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REPORT

on the proposal for a Council regulation on insolvency proceedings
(9178/1999 – C5-0069/1999 – 1999/0806(CNS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Kurt Lechner

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Abbreviations for committees

- I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG Committee on Budgets
- III. CONT Committee on Budgetary Control
- IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON Committee on Economic and Monetary Affairs
- VI. JURI Committee on Legal Affairs and the Internal Market
- VII. INDU Committee on Industry, External Trade, Research and Energy
- VIII. EMPL Committee on Employment and Social Affairs
- IX. ENVI Committee on the Environment, Public Health and Consumer Policy
- X. AGRI Committee on Agriculture and Rural Development
- XI. PECH Committee on Fisheries
- XII. REGI Committee on Regional Policy, Transport and Tourism
- XIII. CULT Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE Committee on Development and Cooperation
- XV. AFCO Committee on Constitutional Affairs
- XVI. FEMM Committee on Women's Rights and Equal Opportunities
- XVII. PETI Committee on Petitions

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PROCEDURAL PAGE

By letter of 22 July 1999 the Council consulted the European Parliament pursuant to Article 61(c) and Article 67(1) of the EC Treaty on the proposal for a Council regulation on insolvency proceedings (9178/1999 – 1999/0806(CNS)).

At the sitting of 17 September 1999 the President of Parliament announced that she had referred the proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs for its opinion (C5-0069/1999).

The Committee on Legal Affairs and the Internal Market appointed Kurt Lechner rapporteur at its meeting of 23 September 1999.

It considered the Council proposal and the draft report at its meetings of 11 January 2000 and 21 February 2000.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Willi Rothley, acting chairman; Rainer Wieland, vice-chairman; Kurt Lechner, rapporteur; Maria Berger, Charlotte Cederschiöld, Jean-Maurice Dehousse, Janelly Fourtou, Evelyne Gebhardt, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood, Ioannis Koukiadis, Donald Neil MacCormick, Hans-Peter Mayer, Manuel Medina Ortega, Claude Moraes, Astrid Thors, Feleknas Uca, Diana Paulette Wallis, Joachim Wuermeling, Stefano Zappalà and François Zimeray.

The opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs is attached.

The report was tabled on 23 February 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Council regulation on insolvency proceedings (9178/1999 – C5-0069/1999 – 1999/0806(CNS))

The proposal is amended as follows:

Text proposed by the Council ¹	Amendments by Parliament
(Amendment 1) Recital 10	
<p>(10) This Regulation applies equally to all proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. Insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties and collective investment undertakings are excluded from the scope of this Regulation. Such undertakings are not covered by the Regulation since they are subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention.</p>	<p>(10) This Regulation applies equally to all proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. Insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties and collective investment undertakings are excluded from the scope of this Regulation. Such undertakings are not covered by the Regulation since they are subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention. <u>With regard to insurance undertakings, however, special arrangements exist only for the original insurer (ceding company). In the case of insolvency proceedings relating to a reinsurer, therefore, the general rules laid down in this regulation apply.</u></p>

Justification:

Reinsurance unquestionably falls under the proposal for a regulation. However, this fact cannot readily be perceived from the proposed text. It therefore makes sense to insert a clarification in Recital 10

¹ OJ C 221, 3.8.1999, p. 8.

(Amendment 2 by Kurt Lechner)

Recital 13

(13) Insolvency proceedings may be opened in the Member State where the debtor has the centre of his main interests. Main insolvency proceedings have universal scope, they aim at encompassing all the debtor's assets on a world-wide basis and at affecting all creditors, wherever located. The centre of main interests is taken as meaning a place with which a debtor regularly has very close contacts, in which his manifold commercial interests are concentrated and in which the bulk of his assets is for the most part situated. The creditor is also very familiar with that place.

