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THE EUROPEAN UNION**

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**PROPOSAL**

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from:	Commission
dated:	13 December 2012
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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

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

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Encl.: COM(2012) 744 fnal



Strasbourg, 12.12.2012  
COM(2012) 744 final

2012/0360 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 1346/2000 on insolvency proceedings**

{SWD(2012) 416 final}

{SWD(2012) 417 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. General context

This proposal is amending Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (the "Insolvency Regulation" or "Regulation").

The Insolvency Regulation establishes a European framework for cross-border insolvency proceedings. The Regulation applies whenever the debtor has assets or creditors in more than one Member State, irrespective of whether he is a natural or legal person. The Regulation determines which court has jurisdiction for opening insolvency proceedings: Main proceedings have to be opened in the Member State where the debtor has its centre of main interests (COMI) and the effects of these proceedings are recognised EU-wide. Secondary proceedings can be opened where the debtor has an establishment; the effects of these proceedings are limited to the assets located in that State. The Regulation also contains rules on applicable law and certain rules on the coordination of main and secondary insolvency proceedings. The Insolvency Regulation applies to all Member States with the exception of Denmark which does not participate in judicial cooperation under the Treaty on the Functioning of the European Union.

Adopted in May 2000, the Insolvency Regulation applies since 31 May 2002. Ten years after its entry into force, the Commission has reviewed its operation in practice and considers it necessary to amend the instrument.

#### 1.2. Need for a revision of the Insolvency Regulation

While the Insolvency Regulation is generally considered to operate successfully in facilitating cross-border insolvency proceedings within the European Union, the consultation of stakeholders and legal and empirical studies commissioned by the Commission revealed a range of problems in the application of the Regulation in practice. Moreover, the Regulation does not sufficiently reflect current EU priorities and national practices in insolvency law, in particular in promoting the rescue of enterprises in difficulties. Essentially, the evaluation of the Insolvency Regulation identified five main shortcomings:

- The Regulation's scope does not cover national procedures which provide for the restructuring of a company at a pre-insolvency stage ("pre-insolvency proceedings") or proceedings which leave the existing management in place ("hybrid proceedings"). However, such proceedings have recently been introduced in many Member States<sup>1</sup> and are considered to increase the chances of successful restructuring of businesses. In addition, a number of personal insolvency proceedings are currently outside the Regulation's scope.
- There are difficulties in determining which Member State is competent to open insolvency proceedings. While there is wide support for granting jurisdiction for opening main insolvency proceedings to the Member State where the

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<sup>1</sup> For an overview of national pre-insolvency and hybrid proceedings, see Section 2 of the Commission report of 12.12.2012 on the evaluation of Council Regulation (EC) No 1346/2000 on insolvency proceedings.

debtor's COMI is located, there have been difficulties in applying the concept in practice. The Regulation's jurisdiction rules have also been criticised for allowing forum shopping by companies and natural persons through abusive COMI-relocation.

- Problems have also been identified with respect to secondary proceedings. The opening of secondary proceedings can hamper the efficient administration of the debtor's estate. With the opening of secondary proceedings, the liquidator in the main proceedings no longer has control over the assets located in the other Member State which makes a sale of the debtor on a going concern<sup>2</sup> basis more difficult. Moreover, secondary proceedings currently have to be winding-up proceedings which constitutes an obstacle to the successful restructuring of a debtor.
- There are problems relating to the rules on publicity of insolvency proceedings and the lodging of claims. There is currently no mandatory publication or registration of the decisions in the Member States where a proceeding is opened, nor in Member States where there is an establishment. There is also no European Insolvency Register which would permit searches in several national registers. However, the good functioning of cross-border insolvency proceedings relies to a significant extent on the publicity of the relevant decisions relating to an insolvency procedure. Judges need to be aware whether proceedings have already been opened in another Member State; creditors or potential creditors need to be aware that proceedings have commenced. In addition, creditors, particularly small creditors and SMEs, face difficulties and costs in lodging claims under the Insolvency Regulation.
- Finally, the Regulation does not contain specific rules dealing with the insolvency of a multi-national enterprise group although a large number of cross-border insolvencies involve groups of companies. The basic premise of the Insolvency Regulation is that separate proceedings must be opened for each individual member of the group and that these proceedings are entirely independent of each other. The lack of specific provisions for group insolvency often diminishes the prospects of successful restructuring of the group as a whole and may lead to a break-up of the group in its constituting parts.

The detailed evaluation of the Regulation's application in practice is set out in the Commission's report which accompanies this proposal. An in-depth analysis of the problems of the current Regulation as well as the impacts of the different options considered for addressing them can be found in the Commission's Impact Assessment which equally accompanies this proposal.

The overall objective of the revision of the Insolvency Regulation is to improve the efficiency of the European framework for resolving cross-border insolvency cases in view of ensuring a smooth functioning of the internal market and its resilience in economic crises. This objective links in with the EU's current political priorities to promote economic recovery and sustainable growth, a higher investment rate and the preservation of employment, as set out in

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<sup>2</sup> 'Going concern' is a concept used primarily in accounting which directs accountants to prepare financial statements on the assumption that the business is not about to be liquidated over the next 12-months period.

the Europe 2020 strategy. The revision of the Regulation will contribute to ensuring a smooth development and the survival of businesses, as stated in the Small Business Act<sup>3</sup>. The revision is also one of the key actions listed in the Single Market Act II<sup>4</sup>.

## 2. CONSULTATION AND IMPACT ASSESSMENT

This proposal was preceded by a consultation of the interested public, Member States, other institutions and experts on the existing problems of the current Regulation and possible solutions to these problems. On 29 March 2012, the Commission launched a public consultation to which a total of 134 answers were received. The Commission also took into account the results of an external study for the evaluation of the application of the Insolvency Regulation carried out by a consortium of the Universities of Heidelberg and Vienna. Empirical data on the impact of the different options for reform were collected by another external study carried out by a consortium of GHK and Milieu. Both studies will be published together with this proposal on the internet site of DG JUSTICE. Two meetings with national experts were held in April and October 2012. In addition, the Commission set up a group of private experts in the field of cross-border insolvencies which met five times from May to October 2012 and provided input on the problems, the options and the drafting of the revised Regulation.

Views of stakeholders on the main elements of the reform can be summarised as follows:

- With respect to the extension of the scope of the Regulation, a significant majority felt that the Regulation should cover pre-insolvency and hybrid proceedings. Views were mixed on exactly which proceedings should be covered and, in particular, where court oversight should be required. A majority of respondents agreed that the Insolvency Regulation should apply to private individuals and self-employed.
- With respect to jurisdiction, three quarters of respondents approved of the use of the COMI concept to locate the main proceedings. However a majority considered that the interpretation of the term COMI by case-law caused practical problems. Almost half of the respondents indicated evidence of abusive relocation of COMI<sup>5</sup>.
- As to the relation of main and secondary insolvency proceedings, almost half of the respondents were dissatisfied with the coordination between main and secondary proceedings.
- With respect to publication of proceedings, three quarters of respondents agreed that the absence of mandatory publication of the decision opening insolvency is a problem. Almost half of those who expressed an opinion considered there were problems with lodging claims.

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<sup>3</sup> COM(2008)394,25.6.2008.

