a) of paragraph 2 is not compulsory.
4. When a creditor lodges its claim by means other than the standard form referred to in paragraph 1, the claim shall contain the information referred to in paragraph 2.

5. Claims may be lodged in any official language of the institutions of the Union. The court, the insolvency practitioner or the debtor in possession may require the creditor to provide a translation in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that Member State has indicated it can accept. Each Member State shall indicate whether it accepts any official language of the institutions of the Union other than its own for the purpose of the lodging of claims.
6. Claims shall be lodged within the period stipulated by the law of the State of the opening of proceedings. In the case of a foreign creditor, that period shall not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the State of the opening of proceedings. Where a Member State relies on Article 24(4), that period shall not be less than 30 days following a creditor having been informed pursuant to Article 54.
7. Where the court, the insolvency practitioner or the debtor in possession has doubts in relation to 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.

**CHAPTER V**  
**INSOLVENCY PROCEEDINGS**  
**OF MEMBERS OF A GROUP OF COMPANIES**

**SECTION 1**  
**COOPERATION AND COMMUNICATION**

*Article 56*

*Cooperation and communication between insolvency practitioners*

1. Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent that such cooperation is appropriate to facilitate the effective administration of those proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interest. That cooperation may take any form, including the conclusion of agreements or protocols.
2. In implementing the cooperation set out in paragraph 1, insolvency practitioners shall
  - (a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;

- (b) consider whether possibilities exist for coordinating the administration and supervision of the affairs of the group members which are subject to insolvency proceedings, and if so, coordinate such administration and supervision;
- (c) consider whether possibilities exist for restructuring group members which are subject to insolvency proceedings and, if so, coordinate with regard to the proposal and negotiation of a coordinated restructuring plan;

For the purposes of points (b) and (c), all or some of the insolvency practitioners referred to in paragraph 1 may agree to grant additional powers to an insolvency practitioner appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings. They may also agree on the allocation of certain tasks amongst them, where such allocation of tasks is permitted by the rules applicable to each of the proceedings.

*Article 57*

*Cooperation and communication between courts*

1. Where insolvency proceedings relate to two or more members of a group of companies, a court 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, is not incompatible with the rules applicable to them and does not entail any conflict of interest. For that purpose, the courts may, where appropriate, appoint an independent person or body to act on its instructions, provided that this is not incompatible with the rules applicable to them.
2. In implementing the cooperation set out in paragraph 1, courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with each other, or request information or assistance directly from each other, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.
3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:
  - (a) coordination in the appointment of insolvency practitioners;
  - (b) communication of information by any means considered appropriate by the court;

- (c) coordination of the administration and supervision of the assets and affairs of the members of the group;
- (d) coordination of the conduct of hearings;
- (e) coordination in the approval of protocols where necessary.

*Article 58*

*Cooperation and communication between insolvency practitioners and courts*

An insolvency practitioner appointed in insolvency proceedings concerning a member of a group of companies:

- (a) shall cooperate and communicate with any court before which a request for the opening of proceedings in respect of another member of the same group of companies is pending or which has opened such proceedings; and
- (b) 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,

to the extent that such cooperation and communication are appropriate to facilitate the effective administration of the proceedings, do not entail any conflict of interest and are not incompatible with the rules applicable to them.



*Article 59*

*Costs of cooperation and communication in proceedings  
concerning members of a group of companies*

The costs of the cooperation and communication provided for in Articles 56 to 60 incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

*Article 60*

*Powers of the insolvency practitioner in proceedings  
concerning members of a group of companies*

1. An insolvency practitioner appointed in insolvency proceedings opened in respect of a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings:
  - (a) be heard in any of the proceedings opened in respect of any other member of the same group;
  - (b) request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:
    - (i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under point (c) of Article 56(2) and presents a reasonable chance of success;

- (ii) such a stay is necessary in order to ensure the proper implementation of the restructuring plan;
  - (iii) the restructuring plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and
  - (iv) neither the insolvency proceedings in which the insolvency practitioner referred to in paragraph 1 of this Article has been appointed nor the proceedings in respect of which the stay is requested are subject to coordination under Section 2 of this Chapter;
- (c) apply for the opening of group coordination proceedings in accordance with Article 61.

2. The court having opened proceedings referred to in point (b) of paragraph 1 shall stay any measure related to the realisation of the assets in the proceedings in whole or in part if it is satisfied that the conditions referred to in point (b) of paragraph 1 are fulfilled.

Before ordering the stay, the court shall hear the insolvency practitioner appointed in the proceedings for which the stay is requested. Such a stay may be ordered for any period, not exceeding three months, which the court considers appropriate and which is compatible with the rules applicable to the proceedings.

