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ADDENDUM TO NOTE

from:	the Presidency
to:	Coreper/Council
No. Cion prop.:	17883/12 JUSTCIV 365 CODEC 3077 + ADD 1 + ADD 2
No prev.doc.:	10195/14 JUSTCIV 133 EJUSTICE 53 CODEC 1358
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings **[First reading]** - General approach

Delegations will find in the Annex the text of the abovementioned proposal which the Presidency proposes as a compromise with a view to the adoption of a general approach by the Council (Justice and Home Affairs) at its meeting on 5 and 6 June 2014.

Changes compared to the text of the Commission proposal are marked in **bold** or by **(…)** for deleted text.

ANNEX

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

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[1],

Acting in accordance with the ordinary legislative procedure,

After consulting the European Data Protection Supervisor[2],

Whereas:

[1] OJ C , , p. .

[2] OJ C , , p.

(0) In this Regulation, the word "liquidator" shall be replaced by "insolvency practitioner"[3].

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

"Article 1

Scope

1. This Regulation shall apply to **public**[4] collective **(…)** proceedings, including interim proceedings,[5] which are based on a law relating to insolvency[6] **(…)** and in which, for the purpose of rescue, adjustment of debt[7], reorganisation or liquidation,

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[3] "Insolvency practitioners" should be translated into German as "Verwalter" and into Spanish as "administrador concursal".

[4] A recital should clarify that the word "public" should mean that the opening of proceedings which fall within the scope of the Regulation should be subject to publicity, in order to identify the claims and the creditors and, by that way, ensure the collective nature of the proceedings, and give the possibility for the creditors to challenge the jurisdiction of the court which has opened the proceedings.

Consequently, the Regulation should not encompass insolvency proceedings which are confidential. These proceedings may, under the law of some Member States, take the form of negotiations between the debtor and certain creditors with a view to reaching an agreement on the debtor's refinancing or reorganisation which are notified to the court but not made public. While these proceedings may play an important role in some Member States, their confidential nature makes it impossible for a creditor or a court located in another Member State to know that such proceedings are pending. In the light of this, it would be difficult to provide for the recognition of their effects EU-wide.

[5] A recital should be added, clarifying that the "*interim proceedings*" referred to in this provision should comply with all the criteria set out in Article 1(1), the only difference with ordinary insolvency proceedings being that such proceedings may, under the law of some Member States, be opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order confirming the continuation of the proceedings on a non-interim basis.

[6] A recital should be added clarifying that proceedings are not based on a law relating to insolvency when they are based on general company law not designed exclusively for insolvency situations. A further recital should clarify that proceedings for the purpose of adjustment of debt should not include proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never make provisions for payment to creditors.

[7] A recital could be added, clarifying that the term "*adjustment of debts*" should cover, *inter alia,* a reduction in the amount to be paid by the debtor or an extension of the payment period granted to the debtor.

(a) the debtor is totally or partially divested of his assets and **(…) an insolvency practitioner** is appointed,

(b) the assets and affairs of the debtor are subject to control or supervision by a court[8] **or**

(c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law in order to allow for negotiations between the debtor and his creditors, provided that these proceedings (i) provide for suitable measures to protect the general body of creditors and (ii) are preliminary to one of the proceedings referred to under points (a) or (b) if no agreement is reached.[9]

Where such proceedings may be commenced in situations where there is only a likelihood of insolvency, their purpose must be to avoid the debtor's insolvency or the cessation of his business activities.[10]

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8 The first sentence of recital 10 clarifies that the opening of insolvency proceedings covered by the Regulation does not necessarily involve the intervention of a judicial authority. The last sentence of recital 9a clarifies that the term "*control*" should include situations where the court of a Member State only intervenes in the event of an appeal by a creditor or interested party.

9 A recital could clarify that the Regulation's scope should extend to procedures where the court orders a temporary moratorium on enforcement actions brought by individual creditors where such actions may adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business.

10 A recital should be added, clarifying that the Regulation's scope may extend to cover proceedings which are triggered by situations in which the debtor faces non-financial difficulties, provided however, that these difficulties give rise to a real and serious threat to the debtor's actual or future ability to pay his debts as they fall due. The time horizon relevant for the determination of such threat may extend to a period of several months or even longer in order to account for cases where the debtor is faced with non-financial difficulties threatening his going concern and, in the medium term, his liquidity. This might be the case, for example, if the debtor has lost a contract which is of key importance to him.

The proceedings referred to in this paragraph **are** listed in Annex A[11] [12].

2. This Regulation shall not apply to **(…) the** proceedings **referred to in paragraph 1** concerning

(a) insurance undertakings,

(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:

(1) **(…)**[13]

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11 Recital 9 will clarify that the list of insolvency proceedings in Annex A is exhaustive. Consequently, a national insolvency procedure not listed in Annex A is not be covered by the scope of the Regulation.

12 Recital 7 will clarify that the fact that national procedures are not listed in Annex A should not imply that they are covered by the Brussels I Regulation, since the Brussels I Regulation excludes bankruptcy, proceedings relating to the winding up of insolvent companies or other legal persons, judicial arrangements, compositions or analogous proceedings.

13 The definition of 'close-out netting provision' has been deleted.

(2) "collective proceedings" means proceedings which include all or a significant part[14] [15] of the debtor's creditors provided that, in the latter case, the proceedings do not affect the claims of those creditors which are not involved in them;

(3) "collective investment undertakings" means undertakings for collective investment in transferable securities (UCITS) as defined by Directive 2009/65/EC and alternative investment funds (AIFs) as defined by Directive 2011/61/EU;

(4) "debtor in possession" means a debtor in respect of whom insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where therefore the debtor remains totally or at least partially in control of his assets and affairs;

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

(b) "**(…) insolvency practitioner**"[16] means **(…)** any person or body whose function**, including on an interim basis,** is

(i) to verify and admit claims submitted in insolvency proceedings;

(ia) to represent the collective interest of the creditors;

(ii) to administer**, either in full or in part,** assets of which the debtor has been divested;

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[14] A recital should be added, clarifying that "a significant part of the debtor's creditors" should be interpreted as designating the creditors to whom the debtor owes all or a substantial proportion of his outstanding debts. The term should also cover proceedings which involve only the financial creditors of the debtor, provided that the other creditors remain unaffected.

[15] A recital could be added, clarifying that the proceedings which do not include all the debtor's creditors should be proceedings aimed at rescuing the debtor. The proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of his assets should include all the debtor's creditors.

[16] A recital will clarify that the insolvency practitioner must, under national law, be appropriately regulated and authorised to act in insolvency proceedings, and the national regulatory framework provides for proper arrangements to deal with potential conflict of interests.

(iii) **to** liquidate the assets referred to in (ii); or

(iv) to supervise the administration of the debtor's affairs.