<sup>4</sup> COM(2012) .....

<sup>5</sup> See on the extent of this problem, Section 3.4.1 of the Commission's Impact Assessment report accompanying this proposal.

- Concerning group insolvency, almost half of respondents felt the EIR does not work efficiently for the insolvency of members of a multinational group of companies.

The Commission analysed the costs and benefits of the main aspects of the proposed reform in its Impact Assessment which accompanies this proposal.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

#### 3.1. Summary of the proposed action

The elements of the proposed reform of the Insolvency Regulation can be summarised as follows:

- **Scope:** The proposal extends the scope of the Regulation by revising the definition of insolvency proceedings to include hybrid and pre-insolvency proceedings as well as debt discharge proceedings and other insolvency proceedings for natural persons which currently do not fit the definition;
- **Jurisdiction:** The proposal clarifies the jurisdiction rules and improves the procedural framework for determining jurisdiction;
- **Secondary proceedings:** the proposal provides for a more efficient administration of insolvency proceedings by enabling the court to refuse the opening of secondary proceedings if this is not necessary to protect the interests of local creditors, by abolishing the requirement that secondary proceedings must be winding-up proceedings and by improving the cooperation between main and secondary proceedings, in particular by extending the cooperation requirements to the courts involved;
- **Publicity of proceedings and lodging of claims:** The proposal requires Member States to publish the relevant court decisions in cross-border insolvency cases in a publicly accessible electronic register and provides for the interconnection of national insolvency registers. It also introduces standard forms for the lodging of claims;
- **Groups of companies:** The proposal provides for a coordination of the insolvency proceedings concerning different members of the same group of companies by obliging the liquidators and courts involved in the different main proceedings to cooperate and communicate with each other; in addition, it gives the liquidators involved in such proceedings the procedural tools to request a stay of the respective other proceedings and to propose a rescue plan for the members of the group subject to insolvency proceedings.

##### 3.1.1. *Scope of the Insolvency Regulation*

The proposal extends the scope of the Insolvency Regulation by amending the current definition of "insolvency proceedings" in its Article 1 (1). In this respect, it is proposed to open the scope to proceedings which do not involve a liquidator but in which the assets and affairs of the debtor are subject to control or supervision by a court. This amendment would

allow proceedings where the debtor remains in possession without a liquidator being appointed to benefit from the EU-wide recognition of the effects of insolvency proceedings which the Regulation brings about. It would also allow more personal insolvency procedures to be covered by the Regulation. In addition, it is proposed to make an express reference to proceedings for the adjustment of debts and to the purpose of rescue in order to include also those proceedings which enable the debtor to find an arrangement with his creditors at a pre-insolvency stage. The amendments would also bring the Regulation more in line with the approach taken by the UNCITRAL Model Law on cross-border insolvency<sup>6</sup>.

While the extension of the Regulation's scope is important to ensure the efficient conduct of pre-insolvency and hybrid proceedings in a cross-border context, it should not encompass insolvency proceedings which are confidential. There are indeed a number of national pre-insolvency proceedings where the debtor enters into negotiations with (certain) creditors in view of reaching an agreement on its refinancing or reorganisation but this information is not made public. These proceedings may entail a moratorium of individual enforcement proceedings or prevent creditors from filing for insolvency proceedings during a certain time period in order to give the debtor some "breathing space". While these proceedings may play an important role in some Member States, their contractual and confidential nature would make it difficult to recognise their effects EU-wide because a court or creditor located in another Member State would not know that such proceedings are pending. This does, however, not prevent such a procedure from being subsequently covered by the scope of the Insolvency Regulation as from the moment it becomes public.

This proposal does not envisage changing the existing mechanism according to which the national insolvency procedures covered by the Regulation are listed in Annex A and the Member States decide whether to notify a particular insolvency procedure to be included in that Annex. However, the proposal introduces a procedure by which the Commission scrutinises whether a national insolvency procedure notified actually fulfils the conditions of the revised definition. This will ensure that only proceedings which fit the rules of the Regulation are listed in the Annex.

### *3.1.2. Jurisdiction for opening insolvency proceedings*

The proposal retains the concept of the centre of main interest (COMI) because that concept ensures that the case will be handled in a jurisdiction with which the debtor has a genuine connection rather than in the one chosen by the incorporators. The COMI approach is also in line with international developments since it has been chosen as a jurisdictional standard by UNCITRAL in its Model Law on cross-border insolvency. In order to give guidance to legal practitioners in determining COMI, the proposal complements the definition of COMI; it also introduces a provision determining the COMI of natural persons. In addition, a new recital clarifies the circumstances in which the presumption that the COMI of a legal person is located at the place of its registered office can be rebutted; the language of this recital is taken from the "Interdil" decision of the Court of Justice of the European Union<sup>7</sup>.

The proposal also improves the procedural framework for determining jurisdiction for the opening of proceedings. The proposal requires the court to examine its jurisdiction *ex officio* prior to opening insolvency proceedings and to specify in its decision on which grounds it based its jurisdiction. Furthermore, the proposal grants all foreign creditors a right to challenge the opening decision and ensures that these creditors are informed of the opening

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<sup>6</sup> [http://www.uncitral.org/uncitral/en/uncitral\\_texts/insolvency/1997Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html)

<sup>7</sup> Case C – 396/09, judgment of 20.10.2011.

decision in order to be able to effectively exercise their rights. These changes aim at ensuring that proceedings are only opened if the Member State concerned actually has jurisdiction. It should therefore reduce the cases of forum shopping through abusive and non-genuine relocation of the COMI.

Thirdly, the proposal clarifies that the courts opening insolvency proceedings also have jurisdiction for actions which derive directly from insolvency proceedings or are closely linked with them such as avoidance actions. This amendment codifies the case-law of the CJEU in the "DekoMarty" decision<sup>8</sup>. Where such an action is related to another action against the same defendant which is based on general civil and commercial law, the proposal gives the liquidator the possibility to bring both actions in the courts of the defendant's domicile if these courts are competent pursuant to Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>9</sup> (as amended). This rule would allow a liquidator to bring, for example, an action for directors' liability based on insolvency law together with an action against that director based on tort law or company law in the same court.

### 3.1.3. *Secondary insolvency proceedings*

Several modifications are proposed with the aim of improving the efficient administration of the debtor's estate in situations where the debtor has an establishment in another Member State.

- The court seised with a request for opening secondary proceedings should be able, if so requested by the liquidator in the main proceedings, to refuse the opening or to postpone the decision if such opening would not be necessary to protect the interests of local creditors. This could, for example, be the case if an investor made an offer to buy the company on a going-concern basis and that offer would give more to the local creditors than a liquidation of the company's assets. The opening of secondary proceedings should also not be necessary, if the liquidator of the main proceedings promises to the local creditors that they would be treated in the main proceedings as if secondary proceedings had been opened and that the rights they would have had in such a case with respect to the determination and ranking of their claims would be respected in the distribution of the assets. The practice of such "synthetic secondary proceedings" has been developed in several cross-border insolvency cases where main proceedings were opened in the United Kingdom (notably in the insolvency proceedings concerning Collins&Aikman, MG Rover and Nortel Networks). The English courts accepted that the English liquidators were entitled to distribute part of the assets according to the law of the Member State where the establishment was located. Since such a practice is currently not possible under the law of many Member States, the proposal introduces a rule of substantive law enabling the liquidator to give such undertakings to local creditors with binding effect on the estate.
- The proposed amendment will not affect the possibility of the liquidator to request the opening of secondary proceedings where this would facilitate the administration of complex cases, for example where a considerable number of

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<sup>8</sup> Case C – 339/07, judgment of 12.2.2009.