The court ordering the stay may require the insolvency practitioner referred to in paragraph 1 to take any suitable measure available under national law to guarantee the interests of the creditors in the proceedings.

The court may extend the duration of the stay by such further period or periods as it considers appropriate and which are compatible with the rules applicable to the proceedings, provided that the conditions referred to in points (b)(ii) to (iv) of paragraph 1 continue to be fulfilled and that the total duration of the stay (the initial period together with any such extensions) does not exceed six months.

## **SECTION 2**

### **COORDINATION**

#### **SUBSECTION 1**

#### **PROCEDURE**

##### *Article 61*

##### *Request to open group coordination proceedings*

1. Group coordination proceedings may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group, by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.
2. The request referred to in paragraph 1 shall be made in accordance with the conditions provided for by the law applicable to the proceedings in which the insolvency practitioner has been appointed.

3. The request referred to in paragraph 1 shall be accompanied by:
- (a) a proposal as to the person to be nominated as the group coordinator (“the coordinator”), details of his or her eligibility pursuant to Article 71, details of his or her qualifications and his or her written agreement to act as coordinator;
  - (b) an outline of the proposed group coordination, and in particular the reasons why the conditions set out in Article 63(1) are fulfilled;
  - (c) a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;
  - (d) an outline of the estimated costs of the proposed group coordination and the estimation of the share of those costs to be paid by each member of the group.

*Article 62*

*Priority rule*

Without prejudice to Article 66, where the opening of group coordination proceedings is requested before courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court.

*Article 63*

*Notice by the court seised*

1. The court seised of a request to open group coordination proceedings shall give notice as soon as possible of the request for the opening of group coordination proceedings and of the proposed coordinator to the insolvency practitioners appointed in relation to the members of the group as indicated in the request referred to in point (c) of Article 61(3), if it is satisfied that:
  - (a) the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;
  - (b) no creditor of any group member expected to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and
  - (c) the proposed coordinator fulfils the requirements laid down in Article 71.
2. The notice referred to in paragraph 1 of this Article shall list the elements referred to in points (a) to (d) of Article 61(3).
3. The notice referred to in paragraph 1 shall be sent by registered letter, attested by an acknowledgment of receipt.

4. The court seised shall give the insolvency practitioners involved the opportunity to be heard.

*Article 64*

*Objections by insolvency practitioners*

1. An insolvency practitioner appointed in respect of any group member may object to:
  - (a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which it has been appointed, or;
  - (b) the person proposed as a coordinator.
2. Objections pursuant to paragraph 1 of this Article shall be lodged with the court referred to in Article 63 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1 of this Article.

The objection may be made by means of the standard form established in accordance with Article 88.
3. Prior to taking the decision to participate or not to participate in the coordination in accordance with point (a) of paragraph 1, an insolvency practitioner shall obtain any approval which may be required under the law of the State of the opening of proceedings for which it has been appointed.

*Article 65*

*Consequences of objection to the inclusion in group coordination*

1. Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which it has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.
2. The powers of the court referred to in Article 68 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.

*Article 66*

*Choice of court for group coordination proceedings*

1. Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member State having jurisdiction is the most appropriate court for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.
2. The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 68.
3. Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.

4. The request for the opening of group coordination proceedings shall be submitted to the court agreed in accordance with Article 61.

*Article 67*

*Consequences of objections to the proposed coordinator*

Where objections to the person proposed as coordinator have been received from an insolvency practitioner which does not also object to the inclusion in the group coordination proceedings of the member in respect of which it has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner to submit a new request in accordance with Article 61(3).

*Article 68*

*Decision to open group coordination proceedings*

1. After the period referred to in Article 64(2) has elapsed, the court may open group coordination proceedings where it is satisfied that the conditions of Article 63(1) are met. In such a case, the court shall:
  - (a) appoint a coordinator;
  - (b) decide on the outline of the coordination; and
  - (c) decide on the estimation of costs and the share to be paid by the group members.



2. The decision opening group coordination proceedings shall be brought to the notice of the participating insolvency practitioners and of the coordinator.

*Article 69*

*Subsequent opt-in by insolvency practitioners*

1. In accordance with its national law, any insolvency practitioner may request, after the court decision referred to in Article 68, the inclusion of the proceedings in respect of which it has been appointed, where
  - (a) there has been an objection to the inclusion of the insolvency proceedings within the group coordination proceedings, or
  - (b) insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.
2. Without prejudice to paragraph 4, the coordinator may accede to such a request, after consulting the insolvency practitioners involved, where
  - (a) he is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in points (a) and (b) of Article 63(1) are met; or
  - (b) all insolvency practitioners involved agree, subject to the conditions in their national law.