Those persons and bodies are listed in Annex C; **(…)**

(c) "court" means

(i) in **(…)** Article**s (…)** 1(1)(b) **and (c), 3a, 3x(2), 3y, 18(3), 20a(1a)(l), 28a, 29b, and 42d1 to 42d17,** the judicial body **of a Member State;**

(ii) **in all other articles, the judicial body** or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;

(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**n (…) insolvency practitioner.**

(e) "the time of the opening of proceedings" means the time at which the judgment opening insolvency proceedings becomes effective, whether it is **(…)** final **(…)** or not;

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

(…)(i) registered shares in companies, the Member State within the territory of which the company having issued the shares has its registered office;

(…)(ii) financial instruments, **other than those referred to in (i)**, **the** title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary ("book entry securities"), the Member State in which the register or account in which the entries are made is maintained;

(…)(iii) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN, **or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located**[17]**;**

(…)(iv) property and rights ownership of or entitlement to which is entered in a public register other than those referred to in paragraph (i), the Member State under the authority of which the register is kept,

(iv)a European patents, the Member State for which the European patent is granted,

(iv)b copyright and related rights, the Member State within the territory of which the owner of such rights has his habitual residence or registered office,

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

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

[17] Wording taken from the Council general approach on the proposal on the EAPO.

(g) "establishment" means any place of operations where the debtor carries out **or has carried out in the three months prior to the request to open main insolvency proceedings** a non-transitory economic activity with human means and assets;[18]

(h) "local creditors" means the creditors whose claims against the debtor arose from **or in connection with** the operation of an establishment situated in a Member State other than the one where the debtor's centre of main interests is located;

(i) "group of companies" means a **(…)** parent **undertaking** and **all its** subsidiary **(…) undertakings**;

(j) "parent **(…) undertaking**" means a**n (….) undertaking** which **controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which is preparing consolidated financial statements in accordance with Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, shall be deemed to be a parent undertaking. (…)"**

[18] A recital should be added, clarifying that where main proceedings concerning a legal person or an individual exercising an independent business or professional activity have been opened in a Member State other than that of its registered office, it should be possible to open secondary proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State.

(22) In Article 3, paragraphs 1**, (…)** 3 **and 4** 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.[19]

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 **presumed to be** that individual's principal place of business **in the absence of proof to the contrary.**

In the case of any other individual, the centre of main interests shall be **presumed to be** the place of the individual's habitual residence **in the absence of proof to the contrary[20]. This presumption shall only apply if the habitual residence has not been moved to another Member State within a period of 6 months prior to the request for the opening of insolvency proceedings.**

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19 A recital could clarify that, when determining whether the COMI is ascertainable by third parties, special consideration must be given to the creditors and their perception as to where a debtor conducts his business. This may require, in the event of a shift of COMI, informing creditors of the new location from which the debtor is carrying out his business, e.g. by drawing attention to the change of address in an invoice, or making the new location public through other appropriate means.

20 A recital could be added clarifying that, in order to determine the habitual residence, the courts dealing with insolvency proceedings concerning individuals who are not exercising an independent business or professional activity should make an overall assessment of the circumstances of the life of the individual at the time of the request to open insolvency proceedings, taking account of all relevant factual elements, in particular the duration and regularity of the individual's presence in the Member State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection to the Member State concerned, taking into account the specific aims of this Regulation, in particular with respect to prevention of fraudulent or abusive forum shopping.

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3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary proceedings. **(…)**

4. The territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:

(a) where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

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21 A recital will be added along the following lines: *"This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.*
Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interest should be rebuttable, and the court should carefully assess whether the debtor's centre of main interest is genuinely located in that Member State. In particular, it should be possible, in the case of an individual, to rebut the presumption that the centre of main interest is at the place of the individual's habitual residence. This should be possible for example if the major part of the debtor's assets is located outside the Member State of his habitual residence, or if it can be established that his principal reason for moving was to file for insolvency proceedings in the new jurisdiction and if such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.
With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the debtor's centre of main interest is at the place of his habitual residence should not apply where the debtor has relocated his habitual residence to another Member State within a period of six months prior to the request for opening insolvency proceedings. In these cases, the courts should carefully determine where the debtor's genuine centre of main interest is located.
In all instances, where the circumstances of the case give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support his assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction."

(b) where the opening of territorial insolvency proceedings is requested by:

(i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or

(ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.

When main insolvency proceedings are opened, the territorial insolvency proceedings become secondary proceedings.[22]

(22a) The following Article 3x is inserted:

Article* (…) *3x [23][24]

Examination as to jurisdiction (…)

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

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[22] This text has been copied from the last sentence of recital 17.

[23] A recital should be added to clarify that, where the debtor is in need of immediate protection from his creditors, the court should be able to grant such protection on a provisional basis pending the outcome of the decision on jurisdiction, if the national law applicable to the insolvency proceedings so allows.

[24] A recital will clarify that, when the court seised of the request to open insolvency proceedings finds that it has no jurisdiction pursuant to Article 3, it shall not open insolvency proceedings.

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

(22b) The following Article 3y is inserted:

Article 3y

Judicial review of the decision to open main proceedings

1. (…) The debtor or any creditor[25] **may** (…) challenge **before a court** the decision opening main proceedings **on grounds of international jurisdiction.**[26] **(…)**

2. The decision opening main proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than the lack of jurisdiction, where the national law so provides.

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25 A recital could clarify that 'any creditor' means 'any creditor of the debtor'.

26 It is recalled that recital 15 provides that the rules of jurisdiction set out in this Regulation establish only the international jurisdiction, that is to say, they designate the Member State whose courts may open insolvency proceedings. Territorial jurisdiction within that Member State must be established by the national law of the Member State concerned.

27 A recital could clarify that the consequences of a challenge of the decision opening insolvency proceedings under Article 3y will be governed by national law.

(23) The following Article **(…)** 3a **(…) is** inserted **(…)**:

"Article 3a

Jurisdiction for (…) actions which derive directly from the insolvency proceedings and are closely linked with them[28]

1. The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for any action which derives directly from the insolvency proceedings and is closely linked with them, such as avoidance actions.

2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the **(…) insolvency practitioner** may bring both actions in the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, in the courts of the Member State within the territory of which any of them is domiciled, provided that **(…) these** court**s** ha**ve** jurisdiction pursuant to the rules of Regulation (**(…) EU**) No **(…) 1215/2012**. **The same shall apply to the debtor in possession, provided that he is able under national law to bring actions on behalf of the insolvency estate**.

3. For the purpose of **(…) paragraph 2**, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

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28 Further examples of such actions should be included by way of a recital in the Regulation. Such examples need not prejudice or exhaust the generality of the term.

Article 3b

(…)[29]

(24) In Article 4(2), point**s (f) and** (m) **are** replaced by the following:

(f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits;

(m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.[30]**"**

(25)

"Article 6a

Close-out (…) netting (…) provisions

(…)"

(26) **The following paragraph is added to Article 8:**

"2. The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where (a) the law of the Member State applicable to those contracts requires that such a contract may only be terminated or modified with the approval of the court opening insolvency proceedings and (b) no insolvency proceedings have been opened in that Member State."

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29 The content of Article 3b has been moved to Articles 3x and 3y.