<sup>9</sup> OJ L 12, 16.1.2001, p. 1.



employees have to be laid off in the State of the establishment. In such cases, the opening of local proceedings and the appointment of a local liquidator may still be useful to ensure an efficient administration of the debtor's estate.

- The proposal obliges the court seised with a request to open secondary proceedings to hear the liquidator of the main proceedings prior to taking its decision. This amendment aims to ensure that the court seised with a request for opening secondary proceedings is fully aware of any rescue or reorganisation options explored by the liquidator and is able to properly assess the consequences of the opening of secondary proceedings. This obligation is complemented by the right of the liquidator to challenge the decision opening secondary proceedings.
- The proposal abolishes the current requirement that secondary proceedings have to be winding-up proceedings. Where secondary proceedings are opened, the opening court can choose from the full range of proceedings available under national law including restructuring. This amendment ensures that the opening of secondary proceedings does not automatically thwart the rescue or restructuring of a debtor as a whole. This amendment should be without prejudice to the rules on the recovery of state aid and the jurisprudence of the Court of Justice of the European Union on recovery from insolvent companies<sup>10</sup>.
- In addition, the proposal improves the coordination of main and secondary proceedings by extending the obligation to cooperate, which currently only applies to the liquidators, to the courts involved in the main and secondary proceedings. Consequently, courts will be obliged to cooperate and communicate with each other; moreover, liquidators will have to cooperate and communicate with the court in the other Member State involved in the proceedings. Cooperation between courts will improve the coordination of main and secondary proceedings. It can notably be crucial to ensure a successful restructuring, e.g. concerning the approval of a protocol setting out a rescue plan.

#### *3.1.4. Publicity of insolvency proceedings and lodging of claims*

The proposal provides that certain minimum information relating to the insolvency proceedings have to be published in an electronic register available to the public free of charge via the internet. This obligation concerns the court opening the insolvency proceedings, the date of opening and – for main proceedings, the date of closing proceedings, the type of proceedings, the debtor, the liquidator appointed, the decision opening proceedings as well as the decision appointing the liquidator, if different, and the deadline for lodging claims. In light of the disparities in national legal systems as to the publication of insolvency proceedings and the different needs of creditors, the obligation to publish this information is limited to companies, self-employed and independent professionals; it does not extend to insolvency proceedings relating to consumers. The proposal provides for the establishment of a system for the interconnection of national registers which will be accessed via the European e-justice portal. The Commission will determine minimum common criteria for searching the registers and for obtaining results which will be based on the information to be published in

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<sup>10</sup> Case C-454/09, judgment of 13.10.2011 (Commission v. Italy – 'New Interline').

the insolvency registers by way of implementing act. The interconnection of national registers will ensure that a court seised with a request for opening insolvency proceedings will be able to determine whether proceedings relating to the same debtor have already been opened in another Member State; it will also enable creditors to find out whether proceedings have been opened concerning the same debtor and, if so, which powers the liquidator has, if any. For debtors which are companies, Member States will be able to build on the obligations arising from Directive 2012/17/EU of 13 June 2012 on the interconnection of central, commercial and companies registers<sup>11</sup>. However, for the purpose of this Regulation, the mere information that proceedings have been opened concerning a debtor is insufficient for the purpose of coordinating cross-border insolvency proceedings and enabling creditors to make use of their rights in relation to such proceedings.

The proposal facilitates the lodging of claims for foreign creditors, particularly small creditors and SMEs, in three ways: First, it provides for two standard forms to be introduced by way of implementing act, one for the notice to be sent to creditors and the other for the lodging of claims. These standard forms will be available in all official languages of the European Union, thereby reducing translation costs. Second, the proposal gives foreign creditors at least 45 days following publication of the notice of opening of proceedings in the insolvency register to lodge their claims, irrespective of any shorter periods applicable under national law. They will also have to be informed in case their claim is contested and be given the possibility to supplement the evidence provided in order to prove their claim. Finally, legal representation will not be mandatory for lodging a claim in a foreign jurisdiction, thereby reducing costs for creditors.

#### *3.1.5. Insolvency of members of a group of companies*

The proposal creates a specific legal framework to deal with the insolvency of members of a group of companies while maintaining the entity-by-entity approach which underlies the current Insolvency Regulation. The proposal introduces an obligation to coordinate insolvency proceedings relating to different members of the same group of companies by obliging the liquidators and the courts involved to cooperate with each other in a similar way as this is proposed in the context of main and secondary proceedings. Such cooperation could take different forms depending on the circumstances of the case. Liquidators should notably exchange relevant information and cooperate in the elaboration of a rescue or reorganisation plan where this is appropriate. The possibility to cooperate by way of protocols is explicitly mentioned in order to acknowledge the practical importance of these instruments and further promote their use. Courts should cooperate, in particular, by exchanging information, coordinating, where appropriate, the appointment of liquidators which can cooperate with each other, and approving protocols put before them by the liquidators.

In addition, the proposal gives each liquidator standing in the proceedings concerning another member of the same group. In particular, the liquidator has a right to be heard in these other proceedings, to request a stay of the other proceedings and to propose a reorganisation plan in a way which would enable the respective creditors' committee or court to take a decision on it. The liquidator also has the right to attend the meeting of creditors. These procedural tools enable the liquidator which has the biggest interest in the successful restructuring of all companies concerned to officially submit his reorganisation plan in the proceedings concerning a group member, even if the liquidator in these proceedings is unwilling to cooperate or is opposed to the plan.

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<sup>11</sup> OJ L 156, 16.6.2012, p. 1.

In providing for the coordination of different proceedings relating to members of the same group, the proposal does not intend to prevent the existing practice in relation to highly integrated groups of companies to determine that the centre of main interests of all members of the group is located in one and the same place and, consequently, to open proceedings only in a single jurisdiction.

### **3.2. Legal Basis**

This proposal amends Regulation 1346/2000 which was based on Articles 61 (c) and 67 (1) of the Treaty establishing the European Community. Since the entry into force of the Treaty of Lisbon, the corresponding legal basis is Article 81 (2) (a), (c) and (f) of the Treaty on the Functioning of the European Union.

Title V of Part Three of the Treaty on the Functioning of the European Union is not applicable to Denmark by reason of the Protocol on the position of Denmark annexed to the Treaties. Title V is also not applicable to the United Kingdom and Ireland, unless those two countries decide otherwise, in accordance with the relevant rules of the Protocol on their position in respect of the area of Freedom, Security and Justice. However, where a Commission proposal amends an existing act and the United Kingdom or Ireland do not exercise their right to opt into the amending measure, the Council, acting on a proposal from the Commission, can determine that the non-participation of the respective country in the amended version of the existing measure makes the application of that measure inoperable for other Member States or the Union, in which case the period for making the notification is extended. If the respective country has not opted in at the expiry of the extended period, the existing measure shall no longer be binding upon or applicable to it.

