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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Revision of Regulation (EC) No 1346/2000 on insolvency proceedings

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Revision of Regulation (EC) No 1346/2000 on insolvency proceedings

1. INTRODUCTION

As the European Union is facing the biggest economic crisis in its history, the European Council has repeatedly emphasised the Union's role in promoting sustainable growth while pushing for financial consolidation. Growth has therefore been put at the heart of the Commission's agenda on justice ('Justice for Growth').

One of the measures supporting economic activities in the area of justice is the revision of Council Regulation (EC) No 1346/2000 on insolvency proceedings (the 'Regulation' or 'EIR'). From 2009-2011, an average of 200 000 firms went bankrupt per year in the EU, resulting in direct job losses each year of 1.7 million. About one-quarter of these bankruptcies have a cross-border element, and so fall under the EIR. As firms that trade cross-border tend to be larger than average, the share of jobs affected is likely to be greater than the share of bankruptcies, even before taking into account the effects on creditors of these firms.

The Commission has put the revision of the Regulation in its Work Programme for 2012, in line with the review clause of the Regulation, Article 46. The revision is consistent with Europe 2020, the Small Business Act, the Annual Growth Survey 2012 and the Single Market Act II. In October 2011, the European Parliament adopted a resolution calling for the revision of the Regulation and recommending the harmonisation of specific aspects of insolvency law and company law. The revision will be adopted together with a report on its application, in line with the review clause of the Regulation.

2. PROBLEM DEFINITION

2.1. Evaluation of the Regulation

Regulation (EC) No 1346/2000 on insolvency proceedings establishes a legal framework for cross-border insolvencies in the European Union. The EIR lays down uniform rules for jurisdiction, the recognition and enforcement of insolvency-related decisions, and applicable law. It also provides for coordination of multiple proceedings relating to the same debtor. In short:

- The Regulation applies to legal and natural persons, whenever the debtor has assets or creditors in more than one Member State;
- Jurisdiction for opening main insolvency proceedings lies with the court where the debtor has its centre of main interest (COMI). The opening decision and all other decisions issued by that court are recognised and enforced in all other Member States;

- Secondary proceedings can be opened in any Member State where the debtor has an establishment, i.e. any place where the debtor carries out economic activity. The effect of secondary proceedings is limited to the assets located in that Member State. The liquidator of the secondary proceedings has to cooperate with his counterpart in the main proceedings (and vice-versa) in order to coordinate the proceedings; and
- The law applicable to the insolvency proceedings is, in principle, the law of the country where the proceedings are opened. This law determines, in particular, the ranking of claims and the procedural rights of the creditor.

Although the EIR is generally considered to be successful in facilitating cross-border insolvency proceedings within the European Union, the evaluation shows a range of problems in implementing the Regulation. It also shows that the Regulation does not sufficiently reflect current EU priorities and national practices in insolvency law, in particular in promoting the rescue of firms in difficulties.

The evaluation of the EIR highlighted the following key problems:

(1) Obstacles to the rescue of companies and to the free movement of entrepreneurs and debt-discharged persons;

(2) Difficulties in determining the right jurisdiction to open proceedings;

(3) Inefficient cross-border procedures;

(4) No legal framework to cover insolvency of groups of companies.

This section analyses the four problems, linking them as they are connected and grouping the above problems into two categories.

2.2. Problem group 1: Problems relating to the scope of the Regulation

The first set of problems covers issues relating to gaps in the current scope of the Regulation, such as the lack of provisions on pre-insolvency schemes, provisions on debt discharge procedures for natural persons and specific rules on groups of companies.

2.2.1. The Regulation does not cover national insolvency proceedings that aim at rescuing companies

Since the Regulation was enacted, many Member States have updated their insolvency laws by introducing new procedures that aim at rescuing businesses, providing a second chance to honest entrepreneurs and giving individuals debt discharge. The Heidelberg study revealed that almost two thirds of Member States have pre-insolvency or hybrid (debtor in possession) proceedings that are not covered by the Regulation. These proceedings aim at rescuing viable business and at safeguarding jobs and their economic benefits are widely recognised.