30 The term "general body of creditors" should be translated in French as "*intérêt collectif des créanciers*" and in Spanish as "*conjunto de los acreedores*".

(27) The following **paragraph** is **added to Article 10**:

"2. **(…) T**he court**s of the Member State in** which **secondary proceedings could be** opened **(…)** shall **retain jurisdiction** to approve the termination or modification of the **(…)** contracts **referred to in this Article even if no insolvency proceedings have been opened in that Member State.**

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

(27a) Article 12 shall be replaced by the following:

"***Article 12***

European patents with unitary effect and Community trade marks

For the purposes of this Regulation, a European patent with unitary effect, a Community trade mark or any other similar right established by Union law may be included only in the proceedings referred to in Article 3(1).[31] [32]"

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31 This provision aims to align the wording of Article 12 with that of Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection.

32 A recital will clarify that Article 12 should be interpreted as a rule dealing with the localisation of European Patents with unitary effect, Community trade marks and similar rights. This means that this rule should apply when determining which assets belong to the main or secondary proceedings, and to situations covered by Article 5.

(28) Article 15 shall be replaced by the following:

"Article 15

Effects of insolvency proceedings on pending lawsuits or arbitral proceedings (…)

The effects of insolvency proceedings on a pending lawsuit or **pending** arbitral proceeding concerning an asset or a right **(…) which forms part of the debtor's estate** shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral proceedings have their seat.[33] [34]"

(29) Article 18 is amended as follows:

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

1. The **(…) insolvency practitioner** appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on him by the law of the State of the opening of proceedings in another Member State, as long as no other insolvency proceedings have been opened there nor any preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. Subject to Articles 5 and 7, he may in particular remove the debtor's assets from the territory of the Member State in which they are situated[35]. **(…)**[36]"

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[33] Depending on the outcome of the negotiations on the rules of procedure of the Unified Patent Court, a provision may need to be added which takes into account the procedures before the United Patent Court.

[34] A recital could clarify that this provision should not affect national rules on recognition and execution of arbitral decisions.

[35] A recital could be added, clarifying that the debtor in possession would be able to exercise the rights referred to in Article 18, e.g. remove assets from another Member State, by virtue of his position as the owner of the assets forming the estate.

[36] The text has been moved to Article 28a.

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

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

(30) The following Articles 20a, 20b, 20c and **(…) 20e** are inserted:

"Article 20a

Establishment of insolvency registers[37]

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

1a. The information referred to in paragraph 1 shall be made publicly available, subject to the conditions laid down in Article 20e, and shall include the following ("mandated information"):

(a) the date of the opening of insolvency proceedings;

(b) the court opening insolvency proceedings and the case reference number, if any;

(c) the type of insolvency proceedings **referred to in Annex A** opened **and, where applicable, any relevant subtype of such proceedings opened in accordance with national law**;

(d) whether jurisdiction for opening proceedings is based on Article 3 (1), 3 (2) or 3 (4);

(e) if the debtor is a company or a legal person, its name, registration number, registered office or, if different, postal address;

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37 A recital could be added, clarifying that Member States are free to publish information in relation to insolvency proceedings falling within the scope of this Regulation in several registers and that it would be possible to connect more than one national register to the system of interconnection via the European E-justice portal.

(f) **if the debtor is an individual whether or not exercising an independent business or professional activity, his name, registration number, if any, and postal address or, where the address is protected, his place and date of birth;**

(g) the name, **(…) postal** address **or email address** of the **(…) insolvency practitioner** appointed in the proceedings, if any;

(h) the time limit for lodging claims**, if any, or a referral to the criteria for calculating this time limit**[38]**;**

(i) **(…)**

(j) **(…)**

(k) the date of closing main proceedings, **if any;**

(l) **the court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with Article 3y, or a referral to the criteria for calculating this time limit.**

2. **Paragraph 1a shall not preclude Member States from including documents or additional information in their national insolvency registers, such as insolvency-related directors' disqualifications.**

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38 A recital referring to points (h) and (l) will explain that Member States can fulfil their obligations under these points by adding hyperlinks to the e-Justice Portal where information will be given on the criteria for calculating those time-limits.

3. Member States are not obliged to include the information referred to in paragraph 1 concerning individuals not exercising an independent business or professional activity in the insolvency registers, nor to make such information publicly available through the system of interconnection of these registers, provided that foreign known creditors are informed, pursuant to Article 40, of the elements referred to under point l of paragraph 1a.

Where a Member State makes use of the possibility referred to in paragraph 3, subparagraph 1, the insolvency proceedings shall not affect the claims of the foreign creditors who have not received the information referred to in the first subparagraph.

4. The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 41 (4).

Article 20b

Interconnection of insolvency registers[39]

1. The Commission shall establish a decentralised system for the interconnection of insolvency registers by means of implementing act. This system shall be composed of the insolvency registers and the European e-Justice Portal which shall serve as central public electronic access point to information from the system. The system shall provide a search service in all the official languages **of the institutions** of the Union in order to make available the **mandated** information **(…) and any other documents or information included in the insolvency registers which the Member States choose to make available through the European e-Justice Portal**.

[39] A recital could clarify that the obligation to publish information in the insolvency registers and to interconnect these registers through the e-justice portal should only apply to cross-border insolvency cases.

2. By means of implementing act in accordance with the procedure referred to in Article 45b (3), the Commission shall adopt the following by……**(…) 48** months after the entry into force of the Regulation:

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

(b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;

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

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

(e) the modalities and the technical conditions of availability of services provided by the system of interconnection; and

(f) a glossary containing a basic explanation of the national insolvency procedures listed in Annex A.

Article 20c[40]

Costs of establishing and interconnecting insolvency registers

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

2. Each Member State shall bear the costs of **establishing and** adjusting **its (…) national** insolvency registers to make **(…) them** interoperable with the European e-Justice Portal, as well as the costs to administer, operate and maintain **(…) those** registers. **This shall be without prejudice to the possibility to apply for grants to support such activities under the European Union's financial programmes.**

Article 20d

(…)[41]

Article 20e

Conditions of access to information through the system of interconnection

1. Member States shall ensure that the mandated information referred to in points (a) to (l) of Article 20a(1) is available free of charge via the system of interconnected insolvency registers.

2. This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 20a(2) via the system of interconnected insolvency registers.

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40 The Impact Assessment accompanying the proposed Regulation, as set out in 17883/12 ADD 1 JUSTCIV 365 CODEC 3077, contains, on page 41et seq., an estimate of the future costs to be incurred by the Member States and the Union for establishing and interconnecting the national insolvency registers.

41 The content of Article 20d has been moved to Article 20a(1).

3. Member States may make access to mandated information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, subject to supplementary search criteria relating to the debtor in addition to the minimum criteria referred to in Article 20b(2)(c). [42]

4. Member States may require that access to the information referred to in paragraph 3 be made conditional upon a request to the competent authority. Member States may make access conditional upon the verification of the existence of a legitimate interest for accessing such information. The requesting person shall be able to submit the request for information electronically by means of a standard form via the e-Justice Portal[43]**. If a legitimate interest is required, the requesting persons shall be allowed to justify his request by electronic copies of relevant documents. The requesting person shall be provided with an answer by the competent authority within 3 working days.**

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

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

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[42] A recital will clarify that these supplementary search criteria may consist of any one of the following: the debtor's personal identification number, his address, his date of birth or the district of the competent court.