### **3.3. Subsidiarity and Proportionality**

The different elements of the revision of the Insolvency Regulation outlined above comply with the requirements of subsidiarity and proportionality. As to subsidiarity, the proposed amendments cannot be achieved by the Member States alone because they require the modification of existing rules of the Insolvency Regulation relating to scope, jurisdiction for opening insolvency proceedings, provisions concerning secondary proceedings, publication of decisions and the lodging of claims. The modification of the Insolvency Regulation requires – by definition – the intervention of the Union legislator. While the creation of electronic insolvency registers could in theory be achieved by the Member States alone, the interconnection of such registers requires action at Union level. Therefore, the objectives of the proposed action – to enable the interconnection of insolvency registers EU-wide – cannot sufficiently be achieved by the Member States alone but can be better achieved by action at Union level.

As to proportionality, the content and form of the proposed action does not exceed what is necessary to achieve the objectives of the Treaty. Moreover, the Impact Assessment attached to this proposal demonstrates that the benefits of each of the proposed amendments outweigh their costs and that they are therefore proportionate.

### **3.4. Impact on fundamental rights**

As set out in detail in the Impact Assessment accompanying this proposal and in accordance with the Union's strategy for the effective implementation of the Charter of Fundamental Rights of the European Union, all elements of the reform respect the rights set out in the Charter of fundamental Rights. The amendments improve the situation of persons involved in

cross-border insolvencies with respect to their right to property, the freedom to conduct business and the right to engage in work, the freedom of movement and residence, and the right to an effective remedy. The proposed amendment to create publicly accessible electronic insolvency registers respects the right of protection of personal data in a way which is proportionate to the objectives because measures will be put in place to ensure compliance with Directive 95/46/EC on data protection.

#### **4. BUDGETARY IMPLICATION**

The proposal would have limited impact on the EU budget. The IT application for the interconnection of the insolvency registers has already been developed and will be hosted on the e-Justice Portal. The implication on the EU budget over 2014-2020 will comprise only of hosting and maintenance costs of the IT application. In total these costs would amount to EUR 1 500 000 for the period 2014-2020 and would be covered by the financial envelope of the future Justice programme<sup>12</sup>.

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<sup>12</sup> COM(2011)759 final

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 1346/2000 on insolvency proceedings**

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>13</sup>,

Acting in accordance with the ordinary legislative procedure,

After consulting the European Data Protection Supervisor<sup>14</sup>,

Whereas:

- (1) Council Regulation (EC) No 1346/2000<sup>15</sup> established a European framework for cross-border insolvency proceedings. It determines which Member State has jurisdiction for opening insolvency proceedings, establishes uniform rules on applicable law and provides for the recognition and enforcement of insolvency-related decisions as well as for the coordination of main and secondary insolvency proceedings.
- (2) The Commission's report on the application of Regulation (EC) No 1346/2000 of 12 December 2012<sup>16</sup> concludes that the Regulation is functioning well in general but that it is desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings.
- (3) The scope of Regulation (EC) No 1346/2000 should be extended to proceedings which promote the rescue of an economically viable debtor in order to help sound companies to survive and give a second chance to entrepreneurs. It should notably extend to proceedings which provide for the restructuring of a debtor at a pre-insolvency stage or which leave the existing management in place. The Regulation should also cover those proceedings providing for a debt

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<sup>13</sup> OJ C , , p. .

<sup>14</sup> OJ C , , p.

<sup>15</sup> OJ L 160, 30.6.2000, p.1.

<sup>16</sup> OJ C , , p.

discharge of consumers and self-employed persons which do not fulfil the criteria of the current instrument.

- (4) The rules on jurisdiction for opening insolvency proceedings should be clarified and the procedural framework for determining jurisdiction should be improved. There should also be an explicit rule on jurisdiction for actions which are deriving directly from insolvency proceedings or are closely linked with them.
- (5) In order to improve the effectiveness of the insolvency proceedings in cases where the debtor has an establishment in another Member State, the requirement that secondary proceedings must be winding-up proceedings should be abolished. Moreover, a court should be able to refuse the opening of secondary proceedings if this is not necessary to protect the interests of local creditors. The coordination between main and secondary proceedings should be improved, in particular by requiring the courts involved to cooperate.
- (6) In order to improve the information available to creditors and courts involved and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant decisions in cross-border insolvency cases in a publicly accessible electronic register. Provision should be made for the interconnection of insolvency registers. Standard forms for the lodging of claims to facilitate the tasks of foreign creditors and reduce translation costs should be introduced.
- (7) There should be specific rules dealing with the coordination of proceedings involving different members of the same group of companies. The liquidators and courts involved in the different insolvency proceedings should be obliged to cooperate and communicate with each other. In addition, any of the liquidators involved should have the procedural tools to propose a rescue plan for the group companies subject to insolvency proceedings and to request, where necessary, a stay of the insolvency proceedings concerning a company other than the one for which they were appointed. The definition of the term "group of companies" should be understood as being limited to the context of insolvency and should not have any influence on the company aspects regarding groups.
- (8) In order to enable a swift adaptation of the Regulation to relevant amendments of the domestic insolvency law which the Member States have notified, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the amendment of the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (9) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1346/2000, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council 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>17</sup>.

- (10) Regulation (EC) No 1346/2000 should therefore be amended accordingly.
- (11) The amendment of this Regulation should be without prejudice to the rules on the recovery of State aid from insolvent companies as interpreted by the case-law of the Court of Justice of the European Union (C-454/09 Commission v. Italy – 'New Interline'). Where the full recovery of the amount of state aid is not possible because the recovery order concerns a company in insolvency proceedings, those proceedings should always be winding-up proceedings and lead to the definitive cessation of the beneficiary's activities and the liquidation of its assets.
- (12) In accordance with Article 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].
- (13) 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 on the Functioning of the European Union, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application.

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

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

- (1) In Recital 2, the reference to Article 65 is replaced by a reference to Article 81.
- (2) In Recitals 3, 5, 8, 11, 12, 14 and 21, the term "Community" is replaced by "Union".
- (3) Recital 4 is replaced by the following:
  - "(4) It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors (forum shopping)."
- (4) Recital 6 is replaced by the following:
  - "(6) This Regulation should encompass provisions governing jurisdiction for opening insolvency proceedings and proceedings which are deriving directly from the insolvency

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<sup>17</sup> OJ L 55, 28.2.2011, p. 13.

proceedings and are closely connected with them. This Regulation should also contain provisions regarding the recognition and enforcement of judgments issued in such proceedings and provisions regarding the law applicable to insolvency proceedings. In addition, this Regulation should contain rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies."

(5) Recital 7 is replaced by the following:

"(7) Proceedings concerning the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings are excluded from the scope of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>18</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."

(6) Recital 9 is replaced by the following:

"(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. Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms 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>19</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."

(7) The following recital 9a is inserted:

"(9a) The scope of this Regulation should extend to proceedings which promote the rescue of an economically viable debtor in order to help sound businesses to survive and give a second chance to entrepreneurs. It should notably extend to proceedings which provide for the restructuring of a debtor at a pre-insolvency stage, proceedings which leave the existing management in place and proceedings providing for a debt discharge of consumers and self-employed persons. Since these proceedings do not necessarily entail the appointment of a liquidator, they should be covered by this Regulation if they take place under the control or supervision of a court. In this context, the term "control" should include situations where the court only intervenes on appeal by a creditor or interested party."