3. The coordinator shall inform the court and the participating insolvency practitioners of his decision pursuant to paragraph 2 and of the reasons on which it is based.
4. Any participating insolvency practitioner or any insolvency practitioner whose request for inclusion in the group coordination proceedings has been rejected may challenge the decision referred to in paragraph 2 in accordance with the procedure set out under the law of the Member State in which the group coordination proceedings have been opened.

#### *Article 70*

##### *Recommendations and group coordination plan*

1. When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to in Article 72(1).
2. An insolvency practitioner shall not be obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan.

If it does not follow the coordinator's recommendations or the group coordination plan, it shall give reasons for not doing so to the persons or bodies that it is to report to under its national law, and to the coordinator.

**SUBSECTION 2**  
**GENERAL PROVISIONS**

*Article 71*

*The coordinator*

1. The coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.
2. The coordinator shall not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.

*Article 72*

*Tasks and rights of the coordinator*

1. The coordinator shall:
  - (a) identify and outline recommendations for the coordinated conduct of the insolvency proceedings;

- (b) propose 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 contain proposals for:
  - (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 as regards intra-group transactions and avoidance actions;
  - (iii) agreements between the insolvency practitioners of the insolvent group members.

2. The coordinator may also:

- (a) be heard and participate, in particular by attending creditors' meetings, in any of the proceedings opened in respect of any member of the group;
- (b) mediate any dispute arising between two or more insolvency practitioners of group members;
- (c) present and explain his or her group coordination plan to the persons or bodies that he or she is to report to under his or her national law;

- (d) request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and
  - (e) request a stay for a period of up to six months of the proceedings opened in respect of any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested; or request the lifting of any existing stay. Such a request shall be made to the court that opened the proceedings for which a stay is requested.
3. The plan referred to in point (b) of paragraph 1 shall not include recommendations as to any consolidation of proceedings or insolvency estates.
  4. The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.
  5. The coordinator shall perform his or her duties impartially and with due care.
  6. Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in the costs compared to the cost estimate referred to in point (d) of Article 61(3), and in any case, where the costs exceed 10 % of the estimated costs, the coordinator shall
    - (a) inform without delay the participating insolvency practitioners, and
    - (b) seek the prior approval of the court opening group coordination proceedings.

*Article 73*  
*Languages*

1. The coordinator shall communicate with the insolvency practitioner of a participating group member in the language agreed with the insolvency practitioner or, in the absence of an agreement, in the official language or one of the official languages of the institutions of the Union, and of the court which opened the proceedings in respect of that group member.
2. The coordinator shall communicate with a court in the official language applicable to that court.

*Article 74*  
*Cooperation between insolvency practitioners and the coordinator*

1. Insolvency practitioners appointed in relation to members of a group and the coordinator shall cooperate with each other to the extent that such cooperation is not incompatible with the rules applicable to the respective proceedings.
2. In particular, insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his or her tasks.

*Article 75*

*Revocation of the appointment of the coordinator*

The court shall revoke the appointment of the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member where:

- (a) the coordinator acts to the detriment of the creditors of a participating group member; or
- (b) the coordinator fails to comply with his or her obligations under this Chapter.

*Article 76*

*Debtor in possession*

The provisions applicable, under this Chapter, to the insolvency practitioner shall also apply, where appropriate, to the debtor in possession.

*Article 77*

*Costs and distribution*

1. The remuneration for the coordinator shall be adequate, proportionate to the tasks fulfilled and reflect reasonable expenses.
2. On having completed his or her tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member, and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.

3. In the absence of objections by the insolvency practitioners within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.
4. In the event of an objection, the court that opened the group coordination proceedings shall, upon the application of the coordinator or any participating insolvency practitioner, decide on the costs and the share to be paid by each member in accordance with the criteria set out in paragraph 1 of this Article, and taking into account the estimation of costs referred to in Article 68(1) and, where applicable, Article 72(6).
5. Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

## **CHAPTER VI**

### **DATA PROTECTION**

#### *Article 78*

#### *Data protection*

1. National rules implementing Directive 95/46/EC shall apply to the processing of personal data carried out in the Member States pursuant to this Regulation, provided that processing operations referred to in Article 3(2) of Directive 95/46/EC are not concerned.



2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.