[43] The e-Justice Portal should ensure that the request is forwarded to the competent national authority.

"Article 21

Publication in another Member State

1. **(…) T**he **(…) insolvency practitioner or the debtor in possession** shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing **the insolvency practitioner** be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that **Member** State. Such publication shall specify, **where appropriate, (…) the insolvency practitioner** appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2)**.**

2. The **(…) insolvency practitioner or the debtor in possession** may request that the information referred to in paragraph 1 of this Article be published in any other Member State where **(…) the insolvency practitioner or the debtor in possession deems it necessary** in accordance with the **publication** procedure**s** provided for in that State. **(…)**."

(32) Article 22 is replaced by the following:

"Article 22

Registration in public registers of another Member State

1. **(…) W**here **the law of a Member State in which** an establishment of the debtor is located and this establishment has been entered into a public register of that Member State **or in which immovable property belonging to the debtor is located requires information on the opening of insolvency proceedings referred to in Article 21 to be published in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all the necessary measures to ensure such a registration**.

2. The **(…) insolvency practitioner or the debtor in possession** may request such **(…) registration** in any other Member State**, provided that the registration is allowed by the law of the Member State where the register is kept."**

(33) 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 **(…) 39** to **(…) 57**, with the exception of Article**s 45 and 46 of Regulation (EU) No 1215/2012**.

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

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings or in connection with it.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 shall be governed by the Regulation referred to in paragraph 1 provided that the Regulation is applicable."

(34) 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**. Where the main proceedings required that the debtor is insolvent, the debtor's insolvency shall not be re-examined in the Member State where secondary proceedings may be opened.** The effects of secondary proceedings shall be restricted to the assets of the debtor situated within the territory of the Member State where those proceedings have been opened.[44]"

[44] A recital should explain that this should not prevent the courts of the Member State in which secondary proceedings have been opened from penalising any violation of their duties by the debtor's directors, provided that those courts have jurisdiction to address such disputes under their national law.

(34a) The following Article 28a is inserted:

Article 28a

Right to give an undertaking in order to avoid secondary proceedings

1. In order to avoid the opening of secondary proceedings, **(…) the insolvency practitioner in the main proceedings** may **(…)** give **(…) a unilateral** undertaking **("the undertaking")**[45] **in respect of the assets located in the Member State in which secondary proceedings could be opened,** that **(…) when distributing those assets or the proceeds received as a result of their realisation, he will comply with the distribution and** priority rights **under national law (…) that** (…) creditors would have (…)if secondary proceedings had been opened **(…) in that Member State**.[46] **The undertaking shall specify the factual assumptions on which it is based, in particular with respect to the value of the assets located in the Member State concerned and the options available to realise such assets.**

1a. Where an undertaking has been given in accordance with this Article, the law applicable to the distribution of proceeds from the realisation of assets referred to in paragraph 1, the ranking of creditors' claims and the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the Member State in which secondary proceedings could have been opened. The relevant point in time for determining the assets referred to in paragraph 1 shall be the moment of issuing the undertaking.

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[45] A recital should clarify that the undertaking would be a unilateral promise given to the local creditors by the insolvency practitioner in the main proceedings.

[46] A recital could be added, clarifying that the assets and rights located in the Member State where the debtor has an establishment will form a sub-category of the insolvency estate, and that, when distributing them or the proceeds resulting from their realisation, the insolvency practitioner in the main proceedings should respect the priority rights that local creditors would have had if secondary proceedings had been opened in that Member State. Moreover, it is recalled that Article 32(1) provides that any creditor may lodge his claims in the main proceedings and in any secondary proceedings. Article 35 provides that, if by the realisation of assets in the secondary proceedings it is possible to meet all claims allowed under those proceedings, the insolvency practitioner in those proceedings should immediately transfer any assets remaining to the insolvency practitioner in the main proceedings.

2. **The undertaking shall be made in the official language or one of the official languages of the Member State where secondary proceedings could have been opened, or, where there are several official languages in that Member State, the official language or one of the official languages of the place where secondary proceedings could have been opened.**

3. **(…) The** undertaking shall be **made in writing. It shall** be subject to **other** form **requirements, if any, and approval** requirements **as to distributions**, if any, of the State of the opening of the main proceedings.

3a. **The undertaking shall be approved by the known local creditors. The rules on qualified majority and voting that apply for the adoption of restructuring plans**[47] **under the law of the Member State where secondary proceedings could have been opened shall also apply for the approval of the undertaking. Where so allowed by national law creditors should be able to participate in the vote by distance means of communication. The insolvency practitioner shall inform the known local creditors of the undertaking, the rules and modalities for its approval and of the approval or rejection of the undertaking.**

4. **The undertaking given and approved in accordance with this Article** shall be **(…)** binding on the estate. **If secondary proceedings are opened in accordance with Articles 29 and 29a, the insolvency practitioner in the main proceedings shall transfer any assets which he removed from the territory of that Member State after the undertaking has been given or, in case these assets have already been realised, their proceeds, to the insolvency practitioner in the secondary proceedings.**

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[47] A recital will clarify that national law should apply, as appropriate, for the approval of the undertaking. In particular, where under national law the voting rules for adopting a restructuring plan requires the prior approval of creditors' claims, these claims should be deemed to be approved for the purpose of voting on the undertaking. Where there are different procedures for the adoption of restructuring plans under national law, Member States should designate the specific procedure which should be relevant for the purpose of this paragraph.

5. Where the insolvency practitioner has given an undertaking, he shall inform local creditors about the intended distributions prior to distributing the assets and proceeds referred to in paragraph 1. If the information does not comply with the terms of the undertaking or the applicable law, any local creditor may challenge such distribution before the courts of the Member State in which main proceedings have been opened in order to obtain a distribution in accordance with the terms of the undertaking and the applicable law. In such case, no distribution shall take place until the court has taken a decision on the challenge.

6. Local creditors may apply to the courts of the Member State in which main proceedings have been opened in order to require the insolvency practitioner in the main proceedings to take any suitable measures necessary to ensure compliance with the terms of the undertaking available under the law of the Member State of the opening of main proceedings.

6a. Local creditors may also apply to the courts of the Member State in which secondary proceedings would have been opened in order to require the court to take provisional or protective, measures to ensure compliance by the insolvency practitioner with the terms of the undertaking.

7. The insolvency practitioner shall be liable for any damage caused to local creditors as a consequence of his non-compliance with the obligations and requirements set out in this Article.

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

(35) Article 29 is replaced by the following:

"Article 29

Right to request the opening of secondary proceedings

1. The opening of secondary proceedings may be requested by:

(a) the insolvency practitioner in the main proceedings;

(b) any other person or authority empowered to request the opening of insolvency proceedigns under the law of the Member State within the territory of which the opening of secondary proceedigns is requested;.