When proceedings are not covered by the Regulation, there is no EU-wide recognition of their effects, notably the suspension of individual enforcement action. As a result, foreign creditors can continue with individual enforcement action against the company and its assets, and are less willing to fully engage in restructuring negotiations or consent to rescue plans. As a consequence, the opportunity to rescue the company may be lost and jobs cannot be saved. Respondents to the public consultation highlighted these problems, 51 % of whom felt that the

lack of coverage of pre-insolvency or hybrid insolvency proceedings is problematic. 59% also agreed that the EIR should cover national pre-insolvency procedures.

Between 2009 and 2011, more than 200 000 companies went bankrupt each year in the EU. Job losses are estimated to be about 1.7 million per year. It is estimated that about 5 million European companies have customers, creditors or business partnerships in other Member States and are therefore potentially affected by the Regulation as debtors or creditors in the event of an insolvency. About 50 000 companies (1% of 5 million) per year will be debtors and at least twice as many will be creditors in a cross-border insolvency.

Cross-border insolvencies particularly affect large companies because these are more likely to do business across borders than SMEs. The insolvency of a large company has significant effects on the European economy because large companies, although they represent only 0.2% of European companies, provide 30% of jobs in the EU and produce 41% of gross added value. Large companies often source their supplies from smaller companies, possibly located abroad, so the insolvency of a large company can have sizeable knock-on effects.

2.2.2. The Regulation does not effectively cover the full range of personal insolvency schemes of Member States

The rise in personal over-indebtedness in Europe has led to many Member States introducing personal insolvency schemes. This reflects the increasing awareness that insolvency and ensuing personal debt is a significant obstacle to entrepreneurship. Bringing in the possibility to obtain a debt discharge also aims to counter the negative social impacts that private over-indebtedness has on the individuals concerned.

While several personal insolvency procedures, including debt discharge, are covered by the Regulation, many others are not. As a consequence, **debtors remain liable to foreign creditors**. The fact that the EIR does not cover some personal insolvency schemes therefore constitutes an obstacle to honest entrepreneurs and debt-discharged persons getting a second chance, and enabling them to make full use of the opportunities of the single market. This is in contradiction with EU policies on entrepreneurship.

The number of personal insolvencies that are currently not covered by the Regulation can be estimated at about 200 000 per year. Half of the respondents to the public consultation (49%) agreed that the **EIR should apply to private individuals/self-employed**, while one third (34%) disagreed, with those in favour including judges, insolvency practitioners and academics. Some respondents did not think an expansion should include consumers.

2.2.3. The Regulation does not effectively deal with the insolvency of groups of companies

Although many cross-border insolvencies involve groups of companies, the Insolvency Regulation does not contain specific rules dealing with the insolvency of a multi-national enterprise group. The basic premise of the Insolvency Regulation is that insolvency proceedings relate to a single legal entity and that, in principle, separate proceedings must be opened for each individual member of the group. There is no compulsory coordination of independent insolvency proceedings opened for a parent company and its subsidiaries.

This situation diminishes the prospects of successful restructuring and reduces the value of the group's assets. According to the April 2011 report of the Reflection Group on the Future of EU Company Law, international grouping of companies has become *the* prevailing form of

European large-sized enterprises. It is estimated that every year **2100 companies (among which 2000 SMEs) are affected by difficulties in group insolvency.** Almost half of respondents to the public consultation (49%) felt the **EIR does not work efficiently for multinational group** insolvencies, with 30% feeling it does.

2.3. Problem group 2: Problems in implementing the Regulation

A number of difficulties have arisen in implementing the EIR, and they can be grouped as follows.