(13) Insolvency proceedings may be opened in the Member State where the debtor has the centre of his main interests. Main insolvency proceedings have universal scope, they aim at encompassing all the debtor's assets on a world-wide basis, while preserving the legal independence of legal persons, and at affecting all creditors, wherever located. The centre of main interests is taken as meaning a place with which a debtor regularly has very close contacts, in which his manifold commercial interests are concentrated and in which the bulk of his assets is for the most part situated. The creditor is also very familiar with that place.

Justification:

The amendment indicates the need for legal persons in insolvency proceedings to be independent, which is not sufficiently apparent from the proposal for a regulation.

(Amendment 3)

Article 29

Right to request the opening of proceedings

The opening of secondary proceedings may be requested by:

- (a) the liquidator in the main proceedings;
- (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested.

The opening of secondary proceedings may be requested by:

- (a) the liquidator in the main proceedings;
- (b) with the consent of the liquidator in the main proceedings, any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested.

Justification:

*The authorisation of secondary proceedings in addition to the main proceedings ought to be restricted, inter alia in order to comply more fully with the principle of unitary proceedings with the aim of ensuring that the European legal order is as uniform as possible. While it should be recognised that there is a need to allow territorial insolvency proceedings **before** the opening of the main proceedings, no such need exists **after** the latter have been opened. Here the unitary nature of the main proceedings should prevail absolutely, unless the liquidator in the main proceedings consents.*

(Amendment 4)
Article 45

The Annexes to this Regulation may be amended by decision of the Council.

Deleted.

Justification:

The annexes to the Regulation form part of it, and must be amended by means of the same procedure as that by which they have been adopted ('actus contrarius').

(Amendment 5)
Article 45a (new)

Five years after the entry into force of this regulation, the Commission shall submit to the Council, the European Parliament and the Economic and Social Committee a report on experience of its implementation. This report shall, if appropriate, incorporate proposals for improving the regulation.

Justification:

It remains to be seen in practice whether the individual provisions of the regulation can be applied by courts and liquidators as they stand or whether they will make excessive demands on the participants (for example 'conversion' as referred to in Article 37).

The regulation itself should therefore lay down that the Commission is to assess experience of its implementation and propose improvements, and when it is to do so.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution of the European Parliament on the proposal for a Council regulation on insolvency proceedings (9178/1999 – C5-0069/1999 – 1999/0806(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the proposal from the Council (9178/1999)²,
 - having been consulted by the Council pursuant to Article 61(c) and Article 67(1) of the EC Treaty (C5-0069/1999),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0039/2000),
1. Approves the Council proposal as amended;
 2. Calls on the Council to alter its proposal accordingly;
 3. If the Council intends to depart from the text approved by Parliament, calls on the Council to notify Parliament;
 4. Asks to be consulted again if the Council intends to amend its proposal substantially;
 5. Instructs its President to forward its position to the Council.

² OJ C 221, 3.8.1999, p. 8

EXPLANATORY STATEMENT

I.

Assets and economic activities increasingly transcend national borders. However, the market is not made up exclusively of economically successful individuals and businesses: regrettably, but inevitably, failures also occur. This makes it necessary for Community law to include provisions for dealing with cross-border problems relating to the assets of insolvent debtors. It is also necessary to prevent assets from being moved from one Member State to another in order to prevent their realisation ('forum shopping'). Hitherto, such provisions have hardly existed; in particular, there are no substantial multilateral agreements. However, the urgency of the problem only makes the task of solving it more worthwhile and feasible.

The first draft of an agreement was produced 20 years ago, but did not lead to any result. Starting in 1989, a working party drafted a new agreement, which was signed by all the Member States except one in 1995 as an agreement pursuant to Article 220 of the EC Treaty (old version).

In the spring of 1999, the European Parliament adopted a report on this agreement which was in principle favourable and positive.³

On the basis of an initiative by Finland and Germany, a proposal for a Council regulation on insolvency proceedings has now been submitted, which is based in substance on the 1995 agreement.