*Article 79*

*Responsibilities of Member States*

*regarding the processing of personal data in national insolvency registers*

1. Each Member State shall communicate to the Commission the name of the natural or legal person, public authority, agency or any other body designated by national law to exercise the functions of controller in accordance with point (d) of Article 2 of Directive 95/46/EC, with a view to its publication on the European e-Justice Portal.
2. Member States shall ensure that the technical measures for ensuring the security of personal data processed in their national insolvency registers referred to in Article 24 are implemented.
3. Member States shall be responsible for verifying that the controller, designated by national law in accordance with point (d) of Article 2 of Directive 95/46/EC, ensures compliance with the principles of data quality, in particular the accuracy and the updating of data stored in national insolvency registers.
4. Member States shall be responsible, in accordance with Directive 95/46/EC, for the collection and storage of data in national databases and for decisions taken to make such data available in the interconnected register that can be consulted via the European e-Justice Portal.

5. As part of the information that should be provided to data subjects to enable them to exercise their rights, and in particular the right to the erasure of data, Member States shall inform data subjects of the accessibility period set for personal data stored in insolvency registers.

#### *Article 80*

##### *Responsibilities of the Commission in connection with the processing of personal data*

1. The Commission shall exercise the responsibilities of controller pursuant to Article 2(d) of Regulation (EC) No 45/2001 in accordance with its respective responsibilities defined in this Article.
2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.
3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.
4. The obligations of the Commission shall not affect the responsibilities of the Member States and other bodies for the content and operation of the interconnected national databases run by them.

*Article 81*  
*Information obligations*

Without prejudice to the information to be given to data subjects in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001, the Commission shall inform data subjects, by means of publication through the European e-Justice Portal, about its role in the processing of data and the purposes for which those data will be processed.

*Article 82*  
*Storage of personal data*

As regards information from interconnected national databases, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national databases operated by the Member States or other bodies.

*Article 83*  
*Access to personal data via the European e-Justice Portal*

Personal data stored in the national insolvency registers referred to in Article 24 shall be accessible via the European e-Justice Portal for as long as they remain accessible under national law.

## CHAPTER VII

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 84*

#### *Applicability in time*

1. The provisions of this Regulation shall apply only to insolvency proceedings opened after ...\*. Acts committed by a debtor before that date shall continue to be governed by the law which was applicable to them at the time they were committed.
2. Notwithstanding Article 91 of this Regulation, Regulation (EC) No 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before .....\*.

#### *Article 85*

#### *Relationship to Conventions*

1. This Regulation replaces, in respect of the matters referred to therein, and as regards relations between Member States, the Conventions concluded between two or more Member States, in particular:
  - (a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;

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\* OJ: Please insert the date of application of this Regulation.

- (b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;
- (c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;
- (d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;
- (e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;
- (f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
- (g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;
- (h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;

- (i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;
- (j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;
- (k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990;
- (l) the Convention between the Federative People's Republic of Yugoslavia and the Kingdom of Greece on the Mutual Recognition and Enforcement of Judgments, signed at Athens on 18 June 1959;
- (m) the Agreement between the Federative People's Republic of Yugoslavia and the Republic of Austria on the Mutual Recognition and Enforcement of Arbitral Awards and Arbitral Settlements in Commercial Matters, signed at Belgrade on 18 March 1960;
- (n) the Convention between the Federative People's Republic of Yugoslavia and the Republic of Italy on Mutual Judicial Cooperation in Civil and Administrative Matters, signed at Rome on 3 December 1960;
- (o) the Agreement between the Socialist Federative Republic of Yugoslavia and the Kingdom of Belgium on Judicial Cooperation in Civil and Commercial Matters, signed at Belgrade on 24 September 1971;

- (p) the Convention between the Governments of Yugoslavia and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Paris on 18 May 1971;
- (q) the Agreement between the Czechoslovak Socialist Republic and the Hellenic Republic on Legal Aid in Civil and Criminal Matters, signed at Athens on 22 October 1980, still in force between the Czech Republic and Greece;
- (r) the Agreement between the Czechoslovak Socialist Republic and the Republic of Cyprus on Legal Aid in Civil and Criminal Matters, signed at Nicosia on 23 April 1982, still in force between the Czech Republic and Cyprus;
- (s) the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of France on Legal Aid and the Recognition and Enforcement of Judgments in Civil, Family and Commercial Matters, signed at Paris on 10 May 1984, still in force between the Czech Republic and France;
- (t) the Treaty between the Czechoslovak Socialist Republic and the Italian Republic on Legal Aid in Civil and Criminal Matters, signed at Prague on 6 December 1985, still in force between the Czech Republic and Italy;
- (u) the Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships, signed at Tallinn on 11 November 1992;