2.3.1. No definition of COMI and consequent difficulties relating to determining jurisdiction for opening insolvency proceedings and forum shopping

The Regulation grants jurisdiction to open main insolvency proceedings with the courts of the Member State where the debtor has the centre of its main interests ('COMI'). The case will be handled in the Member State of the COMI and be subject to that state's insolvency law, without prejudice to the opening of secondary proceedings. While **77% of respondents to the public consultation approved the use of COMI** to determine the jurisdiction of the main proceedings, its application in practice has given rise to difficulties as national courts are not sufficiently aware of CJEU case law in the Eurofood and Interedil cases. Furthermore, the Regulation does not contain an express obligation for the court opening insolvency proceedings to investigate the international jurisdiction. The risk is that this results in parallel main proceedings opened with conflicts of competence.

The Regulation has also been criticised for allowing forum shopping by companies and natural persons that exploit the system by relocating their COMI to another Member State. However, not all relocations are wrongful. The problem of forum shopping is essentially driven by differences in national insolvency laws.

The Court of Justice has accepted cases of **companies** relocating their COMI as a legitimate exercise of the freedom of establishment. There are several cases where COMI relocation to the UK led to the successful restructuring of a company because of the flexibility which English insolvency law grants companies.

COMI relocation has also been reported in cases of **over-indebted natural persons**. This phenomenon has been termed 'bankruptcy tourism'. Bankruptcy tourism is problematic because a debtor takes advantage of a more favourable insolvency regime in another jurisdiction without genuinely relocating to the other Member State, to the detriment of his creditors who are unable to enforce their claims.

Issues relating to determining COMI are a frequent source of litigation, although COMI litigation is becoming less frequent. Research concluded that COMI issues arise in 40-50% of the cases, albeit not always as a contested issue. The extent of wrongful COMI relocation is difficult to quantify, partly due to diverging views as to whether COMI relocation is actually wrongful and partly because, due to the deficiencies in the procedural framework, not all wrongful COMI shifts are detected. UK statistics indicate that in fewer than 100 cases per year, the COMI shift could be considered to be wrongful.

2.3.2. Relationship between the main and the secondary proceedings under the Regulation

The EIR allows secondary proceedings to be opened if the debtor has an establishment in that country. However, it provides that secondary proceedings must be winding-up or liquidation

proceedings, that is, they cannot be restructuring or re-starting proceedings. This requirement has triggered criticism that the EIR focuses on liquidation rather than restructuring, and is therefore incompatible with today's 'corporate rescue' culture. A vast majority of stakeholders consider this to be a problem.

The narrow scope of secondary proceedings can be an obstacle to the successful restructuring of a company with branches in several Member States, thereby diminishing the total value of the debtor's assets and destroying jobs. This sub-problem therefore reinforces the first sub-problem that the current Regulation constitutes **an obstacle to business continuation and the safeguarding of jobs**. The system of secondary proceedings was introduced to protect the interests of local creditors and/or to facilitate the administration of complex cases. In practice however, secondary proceedings can obstruct both the effective administration of the estate and the successful reorganisation of a company. They remove part of the assets from the control of the insolvency administrator in the main proceedings. They also increase the costs of proceedings because an additional insolvency practitioner has to be paid. The use of secondary procedures has fallen because companies tend to organise their cross-border activities through subsidiaries. However, the use of branches remains the norm in the aviation sector, with big assets and many employees. It is estimated that **every year about 700 companies with branches in another Member State go bankrupt** and **several hundred secondary proceedings are opened**.

When secondary proceedings are opened, all parties involved report that there is a lack of coordination between the main and secondary procedure. The Regulation obliges insolvency practitioners to communicate information and cooperate with each other. Associations of practitioners have produced several guidelines for practitioners on cooperation and communication in cross-border insolvencies. Insolvency practitioners and courts have reported that cooperation is not effective in practice. The additional cost of cooperation, language barriers and national procedural rules preventing the disclosure of information may also be a source of difficulties in cooperation. Moreover, there are no similar duties of cooperation between the courts and between insolvency administrators and the courts. As a result, the judge in the main proceedings is not informed of developments in the secondary proceedings before deciding on further action, and vice-versa. This ultimately reduces the efficiency of proceedings, increases their length and costs, and, ultimately, chances to maximise the value of the assets may be lost. **70 % of respondents to the public consultation were dissatisfied with the coordination between main and secondary proceedings. 61 % responded similarly in the Heidelberg report.**