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<sup>18</sup> OJ L 12, 16.1.2001, p. 1.

<sup>19</sup> OJ L 125, 5.5.2001, p. 15.



- (8) Recital 10 is replaced by the following:
- "(10) Insolvency proceedings do not necessarily involve the intervention of a judicial authority; the expression 'court' in this Regulation should be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened."
- (9) A new recital 12a is inserted:
- (12a) Before opening insolvency proceedings, the competent court should examine ex officio whether the debtor's centre of main interests or establishment is actually located within its jurisdiction. Where the circumstances of the case give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support his assertions and, where appropriate, give the debtor's creditors the opportunity to present their views on the question of jurisdiction. In addition, creditors should have an effective remedy against the decision opening insolvency proceedings.
- (10) Recital 13 is deleted.
- (11) The following recitals 13a and 13b are inserted:
- (13a) The 'centre of main interests' of a company or other legal person should be presumed to be at the place of its registered office. It should be possible to rebut this presumption 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. By contrast, it should not be possible to rebut the presumption where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions are taken there in a manner ascertainable by third parties.
- (13b) The courts of the Member State opening insolvency proceedings should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them, such as avoidance actions. Where such an action is related with another action based on general civil and commercial law, the liquidator 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 liquidator 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.
- (12) The following recitals 19a and 19b are inserted:
- (19a) Secondary proceedings may also hamper the efficient administration of the estate. Therefore, the court opening secondary proceedings should be able, on request of the

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

(19b) In order to ensure an effective protection of local interests, the liquidator 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.

(13) Recital 20 is replaced by the following:

"(20) Main insolvency proceedings and secondary proceedings can only contribute to the effective realisation of the total assets if all the concurrent proceedings pending are coordinated. The main condition here is that the various liquidators 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 liquidator in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. In particular, the liquidator should be able to propose a restructuring plan or composition or apply for a suspension of the realisation of the assets in the secondary insolvency proceedings. In their cooperation, liquidators and courts should take into account best practices for cooperation in cross-border insolvency cases as set out in principles and guidelines on communication and cooperation adopted by European and international associations active in the area of insolvency law."

(14) The following recitals 20a and 20b are inserted:

(20a) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies. Where insolvency proceedings have been opened for several companies of the same group, these proceedings should be properly coordinated. The various liquidators and the courts involved should therefore be under the same obligation to cooperate and communicate with each other as those involved in main and secondary proceedings relating to the same debtor. In addition, a liquidator appointed in proceedings relating to a member of a group of companies should have standing to propose a rescue plan in the proceedings concerning another member of the same group to the extent such a tool is available under national insolvency law.

(20b) 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 liquidator in all proceedings concerned.

(15) A new Recital 21a is inserted:

(21a) It is essential that creditors who have their habitual residence, domicile or registered office in the Union be informed about the opening of insolvency proceedings relating to their debtor's assets. In order to ensure a swift transmission of information to creditors, Regulation 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>20</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."

(16) Recital 29 is replaced by the following:

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

(17) The following recital 29a is inserted:

(29a) 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.

(18) Recital 31 is replaced by the following:

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

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<sup>20</sup> OJ L 324, 10.12.2007, p. 79.

(19) The following Recitals 31a, 31b and 31c are inserted:

"(31a) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1346/2000, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council 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>21</sup> .

(31b) 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.

(31c) 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>22</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>23</sup> apply to the processing of personal data within the framework of this Regulation."

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

(21) Articles 1 and 2 are replaced by the following

*"Article 1*  
**Scope**

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

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

(b) the assets and affairs of the debtor are subject to control or supervision by a court.

The proceedings referred to in this paragraph shall be listed in Annex A.

2. This Regulation shall not apply to insolvency proceedings concerning

(a) insurance undertakings,

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<sup>21</sup> OJ L 55, 28.2.2011, p. 13.

<sup>22</sup> OJ L 281, 23.11.1995, p. 31.

<sup>23</sup> OJ L 8, 12.1.2001, p. 1.

- (b) credit institutions,
- (c) investment firms 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:

- (a) "insolvency proceedings" means the proceedings listed in Annex A;
- (b) "liquidator" means
  - (i) any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs. Those persons and bodies are listed in Annex C;
  - (ii) in a case which does not involve the appointment of, or the transfer of the debtor's powers to, a liquidator, the debtor in possession.
- (c) "court" means in all articles except Article 3b(2) the judicial body or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;
- (d) "judgment opening insolvency proceedings" includes
  - (i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings, and
  - (ii) the decision by a court appointing a provisional liquidator.
- (e) "the time of the opening of proceedings" means the time at which the judgment opening insolvency proceedings becomes effective, whether it is a final judgment or not;
- (f) "the Member State in which assets are situated" means, in the case of:
  - (i) tangible property, the Member State within the territory of which the property is situated,
  - (ii) property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept,
  - (iii) registered shares in companies, the Member State within the territory of which the company having issued the shares has its registered office,

- (iv) financial instruments, title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary ("book entry securities"), the Member State in which the register or account in which the entries are made is maintained,
  - (v) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN,
  - (vi) claims against third parties other than those relating to assets referred to in subparagraph (v), the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);
- (g) "establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and assets;
  - (h) "local creditors" means the creditors whose claims against the debtor arose from the operation of an establishment situated in a Member State other than the one where the debtor's centre of main interests is located;
  - (i) "group of companies" means a number of companies consisting of parent and subsidiary companies;
  - (j) "parent company" means a company which
    - (i) has a majority of the shareholders' or members' voting rights in another company (a "subsidiary company"); or
    - (ii) is a shareholder or member of the subsidiary company and has the right to
      - (aa) appoint or remove a majority of the members of the administrative, management or supervisory body of that subsidiary; or
      - (bb) exercise a dominant influence over the subsidiary company pursuant to a contract entered into with that subsidiary or to a provision in its articles of association."

(22) In Article 3, paragraphs 1 and 3 are replaced by the following:

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

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

other individual, the centre of main interests shall be the place of the individual's habitual residence.

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. In such a case, the relevant time for assessing whether the debtor possesses an establishment within the territory of another Member State shall be the date of the opening of the main proceedings."

- (23) The following Articles 3a and 3b are inserted as follows:

*"Article 3a*

**Jurisdiction for related actions**

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

**Examination as to jurisdiction; right to judicial review**

1. The court seized of a request to open insolvency proceedings shall ex officio examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).
2. Where insolvency proceedings are opened in accordance with national law without a decision by a court, the liquidator appointed in such proceedings shall examine whether the Member State in which the proceedings are pending has jurisdiction pursuant to Article 3. Where this is the case, the liquidator shall specify the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).
3. Any creditor or interested party who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, shall have the right to challenge the decision opening main proceedings. The court opening main proceedings or the liquidator shall inform such creditors insofar as they are known of the decision in due time in order to enable them to challenge it."

- (24) In Article 4 (2), point (m) is replaced by the following:
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors."