- (v) the Agreement between Estonia and Poland on Granting Legal Aid and Legal Relations on Civil, Labour and Criminal Matters, signed at Tallinn on 27 November 1998;
- (w) the Agreement between the Republic of Lithuania and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters, signed in Warsaw on 26 January 1993;
- (x) the Convention between the Socialist Republic of Romania and the Hellenic Republic on legal assistance in civil and criminal matters and its Protocol, signed at Bucharest on 19 October 1972;
- (y) the Convention between the Socialist Republic of Romania and the French Republic on legal assistance in civil and commercial matters, signed at Paris on 5 November 1974;
- (z) the Agreement between the People's Republic of Bulgaria and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters, signed at Athens on 10 April 1976;
- (aa) the Agreement between the People's Republic of Bulgaria and the Republic of Cyprus on Legal Assistance in Civil and Criminal Matters, signed at Nicosia on 29 April 1983;



- (ab) the Agreement between the Government of the People's Republic of Bulgaria and the Government of the French Republic on Mutual Legal Assistance in Civil Matters, signed at Sofia on 18 January 1989;
  - (ac) the Treaty between Romania and the Czech Republic on judicial assistance in civil matters, signed at Bucharest on 11 July 1994;
  - (ad) the Treaty between Romania and the Republic of Poland on legal assistance and legal relations in civil cases, signed at Bucharest on 15 May 1999.
2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of Regulation (EC) No 1346/2000.
3. This Regulation shall not apply:
- (a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that Member State with one or more third countries before the entry into force of Regulation (EC) No 1346/2000;
  - (b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time Regulation (EC) No 1346/2000 entered into force.

*Article 86*

*Information on national and Union 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<sup>1</sup>, and with a view to making the information available to the public, a short description of their national legislation and procedures relating to insolvency, in particular relating to the matters listed in Article 7(2).
2. The Member States shall update the information referred to in paragraph 1 regularly.
3. The Commission shall make information concerning this Regulation available to the public.

*Article 87*

*Establishment of the interconnection of registers*

The Commission shall adopt implementing acts establishing the interconnection of insolvency registers as referred to in Article 25. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 89(3).

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<sup>1</sup> Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

*Article 88*

*Establishment and subsequent amendment of standard forms*

The Commission shall adopt implementing acts establishing and, where necessary, amending the forms referred to in Article 27(4), Articles 54 and 55 and Article 64(2). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

*Article 89*

*Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 90*  
*Review clause*

1. No later than ...<sup>\*</sup>, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.
2. No later than ...<sup>\*\*</sup>, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the group coordination proceedings. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.
3. No later than 1 January 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the cross-border issues in the area of directors' liability and disqualifications.
4. No later than ...<sup>\*\*\*</sup>, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the issue of abusive forum shopping.

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<sup>\*</sup> OJ: Please insert date: ten years after the date of application of this Regulation.

<sup>\*\*</sup> OJ: Please insert date: five years after the date of application of this Regulation.

<sup>\*\*\*</sup> OJ: Please insert date: three years after the date of application of this Regulation.

*Article 91*

*Repeal*

Regulation (EC) No 1346/2000 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex D to this Regulation.

*Article 92*

*Entry into force*

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 .....<sup>\*</sup>, with the exception of:

- (a) Article 86, which shall apply from...<sup>\*\*</sup>;
- (b) Article 24(1), which shall apply from ....<sup>\*\*\*</sup>; and

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\* OJ: Please insert date: 24 months after the entry into force of this Regulation.

\*\* OJ: Please insert date: 12 months after the entry into force of this Regulation.

\*\*\* OJ: Please insert date: 36 months after the entry into force of this Regulation.

(c) Article 25, 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*  
*The President*

*For the Council*  
*The President*

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\* OJ: Please insert date: 48 months after the entry into force of this Regulation.

## ANNEX A

Insolvency proceedings referred to in point (4) of Article 2

### BELGIQUE/BELGIË

- Het faillissement/La faillite,
- De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,
- De gerechtelijke reorganisatie door een minnelijk akkoord/ La réorganisation judiciaire par accord amiable,
- De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,
- De collectieve schuldenregeling/Le règlement collectif de dettes,
- De vrijwillige vereffening/La liquidation volontaire,
- De gerechtelijke vereffening/La liquidation judiciaire,
- De voorlopige ontneming van beheer, bepaald in artikel 8 van de faillissementswet/Le dessaisissement provisoire, visé à l'article 8 de la loi sur les faillites,

### БЪЛГАРИЯ

- Производство по несъстоятелност,

## ČESKÁ REPUBLIKA

- Konkurs,
- Reorganizace,
- Oddlužení,

## DEUTSCHLAND

- Das Konkursverfahren,
- Das gerichtliche Vergleichsverfahren,
- Das Gesamtvollstreckungsverfahren,
- Das Insolvenzverfahren,