2. Where an undertaking has become binding in accordance with Article 28a, the request for opening secondary proceedings must be lodged within 30 days of having received notice of the approval of the undertaking."

(36) 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 **(…) insolvency practitioner or the debtor in posession** in the main proceedings and give him an opportunity to be heard on the request.

2. **(…) Where** the **(…) insolvency practitioner** in the main proceedings **has given an undertaking in accordance with Article 28a**, the court referred to in paragraph 1 shall **at the request of the insolvency practitioner (…) not** open secondary proceedings if **(…) it is satisfied that the undertaking adequately protects the general interests of local creditors**[48].

2a. Where a temporary stay of individual enforcement proceedings has been granted[49] **in order to allow for negotiations between the debtor and his creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary proceedings for a period not longer than three months, provided that suitable measures are in place to protect the interests of local creditors.**

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

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

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

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48 A recital should clarify that when assessing the interests of the general body of creditors, the court should take into account the fact that the undertaking has been approved by a qualified majority of local creditors.

49 A recital should clarify that all creditors that could be affected by the outcome of the negotiations on a restructuring plan should be informed of the negotiations and be allowed to participate in them.

3. **(…) At the request of the insolvency practitioner in the main proceedings,** the court referred to in paragraph 1 **(…) may o**pen **(…) a** type of **insolvency** proceedings **referred to in Annex A** (…)**other than the one initially requested provided that the conditions for opening this other type of procedure under national law are fulfilled and that this procedure (…)** is the most appropriate taking into account the interests of the local creditors **and of coherence between the main and secondary insolvency proceedings (…). The second sentence of Article 27 shall apply.**

4. (…)"[50]

(36a) The following Article 29b is inserted:

"Article 29b

Judicial review of the decision to open secondary proceedings

[51]The **(…) insolvency practitioner** in the main proceedings **(…) may** challenge **(…) the** decision **to open secondary proceedings before the courts of the Member State where secondary proceedings have been opened, on the ground that the court did not comply with the conditions and requirements of Article 29a."**

[50] Paragraph 4 of Article 29a has been moved to Article 29b.

[51] This provision aims to open the right of judicial review to the insolvency practitioner in the main proceedings, who may otherwise have no right under the national law of the secondary proceedings to request such review. It leaves untouched the conditions for judicial review under national law, which remains open to the parties to the proceedings.

(37) Article 31 is replaced by the following:

"Article 31

Cooperation and communication between (…) insolvency practitioners

1. The **(…) insolvency practitioner** in the main proceedings and the **(…) insolvency practitioner or practitioners** in **(…)** secondary proceedings **concerning the same debtor** shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to (…) the **respective** proceedings. Such cooperation may take **(…) any** form, **(…) including the conclusion of** agreements or protocols[52].

2. **(…) In implementing the cooperation set out in paragraph 1**, the **(…) insolvency practitoners** shall:

   (a) **(…) as soon as possible** communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information;

   (b) explore the possibility of restructuring the debtor and, where such possibility exists, coordinate the elaboration and implementation of a restructuring plan;

[52] A recital could be added to clarify that the agreements and protocols referred to in Articles 31(1), 31a(3)(d), 42a(1) and 42b(3)(d) are agreements entered into for the purpose of facilitating cross-border cooperation and coordination of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies. Such agreements and protocols may vary in form (written or oral) and scope (ranging from generic to specific) and may be entered into by different parties. Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved. They may reflect agreement between the parties to take, or refrain from taking, certain steps or actions.

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

3. Paragraphs 1 and 2 shall apply mutatis mutandis to situations where, in the main or in the secondary insolvency proceedings or in one of the territorial insolvency proceedings concerning the same debtor and opened at the same point in time, the debtor remains in possession of his assets[53]."

(38) The following Articles 31a, **(…)** 31b **and 31c** are inserted:

"Article 31a

Cooperation and communication between courts

1. In order to facilitate the coordination of main and **territorial or** secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending or which has opened such proceedings shall cooperate with any other court before which insolvency proceedings are pending or which has opened such proceedings to the extent such cooperation is not incompatible with the rules applicable to each of the proceedings. For this purpose, the courts may, where appropriate, appoint a**n independent** person or body acting on its instructions**, provided that this is not incompatible with the rules applicable to them**.

2. **In implementing the cooperation set out in paragraph 1**, **(…) the** courts**, or any appointed person or body acting on their behalf, as** referred to in paragraph 1, may communicate directly with, or **(…)** request information or assistance directly from each other provided that such communication **(…)** respects the procedural rights of the parties to the proceedings and the confidentiality of information.

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53 Some delegations requested the insertion of additional wording to cover situations of conflict of interest. However, when a debtor remains in possession of his assets, the possibility of a conflict of interest should not preclude any form of cooperation or communication.

3. **The (…) c**ooperation **referred to in paragraph 1** may be implemented by any **(…)** means **that the court considers appropriate. It may, in particular, concern**

(0) coordination in the appointment of the insolvency practitioners[54];

(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**, where necessary.**

Article 31b

Cooperation and communication between (…) insolvency practitioners and courts

1. In order to facilitate the coordination of main**, territorial** and secondary insolvency proceedings opened with respect to the same debtor,

(a) a**n (…) insolvency practitioner** in main proceedings shall cooperate and communicate with any court before which a request to open secondary proceedings is pending or which has opened such proceedings; **(…)**

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

54 A recital could be added, clarifying that courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor, provided that this is compatible with the rules applicable to each of the proceedings, in particular with the requirements concerning qualification and licensing of the insolvency practitioner.

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

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

2. The cooperation referred to in paragraph 1 **(…) may** be implemented by any appropriate means **(…) such as those** set out in Article 31a (3) **(…)**.

Article 31c

Costs of cooperation and communication

Articles 31a and 31b may not lead to courts charging costs to each other for cooperation and communication

(39) Article 33 is amended as follows:

(a) The title is replaced by the following

"Stay of (…) the process of realisation of assets″

(b) In paragraphs 1 and 2, the words "process of liquidation" are replaced by "**(…) process of realisation of assets**".[55]

[55] Recital 20 clarifies that the insolvency practitioner in the main proceedings should be able to apply for a suspension of the realisation of the assets in the secondary proceedings.

(40) Article 34 is replaced by the following:

"Article 34

Power of the insolvency practitioner to propose restructuring plans

1. Where the law of the Member State where secondary proceedings have been opened allows for such proceedings to be closed without liquidation by a rescue plan, a composition or a comparable measure, the insolvency practitioner in the main proceedings shall be empowered to propose such a measure himself in accordance with the procedure of that Member State.

2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary proceedings, such as a stay of payment or discharge of debt, may not have effect in respect of the debtor's assets not covered by those proceedings without the consent of all the creditors having an interest."