- (25) The following Article 6a is inserted:

*"Article 6a*  
**Netting agreements**

Netting agreements shall be governed solely by the law of the contract governing such agreements."

- (26) The following Article 10a is inserted:

*"Article 10a*  
**Approval requirements under local law**

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

- (27) Article 15 shall be replaced by the following:

*"Article 15*  
**Effects of insolvency proceedings on lawsuits or arbitral proceedings pending**

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

- (28) Article 18 is amended as follows:

- (a) Article 18 paragraph 1 is replaced by the following:

1. The liquidator 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 and 7, he may in particular remove the debtor's assets from the territory of the Member State in which they are situated. He may also give the undertaking that the distribution and priority rights which local creditors would have had if secondary proceedings had been opened will be respected in the



main proceedings. Such an undertaking shall be subject to the form requirements, if any, of the State of the opening of the main proceedings and shall be enforceable and binding on the estate."

(b) In paragraph 3, the last sentence is replaced by the following:

"Those powers may not include coercive measures, unless ordered by a court, or the right to rule on legal proceedings or disputes."

(29) The following Articles 20a, 20b, 20c and 20d are inserted:

*"Article 20a*

**Establishment of insolvency registers**

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

- (a) the date of the opening of insolvency proceedings;
- (b) the court opening insolvency proceedings and the case reference number, if any;
- (c) the type of insolvency proceedings opened;
- (d) the name and address of the debtor;
- (e) the name and address of the liquidator appointed in the proceedings, if any;
- (f) the time limit for lodging claims;
- (g) the decision opening insolvency proceedings;
- (h) the decision appointing the liquidator, if different from the decision referred to in point (g) of this paragraph;
- (i) the date of closing main proceedings.

*Article 20b*

**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 Union in order to make available the information referred to in Article 20a.

2. By means of implementing act in accordance with the procedure referred to in Article 45b (3), the Commission shall adopt the following by.....[36 months after the entry into force of the Regulation]:
- 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;
  - the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;
  - minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 20a;
  - minimum criteria for the presentation of the results of such searches based on the information set out in Article 20a;
  - the modalities and the technical conditions of availability of services provided by the system of interconnection; and
  - a glossary containing a basic explanation of the national insolvency procedures listed in Annex A.

*Article 20c*

**Costs of establishing and interconnecting insolvency registers**

1. The establishment and future development of the system of interconnection of insolvency registers shall be financed from the general budget of the Union.
2. Each Member State shall bear the costs of adjusting its domestic insolvency registers to make it interoperable with the European e-Justice Portal, as well as the costs to administer, operate and maintain that register.

*Article 20d*

**Registration of insolvency proceedings**

Where main or secondary proceedings are opened in relation to a company or legal person or an individual exercising an independent business or professional activity, the court opening insolvency proceedings shall ensure that the information referred to in Article 20a is published immediately in the insolvency register of the State of opening."

- (30) Articles 21 and 22 are replaced by the following:

*"Article 21*

**Publication in another Member State**

1. Until such time as the system of interconnection of insolvency registers referred to in Article 20b is established, the liquidator shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that State. Such publication shall specify the liquidator appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).
  2. The liquidator may request that the information referred to in the first paragraph of this Article be published in any other Member State where assets or creditors of the debtor are located in accordance with the procedure provided for in that State."
- (31) Article 22 is replaced by the following:

*"Article 22*

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

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

- (32) Article 25 is replaced by the following:

*"Article 25*

**Recognition and enforceability of other judgments**

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

- (33) Article 27 is replaced by the following:

*"Article 27*

**Opening of proceedings**

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

- (34) The following Article 29a is inserted:

*"Article 29a*

**Decision to open secondary proceedings**

1. The court seized of a request to open secondary proceedings shall immediately give notice to the liquidator in the main proceedings and give him an opportunity to be heard on the request.
2. Upon request by the liquidator in the main proceedings, the court referred to in paragraph 1 shall postpone the decision of opening or refuse to open secondary proceedings if the opening of such proceedings is not necessary to protect the interests of local creditors, in particular, when the liquidator in the main proceedings has given the undertaking referred to in Article 18 (1) and complies with its terms.
3. When deciding whether to open secondary proceedings, the court referred to in paragraph 1 shall open the type of proceedings under its national law which is the most appropriate taking into account the interests of the local creditors, irrespective of whether any condition relating to the debtor's solvency are fulfilled.
4. The liquidator in the main proceedings shall be notified of the decision to open secondary proceedings and shall have the right to challenge that decision."

- (35) Article 31 is replaced by the following:

*"Article 31*

**Cooperation and communication between liquidators**

1. The liquidator in the main proceedings and the liquidators in the secondary proceedings shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to each of the proceedings. Such cooperation may take the form of agreements or protocols.
2. In particular, the liquidators shall:

- (a) immediately communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information;
- (b) explore the possibility of restructuring the debtor and, where such possibility exists, coordinate the elaboration and implementation of a restructuring plan;
- (c) coordinate the administration of the realisation or use of the debtor's assets and affairs; the liquidator in the secondary proceedings shall give the liquidator in the main proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary proceedings."

(36) The following Articles 31a and 31b are inserted:

*"Article 31a*

**Cooperation and communication between courts**

1. In order to facilitate the coordination of main and secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending or which has opened such proceedings shall cooperate with any other court before which insolvency proceedings are pending or which has opened such proceedings to the extent such cooperation is not incompatible with the rules applicable to each of the proceedings. For this purpose, the courts may, where appropriate, appoint a person or body acting on its instructions.
2. The courts referred to in paragraph 1 may communicate directly with, or to request information or assistance directly from each other provided that such communication is free of charge and respects the procedural rights of the parties to the proceedings and the confidentiality of information.
3. Cooperation may be implemented by any appropriate means, including
  - (a) communication of information by any means considered appropriate by the court;
  - (b) coordination of the administration and supervision of the debtor's assets and affairs;
  - (c) coordination of the conduct of hearings,
  - (d) coordination in the approval of protocols.

*Article 31b*

**Cooperation and communication between liquidators and courts**

1. In order to facilitate the coordination of main and secondary insolvency proceedings opened with respect to the same debtor,
  - (a) a liquidator in main proceedings shall cooperate and communicate with any court before which a request to open secondary proceedings is pending or which has opened such proceedings and
  - (b) a liquidator in secondary or territorial insolvency proceedings shall cooperate and communicate with the court before which a request to open main proceedings is pending or which has opened such proceedings,
2. The cooperation referred to in paragraph 1 shall be implemented by any appropriate means including the means set out in Article 31a (3) to the extent these are not incompatible with the rules applicable to each of the proceedings."

(37) Article 33 is amended as follows:

- (a) The title is replaced by the following

**"Stay of proceedings"**

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

(38) Article 34 is replaced by the following:

*"Article 34*

**Closure of main or secondary insolvency proceedings**

1. The closure of main proceedings shall not prevent the continuation of secondary proceedings which are still open at that point in time.
2. Where secondary proceedings concerning a legal person have been opened in the Member State of that person's registered office and the closure of those proceedings entails the dissolution of the legal person, such dissolution shall not prevent the continuation of main proceedings which have been opened in another Member State."