## EESTI

- Pankrotimenetus,
- Võlgade ümberkujundamise menetlus,

## ÉIRE/IRELAND

- Compulsory winding-up by the court,
- Bankruptcy,
- The administration in bankruptcy of the estate of persons dying insolvent,



- Winding-up in bankruptcy of partnerships,
- Creditors' voluntary winding-up (with confirmation of a court),
- Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,
- Examinership,
- Debt Relief Notice,
- Debt Settlement Arrangement,
- Personal Insolvency Arrangement,

#### ΕΛΛΑΔΑ

- Η πτώχευση,
- Η ειδική εκκαθάριση εν λειτουργία,
- Σχέδιο αναδιοργάνωσης,
- Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,
- Διαδικασία Εξυγίανσης,

## ESPAÑA

- Concurso,
- Procedimiento de homologación de acuerdos de refinanciación,
- Procedimiento de acuerdos extrajudiciales de pago,
- Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,

## FRANCE

- Sauvegarde,
- Sauvegarde accélérée,
- Sauvegarde financière accélérée,
- Redressement judiciaire,
- Liquidation judiciaire,

## HRVATSKA

- Stečajni postupak,

## ITALIA

- Fallimento,
- Concordato preventivo,
- Liquidazione coatta amministrativa,
- Amministrazione straordinaria,
- Accordi di ristrutturazione,
- Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano),
- Liquidazione dei beni,

## ΚΥΠΡΟΣ

- Υποχρεωτική εκκαθάριση από το Δικαστήριο,
- Εκούσια εκκαθάριση από μέλη,
- Εκούσια εκκαθάριση από πιστωτές
- Εκκαθάριση με την εποπτεία του Δικαστηρίου,
- Διάταγμα Παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,
- Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,

## LATVIJA

- Tiesiskās aizsardzības process,
- Juridiskās personas maksātnespējas process,
- Fiziskās personas maksātnespējas process,

## LIETUVA

- Īmonēs restruktūrizavimo byla,
- Īmonės bankroto byla,
- Īmonės bankroto procesas ne teismo tvarka,
- Fizinio asmens bankroto procesas,

## LUXEMBOURG

- Faillite,
- Gestion contrôlée,
- Concordat préventif de faillite (par abandon d'actif),
- Régime spécial de liquidation du notariat,
- Procédure de règlement collectif des dettes dans le cadre du surendettement,

## MAGYARORSZÁG

- Csődeljárás,
- Felszámolási eljárás,

## MALTA

- Xoljiment,
- Amministrazzjoni,
- Stralè volontarju mill-membri jew mill-kredituri,
- Stralè mill-Qorti,
- Falliment f'każ ta' kummerċjant,
- Proċedura biex kumpanija tirkupra',

## NEDERLAND

- Het faillissement,
- De surséance van betaling,
- De schuldsaneringsregeling natuurlijke personen,

## ÖSTERREICH

- Das Konkursverfahren (Insolvenzverfahren),
- Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),
- Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),
- Das Schuldenregulierungsverfahren,
- Das Abschöpfungsverfahren,
- Das Ausgleichsverfahren,

## POLSKA

- Postępowanie naprawcze,
- Upadłość obejmująca likwidację,
- Upadłość z możliwością zawarcia układu,

## PORTUGAL

- Processo de insolvência,
- Processo especial de revitalização,

## ROMÂNIA

- Procedura insolvenței,
- Reorganizarea judiciară,
- Procedura falimentului,
- Concordatul preventiv,

## SLOVENIJA

- Postopek preventivnega prestrukturiranja,
- Postopek prisilne poravnave,
- Postopek poenostavljene prisilne poravnave,
- Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja and postopek stečaja zapuščine,

## SLOVENSKO

- Konkurzné konanie,
- Reštrukturalizačné konanie,
- Oddĺženie,

## SUOMI/FINLAND

- Konkurssi/konkurs,
- Yrityssaneeraus/företagssanering,
- Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,

## SVERIGE

- Konkurs,
- Företagsrekonstruktion,
- Skuldsanering,

## UNITED KINGDOM

- Winding-up by or subject to the supervision of the court,
  - Creditors' voluntary winding-up (with confirmation by the court),
  - Administration, including appointments made by filing prescribed documents with the court,
  - Voluntary arrangements under insolvency legislation,
  - Bankruptcy or sequestration.
-