(40a) The following Article 34a is inserted:

*"Article 34**a***

Impact of (…) closure of (…) insolvency proceedings

1. **Without prejudice to Article 35, the** closure of **(…) insolvency** proceedings shall not prevent the continuation of **(…) other insolvency** proceedings **concerning the same debtor** which are still open at that point in time.

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

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

(42) Article 37 is replaced by the following:

"Article 37

Conversion of (…) secondary proceedings

1. **At the request of t**he (…) **insolvency practitioner** in the main proceedings (…) the court of the Member State where secondary proceedings have been opened **may** order the conversion of the secondary proceedings into another type of insolvency proceedings **referred to in Annex A and (…)provided that the conditions for opening this other type of procedure under national law are fulfilled and that this other type of procedure is the this type of procedure is the most appropriate for taking into account the interests of the local creditors and of coherence between the main and secondary insolvency proceedings, and provided that the conditions for the opening of this other type of insolvency proceedings are fulfilled**.

2. **When considering the request, the court may seek information from the insolvency practitioners involved in both proceedings**."

(43) 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"), **may (…)** lodge claims in the insolvency proceedings by any means of communication, **(…)** which are accepted by the law of the State of opening. Representation by a lawyer or another legal professional shall not be mandatory for the **sole purpose of** lodging of claims."

(44) 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 **(…)** form **for lodging of claims** referred to in Article 41 or **(…) information on where that form is available**."

(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 **(…) Article 45c**. **The form shall** be published in the European e-Justice Portal **(…) and** shall bear the heading "Notice of insolvency proceedings" in all **the** official languages **of the institutions** of the Union[56]. It shall be transmitted in the official language **(…)** of the State of the opening of proceedings or, **if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or** in another language which that State has indicated it can accept in accordance with Article 41(3) if it can be assumed that that language is easier to understand for the foreign creditors.

4. In insolvency proceedings relating to an indivual not exercising a business or professional activity, the use of the standard form referred to in this Article shall not be obligatory provided that creditors are not required to lodge their claims in order to have their debts taken into account in the proceedings. "

[56] It should be made clear that the above form should be used in cross-border situations only.

(45) Article 41 is replaced by the following:

"Article 41

Procedure for lodging claims

1. Any **(…)** foreign creditor[57] **(…) may** lodge his claim using the standard claims form to be established in accordance with **(…) Article 45c**. The form shall bear the heading "Lodgment of claims" in all **the** official languages of the **institutions of the** Union.

2. **(…) T**he standard claims form **(…)** referred to in paragraph 1 shall **(…) include the following information**[58]**:**

(a) **(…) the** name, **(…) postal** address**, email address, if any, personal identification number, if any, and bank details of the creditor referred to in paragraph 1;**

(b) the amount of the claim**, specifying the principal and, where applicable, interest** and the date on which it arose **and the date on which it became due, if different;**

(b1) if interest **is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest;**

(b2) if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of these costs;

(c) the nature of the claim;

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57 A recital could be added to clarify that this Regulation should not prevent the insolvency practitioner from lodging claims on behalf of certain groups of creditors, for example, employees, where national law so provides.

58 The consequences of the incomplete filing of the standard form are left to national law.

(d) whether any preferential creditor status is claimed **and the basis of such a claim;**

(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, **the date on which the security was granted and, where the security has been registered, the registration number;** and

(f) whether any set-off is claimed and (…), **if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened**, **the date on which they arose and** the amount **(…)** net of set-off **claimed.**

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

2a. The standard claims form shall indicate that the provision of information concerning the bank details and the personal identification number of the creditor referred to in paragraph 2(a) is not compulsory.

2b. When a creditor lodges his claim by other means than the standard form referred to in paragraph 1, his claim shall contain the information referred to in paragraph 2.

3. Claims may be lodged in any official language of the Union. The **court, the insolvency practitioner or the debtor in possession may require the** creditor **(…)** to provide a translation in**(…)** the official language **(…)** of the **Member** State of the opening of proceedings or**, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or** in**(…)** another language which that Member State has **indicated it can** accept**(…)**. Each Member State **(…) shall** indicate **(…) whether it accepts any official** language of the **institutions of the** Union other than its own for the purpose of the lodging of claims.

4. Claims shall be lodged within the period stipulated by the law of the **Member** State of the opening of insolvency proceedings. In the case of a foreign creditor, that period shall not be less than **30** days following the publication of the opening of **insolvency** proceedings in the insolvency register of the **Member** State of opening.

5. Where the **(…) court, the insolvency practitioner or the debtor in possession (…) has doubts in relation to** a claim lodged in accordance with this Article, he shall give the creditor the opportunity to provide additional evidence on the existence and the amount of the claim.[59]"

(46) Article 42 is deleted.

[59] A recital could clarify that the insolvency practitioner may request such evidence to be provided within a reasonable time period.

(47) the following Chapter IVa is inserted:

"CHAPTER IVa [60] [61]

INSOLVENCY PROCEEDINGS OF MEMBERS OF A GROUP OF COMPANIES

Section 1 Cooperation and communication

Article 42a

(...) Cooperation and communication between (...) insolvency practitioners

1. Where insolvency proceedings relate to two or more members of a group of companies, a**n (…) insolvency practitioner** appointed in proceedings concerning a member of the group[62] shall cooperate with any **(…) insolvency practitioner** appointed in proceedings concerning another member of the same group to the extent such cooperation is appropriate to facilitate the effective administration of the**se** proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interests[63]. That cooperation may take **(…) any** form**, including the conclusion** of agreements or protocols.

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[60] A recital should be added to clarify that nothing in this chapter should prevent Member States from establishing national rules which would supplement the rules on groups of companies set out in the Insolvency Regulation, provided that the scope of application of those national rules is limited to the domestic area and that their application would not impair the efficiency of the rules of this Regulation.

[61] A recital in the preamble will clarify that practitioners and courts, when framing and conducting their coordination and cooperation, are invited to draw inspiration from international instruments, in particular the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation.

[62] A recital should be added to clarify that the rules set out in this Chapter should only apply to the extent that proceedings relating to different members of the same group of companies have been opened in more than one Member State.

[63] A recital should be added to further clarify that cooperation between the insolvency practitioners as referred to in this Article should not go against the interests of the creditors in each of the proceedings and that such cooperation should be aimed at finding a solution that would leverage synergies across the group.

2. In **(…) implementing** the cooperation **(…) set out** in paragraph 1, the **(…) insolvency practitioners** shall

(a) **(…) as soon as possible** communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;

(b) **consider whether possibilities exist** for coordinat**ing (…)** the administration and supervision of the affairs of the group members **which are** subject to insolvency proceedings**, and if so, coordinate such administration and supervision;**

(c) **(…) consider whether** possibilities **exist** for restructuring **(…)** group **members which are subject to insolvency proceedings** and, **(…) if so**, coordinate with respect to the proposal and negotiation of a coordinated restructuring plan;

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

Article 42b

(…) Cooperation and communication between courts

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

2. **In implementing the cooperation set out in paragraph 1, t**he courts**, or any appointed person or body acting on their behalf, as** referred to in paragraph 1**,** may communicate directly with each other, or **(…)** request information or assistance directly from each other**, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information**.