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

(40) Article 37 is replaced by the following:

*"Article 37*  
**Conversion of earlier proceedings**

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

- (41) Article 39 is replaced by the following:

*"Article 39*  
**Right to lodge claims**

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

- (42) Article 40 is amended as follows:

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

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

- (b) The following paragraph 3 is inserted:

- "3. The information referred to in this Article shall be provided using the standard notice form to be established in accordance with the advisory procedure referred to in Article 45b(4) and to be published in the European e-Justice Portal by....[24 months after the entry into force of the Regulation]. The form shall bear the heading "Notice of insolvency proceedings" in all official languages of the Union. It shall be transmitted in the official language or one of the official languages of the State of the opening of proceedings or in another language which that State has indicated it can accept in accordance with Article 41(3) if it can be assumed that that language is easier to understand for the foreign creditors."

- (43) Article 41 is replaced by the following:

*"Article 41*  
**Procedure for lodging claims**

1. Any known foreign creditor shall lodge his claim using the standard claims form to be established in accordance with the advisory procedure referred to in Article 45b(4) and to be published on the European e-justice portal by [24 months after the entry into force of the Regulation]. The form shall bear the heading "Lodgment of claims" in all official languages of the Union.

2. In the standard claims form, the creditor referred to in paragraph 1 shall indicate
  - (a) his name and address
  - (b) the nature of the claim
  - (c) the amount of the claim and the date on which it arose
  - (d) whether any preferential creditor status is claimed
  - (e) whether security in rem or a reservation of title is alleged in respect of the claim and if so, what assets are covered by the security interest he is invoking and
  - (f) whether any set-off is claimed and whether the amount claimed is net of set-off.

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

3. Claims may be lodged in any official language of the Union. The creditor may be required to provide a translation into the official language or one of the official languages of the State of the opening of proceedings or into another language which that Member State has accepted. Each Member State shall indicate at least one official language of the Union other than its own which it accepts for the purpose of the lodging of claims.
  4. Claims shall be lodged within the period stipulated by the law of the State of the opening of insolvency proceedings. In the case of a foreign creditor, that period shall not be less than 45 days following the publication of the opening of proceedings in the insolvency register of the State of opening.
  5. Where the liquidator contests a claim lodged in accordance with this Article, he shall give the creditor the opportunity to provide additional evidence on the existence and the amount of the claim."
- (44) Article 42 is deleted.
- (45) the following Chapter IVa is inserted:

**"CHAPTER IVa  
INSOLVENCY OF MEMBERS OF A GROUP OF COMPANIES**

*Article 42a*

**Duty to cooperate and communicate information between liquidators**

1. Where insolvency proceedings relate to two or more members of a group of companies, a liquidator appointed in proceedings concerning a member of the group shall cooperate with any liquidator appointed in proceedings concerning another member of the same group to the extent such cooperation is appropriate to facilitate the effective administration of the



proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interests. That cooperation may take the form of agreements or protocols.

2. In the exercise of the cooperation referred to in paragraph 1, the liquidators shall
  - (a) immediately communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;
  - (b) explore the possibilities for restructuring the group and, where such possibilities exist, coordinate with respect to the proposal and negotiation of a coordinated restructuring plan;
  - (c) coordinate the administration and supervision of the affairs of the group members subject to insolvency proceedings;

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

#### *Article 42b*

#### **Communication and cooperation between courts**

1. Where insolvency proceedings relate to two or more members of a group of companies, a court before which a request to open proceedings concerning a member of the group is pending or which has opened such proceedings shall cooperate with any other court before which a request to open proceedings concerning another member of the same group is pending or which has opened such proceedings to the extent such cooperation is appropriate to facilitate the effective administration of the proceedings and is not incompatible with the rules applicable to them. For this purpose, the courts may, where appropriate, appoint a person or body acting on its instructions.
2. The courts referred to in paragraph 1 may communicate directly with each other, or to request information or assistance directly from each other.
3. Cooperation shall take place by any appropriate means, including
  - (a) communication of information by any means considered appropriate by the court provided that such communication shall be free of charge and respect the procedural rights of the parties to the proceedings and the confidentiality of information;
  - (b) coordination of the administration and supervision of the assets and affairs of the members of the group;
  - (c) coordination of the conduct of hearings;
  - (d) coordination in the approval of protocols.

*Article 42c*

**Cooperation and communication between liquidators and courts**

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

*Article 42d*

**Powers of the liquidators and stay of proceedings**

1. A liquidator appointed in insolvency proceedings opened with respect to a member of a group of companies shall have the right
    - (a) to be heard and to participate, in particular by attending creditors' meetings, in any of the proceedings opened with respect to any other member of the same group;
    - (b) to request a stay of the proceedings opened with respect to any other member of the same group;
    - (c) to propose a rescue plan, a composition or a comparable measure for all or some members of the group for which insolvency proceedings have been opened and to introduce it into any of the proceedings opened with respect to another member of the same group in accordance with law applicable to those proceedings; and
    - (d) to request any additional procedural measures under the law referred to in point c) which may be necessary to promote rescue, including the conversion of proceedings.
  2. The court having opened proceedings referred to in point b) of paragraph 1 shall stay the proceedings in whole or in part if it is proven that such a stay would be to the benefit of the creditors in these proceedings. Such a stay may be ordered for up to three months and may be continued or renewed for the same period. The court ordering the stay may require the liquidator to take any suitable measure to guarantee the interests of the creditors in the proceedings."
- (46) A new Article 44a is inserted:

*"Article 44a*

**Information on national insolvency law**

1. The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC<sup>24</sup>, with a view to making the information available to the public, a description of their national insolvency law and procedures, in particular relating to the matters listed in Article 4(2).
  2. The Member States shall update that information regularly."
- (47) Article 45 is replaced by the following:

*"Article 45*

**Amendment of the Annexes**

1. The Commission shall be empowered to adopt delegated acts to amend Annexes A and C in accordance with the procedure laid down in this Article and Article 45a.
  2. In order to trigger an amendment of Annex A, Member States shall notify the Commission of their national rules on insolvency proceedings which they want to have included in Annex A, accompanied by a short description. The Commission shall examine whether the notified rules comply with the conditions set out in Article 1 and, where this is the case, shall amend Annex A by way of delegated act."
- (48) The following Articles 45a and 45b are inserted:

*"Article 45a*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of powers referred to in Article 45 shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of powers referred to in Article 45 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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<sup>24</sup> OJ L 174, 27.6.2001, p. 25.

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

*Article 45b*

**Power to adopt implementing acts**

1. The power to adopt implementing acts is conferred on the Commission for the following purposes
  - (a) to provide for the interconnection of insolvency registers as referred to in Article 20b; and
  - (b) to establish and subsequently amend the forms referred to in Articles 40 and 41.
2. In adopting or amending the implementing acts referred to in paragraph 1, the Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.<sup>25</sup>
3. When reference is made to this paragraph, Article 5 of Regulation 182/2011 shall apply.
4. When reference is made to this paragraph, Article 4 of Regulation 182/2011 shall apply."
- (49) In Article 46, the date "1 June 2012" shall be replaced by ".....[10 years after its entry into application]".
- (50) The following Article 46a shall be inserted:

*"Article 46a*

**Data protection**

1. Member States shall apply the Directive 95/46/EC to the processing of personal data carried out in the Member States pursuant to this Regulation.
2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation."
- (51) Annex B is deleted.