## **ANNEX B**

Insolvency practitioners referred to in point (5) of Article 2

### **BELGIQUE/BELGIË**

- De curator/Le curateur,
- De gedelegeerd rechter/Le juge-délégué,
- De gerechtsmandataris/Le mandataire de justice,
- De schuldbemiddelaar/Le médiateur de dettes,
- De vereffenaar/Le liquidateur,
- De voorlopige bewindvoerder/L'administrateur provisoire,

### **БЪЛГАРИЯ**

- Назначен предварително временен синдик,
- Временен синдик,
- (Постоянен) синдик,
- Служебен синдик,

## ČESKÁ REPUBLIKA

- Insolvenční správce,
- Předběžný insolvenční správce,
- Oddělený insolvenční správce,
- Zvláštní insolvenční správce,
- Zástupce insolvenčního správce,

## DEUTSCHLAND

- Konkursverwalter,
- Vergleichsverwalter,
- Sachwalter (nach der Vergleichsordnung),
- Verwalter,
- Insolvenzverwalter,
- Sachwalter (nach der Insolvenzordnung),
- Treuhänder,
- Vorläufiger Insolvenzverwalter,
- Vorläufiger Sachwalter,

## EESTI

- Pankrotihaldur,
- Ajutine pankrotihaldur,
- Usaldusisik,

## ÉIRE/IRELAND

- Liquidator,
- Official Assignee,
- Trustee in bankruptcy,
- Provisional Liquidator,
- Examiner,
- Personal Insolvency Practitioner,
- Insolvency Service,

## ΕΛΛΑΔΑ

- Ο σύνδικος,
- Ο εισηγητής,
- Η επιτροπή των πιστωτών,
- Ο ειδικός εκκαθαριστής,

## ESPAÑA

- Administrador concursal,
- Mediador concursal,

## FRANCE

- Mandataire judiciaire,
- Liquidateur,
- Administrateur judiciaire,
- Commissaire à l'exécution du plan,

## HRVATSKA

- Stečajni upravitelj,
- Privremeni stečajni upravitelj,
- Stečajni povjerenik,
- Povjerenik,

## ITALIA

- Curatore,
- Commissario giudiziale,
- Commissario straordinario,
- Commissario liquidatore,
- Liquidatore giudiziale,
- Professionista nominato dal Tribunale,
- Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore,
- Liquidatore,

## ΚΥΠΡΟΣ

- Εκκαθαριστής και Προσωρινός Εκκαθαριστής,
- Επίσημος Παραλήπτης,
- Διαχειριστής της Πτώχευσης,

## LATVIJA

- Maksātnespējas procesa administrators,

## LIETUVA

- Bankroto administratorius,
- Restruktūrizavimo administratorius,

## LUXEMBOURG

- Le curateur,
- Le commissaire,
- Le liquidateur,
- Le conseil de gérance de la section d'assainissement du notariat,
- Le liquidateur dans le cadre du surendettement,

## MAGYARORSZÁG

- Vagyongfelügyelő,
- Felszámoló,

## MALTA

- Amministratur Proviżorju,
- Riċevitur Uffiċjali,
- Stralċjarju,
- Manager Speċjali,
- Kuraturi f'każ ta' proċeduri ta' falliment,
- Kontrolur Speċjali,

## NEDERLAND

- De curator in het faillissement,
- De bewindvoerder in de surséance van betaling,
- De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,

## ÖSTERREICH

- Masseverwalter,
- Sanierungsverwalter,
- Ausgleichsverwalter,
- Besonderer Verwalter,
- Einstweiliger Verwalter,
- Sachwalter,
- Treuhänder,
- Insolvenzgericht,
- Konkursgericht,

## POLSKA

- Syndyk,
- Nadzorca sądowy,
- Zarządca,



## PORTUGAL

- Administrador da insolvência,
- Administrador judicial provisório,

## ROMÂNIA

- Practician în insolvență,
- Administrator concordatar,
- Administrator judiciar,
- Lichidator judiciar,

## SLOVENIJA

- Upravitelj,

## SLOVENSKO

- Predbežný správca,
- Správca,

## SUOMI/FINLAND

- Pesänhoitaja/boförvaltare,
- Selvittäjä/utredare,

## SVERIGE

- Förvaltare,
- Rekonstruktör,

## UNITED KINGDOM

- Liquidator,
  - Supervisor of a voluntary arrangement,
  - Administrator,
  - Official Receiver,
  - Trustee,
  - Provisional Liquidator,
  - Interim Receiver,
  - Judicial factor.
-

## ANNEX C

### Repealed Regulation with list of the successive amendments thereto

Council Regulation (EC) No 1346/2000

(OJ L 160, 30.6.2000, p.1)