2.3.3. Difficulties in practical implementation relating to the lack of publicity of decisions on an insolvency procedure and to the lodging of claims

A court opening insolvency proceedings needs to know whether the company or person is already subject to insolvency proceedings in another Member State. Today there is no systematic publication or registration of the decisions in the Member States where a proceeding is opened, nor in Member states where there is an establishment. The lack of information on proceedings has resulted in concurrent proceedings being launched unnecessarily. It is also essential to give access to the decision closing a procedure.

In all but two Member States, information about insolvency proceedings is collected centrally. While insolvency proceedings of legal entities are registered in every Member State, insolvencies of individuals are only registered in some. **Only 14 Member States publish decisions in an insolvency register that is publicly accessible online, free of**

charge. 9 other Member States make some information on insolvency available in an electronic database, e.g. a company register or an electronic version of the official bulletin.

The evaluation study and respondents to the public consultation (in particular the European Association for SMEs) have reported that creditors experience difficulties in lodging claims under the European Insolvency Regulation. Liquidators do not always inform creditors in due time about their right to lodge a claim. This may entail the total loss of the claim if it is lodged after deadlines under national law have expired.

These costs and difficulties deter small creditors. The **average cost of lodging a claim for a foreign creditor has been estimated at about € 2000** in a cross-border situation.

2.4. EU right to act: Legal basis, subsidiarity and proportionality

The reform would be based on Articles 81(2)(a), (c) and (f) TFEU. The measures would be adopted in ordinary legislative procedure. The development by the EU of more efficient cross-border insolvency rules is in complete compliance with principle of subsidiarity. The issue has cross-border aspects, which cannot satisfactorily be dealt by individual action by the Member States. Furthermore, action at EU level would produce clear benefits (compared to Member State action) in terms of effectiveness.

3. POLICY OBJECTIVES

General objective
To improve the efficiency of the European framework for resolving cross-border insolvency cases in view of improving the functioning of the internal market and its resilience in economic crises.
Specific objectives
To ensure EU-wide recognition of national insolvency-related proceedings contributing to rescuing businesses, protecting investment, safeguarding jobs and encouraging entrepreneurship; and providing a second chance to honest entrepreneurs and over-indebted consumers; To increase legal certainty for creditors, thereby encouraging cross-border trade and investment; To improve the efficient administration of cross-border insolvencies that protects the interest of all creditors and other interested persons, including the debtor; To improve the efficient administration of the insolvency of members of a multi-national group of companies, thereby maximising the value of their assets and facilitating rescue.
Operational objectives
To address the problem of scope of the Regulation, which does not take into account the increased use of non-liquidation proceedings (e.g. pre-insolvency and hybrid proceedings); to set up a process to adapt the Regulation to developments in national insolvency law and to allow secondary proceedings to cover restructuring, pre-insolvency and hybrid proceedings; To clarify the rules relating to jurisdiction for opening insolvency proceedings, without prejudice to the rights of companies and natural persons to legitimately exercise their freedom of establishment and

movement in the Union;

To improve the procedural framework for taking the decision on jurisdiction and ensuring the possibility for judicial review for interested parties;

To improve coordination between courts and practitioners, both prior to and during the proceedings; to increase transparency by making it mandatory to publish all relevant decisions in each Member State; and to improve access to justice, in particular for SMEs, by devising measures to facilitate the lodging of claims; and

To create a specific legal framework for group insolvency.

4. POLICY OPTIONS

Three policy options have been identified to tackle with the above problems and achieve the above objectives. These are:

1) Status quo, or baseline scenario;

2) Option A, updating the existing Regulation, while maintaining the current balance between creditors and debtors and between universality and territoriality; and

3) Option B, changing the basic premises of the Regulation and requiring some approximation or convergence of national insolvency laws and proceedings.