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<sup>25</sup> OJ L 55, 28.2.2011, p. 13.

*Article 2*

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 .....[24 months after the entry into force of the Regulation] with the exception of the provision concerning information on national insolvency law (Article 44a) which shall apply from .....[12 months after its entry into force] .

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*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European parliament and of the Council amending Council regulation (EC) N° 1346/2000 on insolvency proceedings
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#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>26</sup>

Title 33 - Justice
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#### 1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>27</sup>
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objectives

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Development of an area of Justice, Justice for Growth
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##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

<u>Specific objective No.</u> Judicial Cooperation in Civil and Commercial matters <u>ABM/ABB activity(ies) concerned</u> 33 03
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<sup>26</sup> ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

<sup>27</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Increased efficiency and transparency of cross-border insolvency procedures

1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

**1.5. Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

Revision of Regulation 1346/2000 on insolvency proceedings

1.5.2. *Added value of EU involvement*

1.5.3. *Lessons learned from similar experiences in the past*

1.5.4. *Coherence and possible synergy with other relevant instruments*

## 1.6. Duration and financial impact

- Proposal/initiative of **limited duration**
  - Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
  - Financial impact from YYYY to YYYY
- Proposal/initiative of **unlimited duration**
  - Implementation with a start-up period from adoption of regulation
  - followed by full-scale operation.

## 1.7. Management mode(s) envisaged<sup>28</sup>

- **Centralised direct management** by the Commission
- Centralised indirect management** with the delegation of implementation tasks to:
  - executive agencies
  - bodies set up by the Communities<sup>29</sup>
  - national public-sector bodies/bodies with public-service mission
  - persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation
- Shared management** with the Member States
- Decentralised management** with third countries
- Joint management** with international organisations (*to be specified*)

*If more than one management mode is indicated, please provide details in the "Comments" section.*

### Comments

Only the interconnection of insolvency registers (central interconnection part) will have a financial impact on the EU budget.

The insolvency registers will be connected through the European e-Justice Portal which shall serve as central public electronic access point to information from the system (cf. Article 20b of the Proposal)

<sup>28</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

<sup>29</sup> As referred to in Article 185 of the Financial Regulation.



**2. MANAGEMENT MEASURES**

**2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

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**2.2. Management and control system**

**2.2.1. Risk(s) identified**

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**2.2.2. Control method(s) envisaged**

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**2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

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### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	Diff./non-diff. (30)	from EFTA <sup>31</sup> countries	from candidate countries <sup>32</sup>	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
[3]	[33.0301] [Justice Programme]	Diff/	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
[3]	[XX.YY.YY.YY]		YES/N O	YES/N O	YES/N O	YES/NO

<sup>30</sup> Diff. = Differentiated appropriations / Non-diff. = Non-Differentiated Appropriations

<sup>31</sup> EFTA: European Free Trade Association.

<sup>32</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	Number	[Heading ...3.....]
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DG: JUST			Year 2014 <sup>33</sup>	Year 2015	Year 2016	Year 2017	Years 2018, 2019, 2020			TOTAL
• Operational appropriations	Commitments	(1)	150.000	150.000	200.000	200.000	250.000	250.000	300.000	1.500.000
	Payments	(2)	150.000	150.000	200.000	200.000	250.000	250.000	300.000	1.500.000
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature from the envelope for specific programmes <sup>34</sup>	financed									
Number of budget line	(3)									
<b>TOTAL appropriations for DG JUST</b>	Commitments	=1+1a +3	150.000	150.000	200.000	200.000	250.000	250.000	300.000	1.500.000
	Payments	=2+2a +3	150.000	150.000	200.000	200.000	250.000	250.000	300.000	1.500.000

<sup>33</sup>

Year N is the year in which implementation of the proposal/initiative starts.

<sup>34</sup>

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)	150.000	150.000	200.000	200.000	250.000	250.000	300.000	300.000	1.500.000
	Payments	(5)	150.000	150.000	200.000	200.000	250.000	250.000	300.000	300.000	1.500.000
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)									
	<b>TOTAL appropriations under HEADING 3</b>	=4+6	150.000	150.000	200.000	200.000	250.000	250.000	300.000	300.000	1.500.000
of the multiannual financial framework	Payments	=5+6	150.000	150.000	200.000	200.000	250.000	250.000	300.000	300.000	1.500.000

**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)									
	Payments	(5)									
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)									
	<b>TOTAL appropriations under HEADINGS 1 to 4</b>	=4+6	150.000	150.000	200.000	200.000	250.000	250.000	300.000	300.000	1.500.000
of the multiannual financial framework (Reference amount)	Payments	=5+6	150.000	150.000	200.000	200.000	250.000	250.000	300.000	300.000	1.500.000

<b>Heading of multiannual financial framework:</b>	<b>5</b>	" Administrative expenditure " – not applicable				
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EUR million (to 3 decimal places)						
	Year N	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
DG: <.....>						
• Human resources						
• Other administrative expenditure						
<b>TOTAL DG</b> <.....>						

<b>TOTAL appropriations under HEADING 5</b> of the multiannual financial framework	(Total commitments = Total payments)						
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EUR million (to 3 decimal places)						
	Year N <sup>35</sup>	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5</b> of the multiannual financial framework	150.000	150.000	200.000	200.000	250.000	1.500.000
Commitments	150.000	150.000	200.000	200.000	250.000	1.500.000
Payments	150.000	150.000	200.000	200.000	250.000	1.500.000

<sup>35</sup> Year N is the year in which implementation of the proposal/initiative starts.

### 3.2.2. Estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- ➤ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs	Type of output <sup>36</sup>	Average cost of the output	Year					... enter as many years as necessary to show the duration of the impact (see point 1.6)					TOTAL
			Year N	Year N+1	Year N+2	Year N+3	Number of outputs	Cost	Number of outputs	Cost	Number of outputs	Cost	
			<b>OUTPUTS</b>										
SPECIFIC OBJECTIVE No 1 <sup>37</sup> Judicial Cooperation in Civil and Commercial matters													
- Output	Maintenance of the interconnection of insolvency registries	214 300	150 000	150 000	200 000	200 000	200 000	250 000	250 000	250 000	300 000	300 000	1 500 000
- Output													
- Output													
Sub-total for specific objective N°1			150 000	150 000	200 000	200 000	250 000	250 000	250 000	300 000	300 000	1 500 000	
SPECIFIC OBJECTIVE No 2...													
- Output													

<sup>36</sup>

Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.). As described in Section 1.4.2. "Specific objective(s)..."

<sup>37</sup>



### 3.2.3. *Estimated impact on appropriations of an administrative nature*

#### 3.2.3.1. Summary

- ➤ The proposal/initiative does not require the use of administrative appropriations

#### 3.2.3.2. Estimated requirements of human resources

- ➤ The proposal/initiative does not require the use of human resources



3.2.4. *Compatibility with the current multiannual financial framework*

- ➤ Proposal/initiative is compatible with the multiannual financial framework for the period 2014-2020.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties

**3.3. Estimated impact on revenue**

- ➤ Proposal/initiative has no financial impact on revenue.

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