3. **The (…) c**ooperation **referred to in paragraph 1 (…) may (…) be implemented** by any means **that the court considers appropriate**, including

   (0) coordination in the appointment of the insolvency practitioners[64];

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

64 A recital could be added, clarifying that courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor, provided that this is compatible with the rules applicable to each of the proceedings, in particular with the requirements concerning qualification and licensing of the insolvency practitioner.

(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 **where necessary**.

Article 42c

Cooperation and communication between (…) insolvency practitioners and courts

A**n (…) insolvency practitioner** appointed in insolvency proceedings concerning a member of a group of companies(…)

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

(b) **may** request information from that court concerning the proceedings regarding the other member of the group or request assistance concerning the proceedings in which he has been appointed**,**

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

Article 42cx

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

The costs of the cooperation and communication provided for in Articles 42a to 42d incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

Article 42d

Powers of the (…) insolvency practitioner (…) in proceedings concerning members of a group of companies

1. An insolvency practitioner appointed in insolvency proceedings opened with respect to a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings, (…)

(a) be heard in any of the proceedings opened with respect to any other member of the same group;

(b) request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:

(i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under Article 42a(2)(c) and presents reasonable chance of success;

(ii) such a stay is necessary in order to ensure the proper implementation of the plan;

(iii) the plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and

(iv) no group coordination proceedings have been opened pursuant to Article 42d8;

(c) apply for the opening of group coordination proceedings in accordance with Article 42d1.

2. The court having opened proceedings referred to in point b) of paragraph 1 shall stay any measure related to the realisation of the assets[65] in the proceedings in whole or in part if satisfied that the conditions referred to in paragraph 1(b) are fulfilled.

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

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

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

[65] A recital should clarify that such a stay should not affect the rights in rem of secured creditors pursuant to Article 5.

Section 2: Coordination

2.1 Procedure

Article 42d1

Request to open group coordination proceedings

1. Group coordination proceedings may be requested at any court having jurisdiction over the insolvency proceedings of a member of the group by

an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.

1a. This request shall be made in accordance with the conditions provided by law of the proceedings in which the insolvency practitioner has been appointed[66].

2. The request referred to in paragraph 1 shall be accompanied by:

(a) a proposal as to the person to be nominated as the coordinator, details of his eligibility pursuant to Article 42d11, details of his qualifications and his written agreement to act as coordinator;

(b) an outline of the proposed group coordination and in particular the reasons why the conditions set out in Article 42d3 (1) are fulfilled;

(c) a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;

(d) an outline of the estimated costs of the proposed group coordination and the estimation of the share to be paid by each member of the group.

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66 A recital should clarify that, before asking for the opening of group coordination proceedings, the insolvency practitioner asking for the opening of group coordination should have the necessary authorisation where the law applicable to the insolvency so requires.

Article 42d2

Priority rule

Without prejudice to Article 42d6, where the opening of group coordination proceedings is requested at courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court[67]**.**

Article 42d3

Notice by the court seised

1. The court seised of a request to open group coordination proceedings shall as soon as possible give notice of the request for the opening group coordination proceedings and of the proposed coordinator to the insolvency practitioners appointed in relation to the members of the group as indicated in the request referred to in Article 42d1 (2) (c) , if it is satisfied that

(a) the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;

(b) no creditor of any group member anticipated to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and

(c) the proposed coordinator fulfils the requirements set out in Article 42d11.

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[67] In such a situation, the mechanism of court-to-court communication provided for in Article 42b can be of value for the proper administration of this provision.

2. The notice referred to in paragraph 1 shall list the elements referred to in Article 42d1 (2) (a) to (d).

2a. The notice referred to in paragraph 1 shall be sent by registered letter attested by an acknowledgment of receipt.

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

Article 42d4

Objections by the insolvency practitioners

1. An insolvency practitioner appointed in respect of any group member may object to respectively:

(a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which he has been appointed or;

(b) the person proposed as a coordinator.

2. Objections pursuant to paragraph 1 shall be lodged with the court referred to in Article 42d3 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1[68].

The objection may be made by means of the standard form established in accordance with Article 45c.

3. Prior to taking the decision to participate or not to participate in the coordination in accordance with paragraph 1, an insolvency practitioner shall obtain any approval which may be required under the law of the Member State of the opening the insolvency proceedings for which he has been appointed.

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[68] A recital should be added clarifying that an objection pursuant to Article 42d4 does not require a justification. However, an insolvency practitioner objecting may give reasons to the court for doing. Such reasons may be helpful to the court when taking the decision under Article 42d8.

Article 42d5

Consequences of the objection to the inclusion in group coordination

1. Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which he has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.

2. The powers of the court referred to in Article 42d8 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.

Article 42d6

Choice of court for group coordination proceedings

1. Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member State having jurisdiction is the most appropriate for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.

2. The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 42d8.

3. Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.

4. The request for the opening of coordination proceedings shall be submitted to the court agreed in accordance with Article 42d1.

Article 42d7

Consequences of objections to the proposed coordinator

Where objections to the person of the proposed coordinator have been received from an insolvency practitioner who is not also objecting to the inclusion in the group coordination proceedings of the member in respect of which he has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner or practitioners to submit a new request in accordance with Article 42d1 (2).

Article 42d8

Decision to open group coordination proceedings[69]

1. After the period referred to in Article 42d4(1) has elapsed, the court may open group coordination proceedings, where it is satisfied that the conditions of Article 42d3(1) are met. In such a case, the court shall

(a) appoint a coordinator;

(b) decide on the outline of the coordination;

(c) decide on the estimation of costs and the share to be paid by the group members.

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

[69] As a general principle, this judicial decision should be subject to appeal under the applicable provisions of national law.

Article 42d9

Subsequent opt-in by insolvency practitioners

1. Any insolvency practitioner may request, after the court decision referred to in Article 42d8, and in accordance with its national law, the inclusion of the proceedings in respect of which he has been appointed, where

(a) there has been an objection to the inclusion of insolvency proceedings within the group coordination proceedings, or

(b) insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.

2. Without prejudice to paragraph 4, the coordinator may accede to such a request after consulting the insolvency practitioners involved if

(a) he is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in Article 42d3 (1) (a) and (b) are met; or

(b) all insolvency practitioners involved agree under the conditions provided by their national law.

3. The coordinator shall inform the court and the participating insolvency practitioners of his decision pursuant to paragraph 2 and of the reasons on which it is based..

4. Any participating insolvency practitioner may challenge the decision referred to in paragraph 1 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

Article 42d10

Recommendations and group coordination plan

1. When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to under Article 42d12(1).

2. An insolvency practitioner is not obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan.

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

2.2 General provisions

Article 42d11

The coordinator

1. The group coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.

2. The group coordinator must not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.

Article 42d12

Tasks and obligations of the coordinator

1. The coordinator shall

(a) identify and outline recommendations for the coordinated conduct of the insolvency proceedings;

(b) propose a group coordination plan that identifies, describes and recommends a comprehensive set of measures appropriate to an integrated approach to the resolution of the group members' insolvencies. In particular, the plan may contain proposals for

(i) the measures to be taken in order to re-establish the economic performance and the financial soundness of the group or any part of it;

(ii) the settlement of intra-group disputes as regards intra-group transactions and avoidance actions;

(iii) agreements between the insolvency practitioners of the insolvent group members.