Overleaf is a table setting out the aspects making up each of these options, against the problems that were broken down into two categories. Certain aspects are common to options A and B as both would extend the scope of the Regulation, e.g. regarding the national insolvency registers and the simplified procedures for lodging a claim.

Problem	Status Quo (Baseline scenario)	Option A 'Updating the framework for cross-border insolvency proceedings'	Option B 'Towards approximation of national insolvency laws and proceedings'
Limited scope of the Insolvency Regulation	The scope and definition of the EIR do not cover pre-insolvency, hybrid and most personal insolvency proceedings.	Extend the scope of the EIR to include hybrid proceedings, pre-insolvency proceedings and personal insolvency proceedings and do away with the requirement that secondary proceedings have to be winding-up proceedings.	
	No rules for groups of companies.	Coordination of main proceedings through general cooperation mechanisms, with the option, when appropriate, to nominate a lead insolvency practitioner.	Single court competent for all main proceedings; single insolvency administrator appointed for all members of the group ('procedural consolidation').
Difficulties in implementing the Insolvency Regulation	No obligation to publish and not all MS have an electronic insolvency register.	Require Member States to publish all relevant decisions of insolvency proceedings in a national electronic register and define common categories to be able to link national registers in the e-justice portal.	
	No standard forms for lodging claims. The procedures are entirely left to national law.	Introduce procedures and a standardised form at EU level for lodging claims and encourage Member States to set-up electronic means for lodging claims.	
	Jurisdiction remains at the COMI, which is defined by case law.	Improve the procedural framework and train judges on the EIR.	Harmonise elements of national insolvency laws.
	Coordination is limited to coordination between practitioners.	Maintain secondary proceedings but improve coordination with the main proceedings prior to and during secondary proceedings.	Abolish secondary proceedings.

4.1. Option A

First element: Extend the scope of the EIR to include hybrid proceedings, pre-insolvency proceedings and personal insolvency proceedings and do away with the requirement that secondary proceedings have to be winding-up proceedings.

The definition of insolvency proceedings would be broadened to include hybrid, pre-insolvency and personal insolvency proceedings. National insolvency procedures notified by Member States and which fall under the definition in the Regulation would be listed in the Annex. The definition would require, in particular, that the insolvency proceeding entail some degree of court supervision, which is necessary for recognition based on mutual trust. The Commission would be tasked with ensuring that only proceedings which comply with the definition are listed in the Annex to the Regulation.

The current requirement that secondary proceedings have to be 'winding-up proceedings' would be abolished in order to include proceedings promoting restructuring.

Second element: Coordination of main proceedings through general cooperation mechanisms, with the possibility, when appropriate, to nominate a lead insolvency practitioner. Option A would maintain the entity-by-entity approach of the Regulation but provide for coordination of the insolvency proceedings concerning members of the same group. Coordination would apply in three respects:

(1) The liquidators of the different main proceedings would be obliged to communicate and cooperate, notably by trying to develop a reorganisation plan for the insolvent members of the group. This obligation would build on the existing mechanism for coordination between liquidators in main and secondary proceedings.

(2) Secondly, the Regulation would oblige the courts competent for the different main proceedings to communicate information and cooperate, e.g. by appointing the same liquidator(s) who have indicated they can cooperate with each other.

(3) Thirdly, the liquidator in the main proceedings for one group member would have the duty to communicate and cooperate with the courts competent for the proceedings relating to another group member.

For certain companies, e.g. wholly-owned subsidiaries, in addition to the above coordination mechanisms, they could give a 'leading role' to the liquidator of the parent company. The 'lead' liquidator would have the power to direct the reorganisation of the insolvent group members, in particular, by requesting the competent court to order a suspension of the process of liquidation of a subsidiary, obtain information from the other liquidators or courts involved or propose a restructuring plan.

