



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title **DG JUST - Impact Assessment on the revision of the Regulation 1346/2000 on insolvency proceedings (draft version of 10 September 2012) ***

(A) Context

Regulation 1346/2000 (EIR) establishes a legal framework for cross-border insolvencies in the EU. Ten years after its entry into force, the Commission has evaluated the practical application of the Regulation. While the Regulation is generally considered to operate successfully in facilitating cross-border insolvency proceedings within the EU, its evaluation shows that a range of problems exists with regards its implementation, and that it does not sufficiently reflect current EU priorities and national practices in insolvency law, in particular in promoting the rescue of firms in difficulties. The revision of the Regulation is one of the measures supporting economic activities in the area of justice as set out in the Commission's Action Plan implementing the Stockholm Programme. In October 2011, the European Parliament adopted a resolution calling for the revision of the Regulation and further recommending the harmonisation of specific aspects of insolvency law and company law.

(B) Overall assessment

The report needs to be improved in a number of respects. Firstly, the problem definition should be streamlined and provide a more complete overview of the divergences between Member States' insolvency frameworks and the Regulation. Secondly, the report should simplify the presentation of objectives and options. Consideration should be given in particular to merging all 'status quo' options into a single one and to presenting the packages of options A and B up-front. In addition, the report should identify a more concrete and measurable set of operational objectives (e.g. to reduce the number of secondary proceedings) against which to assess the success of the envisaged changes. Thirdly, the report should develop and rebalance the assessment of impacts by analysing all the advantages and disadvantages of the planned measures. Fourthly, the quantification of the impacts should be strengthened, and in particular the administrative burden derived from new obligations. Finally, the report should provide more detail on stakeholders' different views, in particular those stakeholders which will be assuming most of the costs of the additional measures, such as Member States, courts and liquidators.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(C) Main recommendations for improvements

(1) Provide a clearer and more complete presentation of the problem. The report should provide a simpler presentation of the problem, for example, by grouping the problems and sub-problems that are interrelated. In addition, consideration should be given to presenting the issues related to personal insolvency schemes independently from those in relation to businesses hybrid and pre-insolvency proceedings. The report should also provide more detail on the concrete situation in the different Member States (including an explanation of why Denmark is not covered by the Regulation). The report should better describe the divergences between national insolvency frameworks and the Regulation provisions. A table showing which Member States' frameworks already include pre-insolvency proceedings, hybrid proceedings and/or personal insolvency schemes (and which of those are not yet covered by the Regulation) would help in this respect. The report should also clarify whether the identified problems affect some (groups of) Member States more than others.

(2) Simplify the presentation of objectives and options. On the basis of a reviewed problem definition, the report should streamline the presentation of the objectives and options in order to avoid repetitions and facilitate the reader's understanding. Concerning the options, this could be done by merging all 'status quo' options into a consolidated baseline scenario and by presenting the packages of options A and B up-front, instead of in two steps. When options put-forward by stakeholders have been discarded, the main reasons should be explained in the report. With regard to the objectives, the report should identify a more concrete and measurable set of operational objectives against which to assess the success of the envisaged changes to the Regulation; for example, to reduce the number of secondary proceedings opened outside the main jurisdiction, or to reduce the number of cases where determination of the jurisdiction has been an issue.

(3) Develop and rebalance the assessment of impacts. When analysing the impacts, the report should better describe both the advantages and disadvantages of the planned measures. In particular, the analysis should better explain their possible unintended consequences for lenders, especially when involved in cross-border operations, investors and SMEs. It should, for instance, clarify whether there is a risk that giving a second chance to debtors would impact other entrepreneurs' access to affordable credit, and whether extending the scope of the Regulation to cover a higher number of insolvency schemes would not increase 'forum shopping'. In addition, a more cautious approach should be taken when describing positive economic impacts, unless quantified estimates prove their significance. The report should also develop the analysis of the impacts on employees, in particular in view of the lessons learnt from the Alitalia liquidation. Finally, regarding the preference for option A (over option B), the report should better justify the choice with objective arguments, such as the lack of supporting evidence in favour of B or the fact that A seems a more proportionate option at this stage.

(4) Strengthen the quantification of the impacts. The report should improve its quantitative analysis by giving global estimates and, therefore, providing a clear overview of the overall impact of the preferred package of measures. It should also strive to estimate all expected economic impacts, in particular, administrative burden. Where quantification is not possible, the report should better substantiate its conclusions, such as the expected reduction in litigation costs, in spite of the envisaged new obligations to publish court decisions and for courts to cooperate.

(5) Better present stakeholders' views. The report should more systematically present stakeholders' views when analysing and comparing the options. In particular, the report should provide more detail regarding the views of those stakeholders which will be assuming most of the costs of the additional measures, such as Member States, courts and liquidators. It should also explain that a high percentage of the replies to the public consultation came from a small number of Member States and explain whether this may have had an impact on the analysis. Finally, the report should provide a link to the webpage where the consultation replies can be found.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report's readability should be enhanced. All abbreviations used should be explained and the consistency between different parts of the report improved. The executive summary should include a 'Monitoring and Evaluation' section.

(E) IAB scrutiny process

Reference number	2013/JUST/012
External expertise used	No
Date of IAB meeting	3 October 2012