Council Regulation (EC) No 603/2005

(OJ L 100, 20.4.2005, p. 1)

Council Regulation (EC) No 694/2006

(OJ L 121, 6.5.2006, p. 1)

Council Regulation (EC) No 1791/2006

(OJ L 363, 20.12.2006, p. 1)

Council Regulation (EC) No 681/2007

(OJ L 159, 20.6.2007, p. 1)

Council Regulation (EC) No 788/2008

(OJ L 213, 8.8.2008, p. 1)

Implementing Regulation of the Council (EU) No 210/2010

(OJ L 65, 13.3.2010, p. 1)

Council Implementing Regulation (EU) No 583/2011

(OJ L 160, 18.6.2011, p. 52)

Council Regulation (EU) No 517/2013

(OJ L 158, 10.6.2013, p. 1)

Council Implementing Regulation (EU) No 663/2014

(OJ L 179, 19.6.2014, p. 4)

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded

(OJ L 236, 23.9.2003, p. 33)

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## ANNEX D

### Correlation table

Regulation (EC) No 1346/2000	This Regulation
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2, point (a)	Article 2, point (4)
Article 2, point (b)	Article 2, point (5)
Article 2, point (c)	-
Article 2, point (d)	Article 2, point (6)
Article 2, point (e)	Article 2, point (7)
Article 2, point (f)	Article 2, point (8)
Article 2, point (g), introductory words	Article 2, point (9), introductory words
Article 2, point (g), first indent	Article 2, point (9)(vii)
Article 2, point (g), second indent	Article 2, point (9)(iv)
Article 2, point (g), third indent	Article 2, point (9)(viii)
Article 2, point (h)	Article 2, point 10
-	Article 2, points (1) to (3) and (11) to (13)
-	Article 2, point (10)(i) to (iii), (v), (vi)
Article 3	Article 3
-	Article 4
-	Article 5
-	Article 6
Article 4	Article 7
Article 5	Article 8
Article 6	Article 9
Article 7	Article 10
Article 8	Article 11(1)

Regulation (EC) No 1346/2000	This Regulation
-	Article 11(2)
Article 9	Article 12
Article 10	Article 13(1)
-	Article 13(2)
Article 11	Article 14
Article 12	Article 15
Article 13, first indent	Article 16, point (a)
Article 13, second indent	Article 16, point (b)
Article 14, first indent	Article 17, point (a)
Article 14, second indent	Article 17, point (b)
Article 14, third indent	Article 17, point (c)
Article 15	Article 18
Article 16	Article 19
Article 17	Article 20
Article 18	Article 21
Article 19	Article 22
Article 20	Article 23
-	Article 24
-	Article 25
-	Article 26
-	Article 27
Article 21(1)	Article 28(2)
Article 21(2)	Article 28(1)
Article 22	Article 29
Article 23	Article 30
Article 24	Article 31
Article 25	Article 32
Article 26	Article 33
Article 27	Article 34
Article 28	Article 35
-	Article 36

Regulation (EC) No 1346/2000	This Regulation
Article 29	Article 37(1)
-	Article 37(2)
-	Article 38
-	Article 39
Article 30	Article 40
Article 31	Article 41
-	Article 42
-	Article 43
-	Article 44
Article 32	Article 45
Article 33	Article 46
Article 34(1)	Article 47(1)
Article 34(2)	Article 47(2)
Article 34(3)	-
-	Article 48
Article 35	Article 49
Article 36	Article 50
Article 37	Article 51
Article 38	Article 52
Article 39	Article 53
Article 40	Article 54
Article 41	Article 55
Article 42	-
-	Article 56
-	Article 57
-	Article 58
-	Article 59

Regulation (EC) No 1346/2000	This Regulation
-	Article 60
-	Article 61
-	Article 62
-	Article 63
-	Article 64
-	Article 65
-	Article 66
-	Article 67
-	Article 68
-	Article 69
-	Article 70
-	Article 71
-	Article 72
-	Article 73
-	Article 74
-	Article 75
-	Article 76
-	Article 77
-	Article 78
-	Article 79
-	Article 80
-	Article 81
-	Article 82
-	Article 83
Article 43	Article 84(1)
-	Article 84(2)
Article 44	Article 85
-	Article 86



Regulation (EC) No 1346/2000	This Regulation
Article 45	-
-	Article 87
-	Article 88
-	Article 89
Article 46	Article 90(1)
-	Article 90(2) to (4)
-	Article 91
Article 47	Article 92
Annex A	Annex A
Annex B	-
Annex C	Annex B
-	Annex C
-	Annex D

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