

ROMANIAN PARLIAMENT
CHAMBER OF DEPUTIES

Summary – courtesy translation of Opinion on insolvency proceedings COM(2012)744

The opinion of the Chamber of Deputies supports the proposal for a Regulation and believes that Romania should back the EU in adopting a harmonised legislative framework on insolvency proceedings.

The proposal of the European Commission is consistent with the needs to improve the regulation between courts and practitioners in cross-border collective procedures. Provisions meant to clarify certain concepts and supplementing the Regulation in force, concerning mainly rules for groups of companies and uniform publicity mechanism, are needed.

The opinion welcomes the revision of Regulation No 1346/2000, which is consistent with the Europe 2020 strategy, Small Business Act, Annual Growth Survey 2012, and Single Market Act II.

The harmonisation envisaged by the proposal is liable to improve the smooth functioning of the internal market and its resilience in economic crises, will save enterprises, protect investments, preserve employment and encourage entrepreneurship. Trade and cross-border investments will be encouraged by enhancing legal certainty for creditors.

The opinion judges that among the three policy opinions considered by the European Commission, the up-dating of the Regulation in force, along with preserving the actual balance between creditors and debtors and also between universality and territoriality is the best suited option.

The opinion judges as convenient the extension of the scope of Regulation No 1346/2000, by including hybrid and pre-insolvency stage proceedings and proceedings concerning recover of debts and other proceedings concerning natural persons.

Rules concerning competence to open insolvency proceedings need to be clarified, without prejudice to the rights of companies and natural persons to free movement within EU.

The opinion comprises also the following specific remarks:

- even if Article 3(1) of the Regulation provides insolvency proceedings to be opened in regard to any entity, the lack of an express provision concerning the legal capacity of that entity (with or without legal personality) leads to an inability of the debtor – branch of a foreign company, which is a body without legal personality – to open insolvency proceedings. That being so, the ability of any entity to open insolvency proceedings, the competent courts being the courts of the Member State where the debtor has its centre of main interests (COMI), should be expressly provided. The opinion notes that in Romania the Code of civil procedure was amended in this direction, the bodies without legal personality gaining thus standing;
- Article 20 of the Regulation should be supplemented in order to provide a rule concerning relief of costs in legal proceedings, if these are originally bore by the entity

opening the main proceedings and these belong to other entity than the former, and then a secondary insolvency proceedings is opened against the latter entity;

- in order to avoid “forum shopping”, a provision designed to limit the right of an entity to ask for opening proceedings in another state than that of the COMI, if this centre was moved in a time frame shorter than an year previously to the date of requesting the opening of proceedings, should be provided. If the said centre is moved during that time frame, the competent court will be the original court.

The opinion believes the regulation the insolvency concerning natural persons in Romania should be put in place as soon as possible and takes note of the positive point of view expressed in that direction by the Ministry of Justice. On the other hand, the opinion supports drafting and adopting a Code of insolvency in Romania.