Third element: Require Member States to publish decisions opening and closing insolvency proceedings and other decisions issued in the proceedings **in a national electronic register** and define common categories to link the national registers in the e-justice portal.

This would require all Member States to set up and maintain an electronic register for insolvency decisions, both for companies and private persons. It would define common categories to be able to link the national registers in the e-justice portal[1] with the purpose of providing an accessible and comprehensive EU database of insolvency proceedings, allowing creditors, shareholders, employees and courts to see whether insolvency proceedings have been opened in another Member State.

Fourth element: Introduce procedures and a standard form at EU level for lodging claims and encourage Member States to set up electronic means for lodging claims.

Option A would define a standard form in all EU languages that could be used by all creditors in cross-border proceedings to lodge claims. It would also define EU procedures for lodging claims to ensure that national laws take into account the cross-border dimension of certain proceedings, e.g. they give reasonable timeframe for lodging a claim, penalise practitioners if they do not follow the procedure and provide information to creditors on the outcome of their

[1] The e-justice portal is intended to be a 'one-stop shop' in the area of justice, providing information and improving access to justice throughout the EU.

claim. It would also encourage Member States to set up electronic interfaces for lodging claims that would be available to foreign creditors. These could be set up as a private venture, not necessarily by the public authorities.

Fifth element: Improve the procedural framework and train judges on the EIR, as the EIR would clarify the definition of COMI by codifying certain elements of CJEU case law. The Regulation would also state that the court opening insolvency proceedings is obliged to examine *ex officio* its basis of jurisdiction and to specify in the opening decision whether the proceedings are main or secondary proceedings. If there has been a recent change in COMI and debts remain in the original Member State, the courts would be obliged to examine at first instance, i.e. prior to pronouncing the debt discharge, whether the relocation is genuine. This could be done by, e.g. requesting further documents from the debtor or hearing foreign creditors. In addition, creditors would have an effective remedy against the decision opening insolvency proceedings; in particular, they would be informed of the decision in due time to be able to challenge it. Judges would be trained on the Regulation and on the case law of CJEU on COMI.

Sixth element: Maintain secondary proceedings but improve coordination with the main proceeding prior to and during secondary proceedings, as follows:

Require that the court hears the practitioner of the main proceeding, prior to the opening of secondary proceedings.

Enable the court to postpone or refuse the opening of secondary proceedings if this would obstruct the effective administration of the estate and further benefit local creditors. The liquidator and the courts may undertake to treat local creditors as if secondary proceedings had been opened ('synthetic secondary proceedings').

Oblige courts and insolvency practitioners to cooperate with one another, and courts to communicate and cooperate between themselves.

4.2. Option B

The elements that are common to both options A and B are explained above, i.e.:

– **First element: Extend the scope of the EIR**;

– **Third element: Require Member States to publish decisions in a national electronic register;**

– **Fourth element: Introduce procedures and a standardised form for lodging claims**.

Below are the elements specific to Option B.

Second element: **single court competent for all main proceedings** would mean having a single insolvency administrator appointed for all members of the group ('procedural consolidation'), whereby the insolvency proceedings for all members of the group would be consolidated in a single court at the place of the COMI of the parent company. The same insolvency practitioner would be appointed in all main proceedings of the subsidiaries.

Fifth element: Harmonising elements of national insolvency laws would involve certain aspects of national insolvency procedures, in particular, debt discharge periods, conditions and rules for opening proceedings, rules on hearings of creditors and effective remedy.

Sixth element: Abolish secondary proceedings under Option B. Instead of secondary proceedings, there would be a single main insolvency proceeding with EU-wide effect dealing with the parent company and all branches and establishments.

4.3. Discarded options

Some other elements were identified or proposed by stakeholders as options to solve the problems. In particular, they included introducing a suspension period after a change of the registered office or the COMI as a way to prevent forum shopping. However, it is doubtful whether it would effectively achieve this objective.