2. The coordinator may also:

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

(b) mediate any dispute arising between two or more insolvency practitioners of group members;

(c) present and explain his group coordination plan to the persons or bodies that he is to report to under his national law;

(d) request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and

(e) request a stay for a period of up to six month of the proceedings opened with respect to any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested, or request the cessation of any existing stay. This request shall be made to the court that opened the proceedings for which a stay is requested.

3. The plan referred to in paragraph 1 (b) must not include recommendations as to any consolidation of proceedings or estates.

4. The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.

5. The coordinator shall perform his duties impartially and with due care.

6. Where the coordinator estimates that the fulfilment of his tasks requires a significant increase in the costs compared to the cost estimate referred to in Article 42d1 (2)(d), and in any case, where the costs exceed 10% of the estimated costs, the coordinator shall

(a) inform without delay the participating insolvency practitioners, and

(b) seek the prior approval of the court opening coordination proceedings.

Article 42 d13

Languages

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

2. The coordinator shall communicate with the court of a participating group member in the official language or one of the official languages of the institutions of the European Union of the court which opened the proceedings in respect of that group member.

Article 42d14

Cooperation between the insolvency practitioners and the coordinator

1. The insolvency practitioners appointed in relation to members of the group and the coordinator shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to (…) the respective proceedings.

2. In particular, the insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his tasks.

Article 42d15

Revocation of the coordinator

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

(a) the coordinator acts to the detriment of the creditors of a participating group member; or

(b) the coordinator fails to comply with his obligations under this Chapter.

Article 42d16

Debtor in possession

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

Article 42d17

Costs and distribution

1. The remuneration for the coordinator shall be adequate, proportional to the tasks fulfilled and reflect reasonable expenses[70].

2. When having completed his tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.

3. In the absence of objections by the insolvency practitioners[71] within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.

4. In the case of an objection, the court that has opened the group coordination proceedings shall, upon application of the coordinator or any participating group member, decide on the costs and the share to be paid by each member in accordance with the criteria set out in paragraph 1 and taking into account the estimation of costs referred to in Articles 42d8 and, where applicable, 42d12.

5. Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

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70 A recital could indicate that the criteria set out in paragraph 1 should be assessed in line with the national law of the Member State where group coordination proceedings have been opened.

71 A recital could clarify that where national law so requires, the insolvency practitioner should seek the approval/decision of the court or the creditors' committee.

(47a) The following Chapter is inserted:

"CHAPTER IVB

DATA PROTECTION

"Article **(…)** ***42e***

Data protection

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

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

Article 42f

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

1. Each Member State shall communicate to the Commission the name of the natural or legal person, public authority, agency or any other body designated by national law to exercise the functions of controller in accordance with Article 2(d) of Directive 95/46/EC, with a view to its publication on the European E-justice portal.

2. Member States shall provide that the technical measures to ensure the security of personal data processed in their national insolvency registers referred to in Article 20a are implemented.

3. Member States shall be responsible for verifying that the controller, designated by national law in accordance with Article 2(d) of Directive 95/46/EC, ensures compliance with the principles of data quality, in particular the accuracy and the updating of data stored in national insolvency registers.

4. Member States shall be responsible, in accordance with Directive 95/46, for the collection and storage of data in national databases and for decisions taken to make such data available in the interconnected register that can be consulted via the European e-Justice Portal.

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

Article 42g

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

1. The Commission shall exercise the responsibilities of controller pursuant to Article 2(d) of Regulation 45/2001/EC in accordance with its respective responsibilities defined in this Article.

2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.

3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity for any transmission to and from the European E-Justice Portal.

4. The obligations of the Commission shall not affect the responsibilities of the Member States and other bodies for the content and operation of the interconnected national databases run by them.

Article 42h

Information obligations

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

Article 42i

Storage of personal data

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

Article 42j

Access to personal data via the European E-justice portal

Personal data stored in the national insolvency registers referred to in Article 20a shall be accessible via the European e-Justice portal as long as they remain accessible under national law.

(48) A new Article 44a is inserted:

"Article 44a

Information on national and Union insolvency law

1. The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC[72], with a view to making the information available to the public, a **(…) short** description of their national **(…) legislation** and procedures **relating to insolvency**, in particular relating to the matters listed in Article 4(2). [73]

2. The Member States shall update that information regularly.

3. The Commission shall make information concerning this Regulation available to the public."

[72] OJ L 174, 27.6.2001, p. 25.

[73] In order to assist Member States, the Commission should provide them with a list of questions concerning their national legislation and procedures relating to insolvency.

Article 45 is **deleted**[74]

(50) The following Articles **(…)** 45b **and 45c** are inserted:

Article 45b

(…) Establishment of the interconnection of registers

1. **(…) The Commission shall** adopt implementing acts **(…) establishing (…)** the interconnection of insolvency registers as referred to in Article 20b**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation 182/2011 of the European Parliament and of the Council**.[75]

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**(…)**.[76]

3. **(…)**

4. **(…)**

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74 The new Annexes, adapted to the new scope of the Regulation, will be added to this Regulation. They will be examined at a later stage, together with the recitals.

Under the rules of the ordinary legislative procedure, the legislator acts on the basis of a Commission proposal, and cannot adopt legislation on the basis of a Commission proposal to which he has added matters which were not in the proposal.

75 OJ L 55, 28.2.2011, p. 13.

76 OJ L 55, 28.2.2011, p. 13.

Article 45c

Establishment and subsequent amendment of standard forms

1. The Commission shall adopt implementing acts establishing and, where necessary, amending the forms referred to in Articles 20e (4), 40, 41 and 42d4 (2). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 4 of Regulation (EU) No 182/2011.

2. In adopting or amending the implementing acts referred to in paragraph 1, the Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011."

(51) **(…) Article 46 shall be replaced by the following:**

"Article 46

Review clause

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

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

3. No later than1 January 2016 after the entry into force, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the cross-border issues in the area of directors' liability and disqualifications.

4. No later than 3 years after the entry into application, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the issue of abusive forum shopping."

(52) **(…)**[77]

(53) Annex B is deleted.

Article 2

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

2. It shall apply from …..24 months after the entry into force of the Regulation with the exception of

(a) Article 44a concerning information on national **and Union insolvency law,** which shall apply from…12 months after its entry into force**;**

(b) Article 20a(1) concerning the establishment of insolvency registers at national level, which shall apply from ….36 months after its entry into force; and

(c) Article 20b concerning the interconnection of the national insolvency registers which shall apply from ….48 months after its entry into force. (…)

[77] The text of Article 46a has been moved to Article 42e.

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

Done at Strasbourg,

For the European Parliament *For the Council*

The President *The President*