5. IMPACT ANALYSIS AND COMPARISON OF THE OPTIONS

The **status quo** would not solve the problems identified and would perpetuate the negative effects of both groups of problems. Although a degree of regulatory convergence between Member States could be expected in some areas, in others the problems are likely to become more acute.

Option A has overall positive impacts compared to the baseline. It would effectively achieve the policy objectives and address the problems identified, without intrusion in national legislation or policies. This option has positive economic impacts on the security of investment, the functioning of the single market and on entrepreneurship. It would facilitate the survival of viable businesses and safeguard jobs. There is no evidence of any additional impact on the situation of employees in the event of insolvency of their employer. There would be a risk that giving a second chance to debtors would impact other entrepreneurs' access to affordable credit, but this is counter-balanced by the efficiency of modern insolvency schemes that are tightened and closely monitored. There is also a risk that extending the scope to cover more insolvency schemes would have an effect on forum shopping. However, facilitating rescue is the primary aim of the hybrid and pre-insolvency proceedings, and the benefits are reinforced by the efficient coordination of procedures. This option would contribute to promoting second chance. It would increase efficiency, fairness and transparency of cross-border insolvency proceedings and improve access to justice.

Option A imposes some costs on Member State authorities related to insolvency registers and training for judges. The costs are justified by the benefits and savings for society of increasing the efficiency and quality of cross-border insolvency procedures.

Option A would have a positive impact on mutual trust between Member States' judicial authorities. It maintains the current balance between debtor and creditor and between universality and territoriality. However, it would not address one major cause of the problems — inefficiencies and differences in national insolvency laws.

Option B is potentially more effective than Option A in achieving the objectives and providing economic and social benefits for the single market. It would increase the effectiveness and efficiency of insolvency proceedings in the EU as a whole; it would create elements of a fully universal system, similar to some of the features of the insolvency regulation governing the 50 States of the US, the US Insolvency Act.

Option B would more completely address the European Parliament's Resolution of November 2011, in which it made recommendations to the Commission regarding the harmonisation of specific aspects of insolvency proceedings. The basis of the recommendations is that the internal market would benefit from a level playing field, and that disparities between national insolvency laws create competitive advantages or disadvantages and difficulties for companies with cross-border activities, which could become obstacles to a successful restructuring of insolvent companies and favour forum shopping.

However, Option B would have a more significant impact on national systems. The proposed changes go beyond simply updating the EIR, and would require an in-depth comparative analysis of national insolvency laws, which would prevent the immediate implementation of Option B. In the meantime, the current problems would persist, and could even worsen.

Therefore, while there is evidence supporting Option B, Option A seems a more proportionate option at this stage. Accordingly, **the preferred option for the revision of the Insolvency Regulation is Option A**.

The absence of detailed, systematic statistics specific to the number and type of bankruptcies that fall under the scope of the EIR - an absence that it is intended to remedy in the monitoring arrangements for the revised regulation, as set out in section 8 below - makes it difficult to make precise, robust estimates of the scale of the positive impacts that the preferred option is expected to generate. There is, nevertheless, substantial evidence that the approach to bankruptcy and insolvency that is set out in the preferred option, of giving preference to restructuring over liquidation, and of avoiding placing unnecessary hurdles in the way of failed entrepreneurs who wish to have a "second chance", can give rise to significant economic benefits. OECD data already cited in this IA show that the rate of loss of manufacturing companies is as much as one-third lower in countries that have hybrid or pre-insolvency proceedings compared to those that do not. The concern that making it easier for bankrupts to start up another company will reward dishonest behaviour appears to be somewhat exaggerated, as no more than 4-6% of bankruptcies are fraudulent - and sanctions for fraud are not affected by the preferred option.

6. MONITORING AND EVALUATION

In order to monitor the application of the amended Regulation, the Commission will prepare regular evaluation reports, based on consultations with Member States, stakeholders and external experts. The Commission will encourage the exchange of best practices between Member States and require in the revision of the EIR that they provide statistical data on the application of the EIR, notably the numbers of secondary proceedings and of proceedings concerning groups of companies.