The initiative is extremely welcome. The proposed regulation represents a considerable improvement, and could provide a legal framework for insolvency proceedings with cross-border effect.

The proposal envisages that proceedings should be universal and unitary. This means a single insolvency procedure in which all assets are liquidated and all creditors participate.

Provision is made for determining who is empowered to open insolvency proceedings, what decisions are to be recognised and what law is applicable, thus replacing the provisions of private international law of the individual states concerning conflict of laws with a uniform European legal act.

The most important innovation in the regulation, and one which can be described as a breakthrough, is to be found in Article 16(1): any judgment opening insolvency proceedings handed down by a court of a Member State within whose jurisdiction 'the centre of a debtor's main interests is situated' 'shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings'. This renders superfluous any further decisions on the recognition or enforceability of the judgment opening the insolvency proceedings and even any further examination of the debtor's insolvency in secondary proceedings as referred to in Chapter III of the regulation (see III below).

³ Resolution on report A4-0234/99 (Malangré report) of 7.5.1999

The regulation does not apply to insurance undertakings, credit institutions and the like, as it is intended that separate provisions should be adopted concerning them.

II.

However, in many respects the proposal departs from the principle of universality which is inherent in the logic of the internal market and the creation of a uniform European legal area. It does so partly by including special provisions on a number of significant legal aspects, e.g. rights in rem, employment contracts, set-offs, reservation of title and rights of challenge. In view of the substantively different laws of the Member States, inter alia as regards the privileges of individual creditors in the insolvency, these departures from the universality principle in favour of the territoriality principle are unavoidable. In these cases, the insolvency proceedings are unitary, but in the course of them these various special provisions have to be taken into account by the court. The aim is purely to resolve issues of conflict of laws, while the substantive laws of the Member States, including their laws on insolvency, remain unaltered. The special provisions have been drafted and coordinated with care. They do not, therefore, seem to require any correction

III.

A further departure from the principle that proceedings are universal and unitary lies in the authorisation of territorial insolvency proceedings (secondary proceedings). These may be opened in a Member State other than that where the debtor has the centre of his main interests. They are permitted both as preliminary proceedings, i.e. before the opening of the main proceedings, and as subsequent proceedings. Their effects are restricted to the assets of the debtor situated within the territory of the State concerned, which is not the State where the main proceedings are being, or would have to be, conducted. The relationship between the main and secondary proceedings and the liquidators concerned is regulated, but seems problematic. The admissibility of secondary proceedings should therefore be further restricted, inter alia in order to comply more fully with the principle of unitary proceedings with the aim of ensuring that the European legal order is as uniform as possible. While it should be recognised that there is a need to allow territorial insolvency proceedings **before** the main proceedings, no such need exists **after** the latter have been opened. Here the unitary nature of the main proceedings should prevail absolutely, unless the liquidator in the main proceedings consents to secondary proceedings (Amendment 1).

IV.

The relationship between main proceedings and territorial insolvency proceedings represents a **compromise** which was the outcome of many years of discussion. It remains to be seen in practice whether the individual provisions can be applied by courts and liquidators as they stand or whether they will make excessive demands on the participants (for example 'conversion' as referred to in Article 37). The regulation itself should therefore lay down that the Commission is to assess experience of its implementation and propose improvements, and when it is to do so (Amendment 2).

EUROPEAN PARLIAMENT

28 January 2000

OPINION

(Rule 162)

for the Committee on Legal Affairs and the Internal Market

on the proposal for a Council Regulation on insolvency proceedings (9178/99 – C5-0069/99 – 1999/0806(CNS)) (report by Kurt Lechner)

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Draftsman: Margot Keßler

PROCEDURE

At its meeting of 25 October 1999 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Margot Keßler draftsman.

It considered the draft opinion at its meetings of 27 September, 23 November, 29 November 1999 and 27 January 2000.

At the last meeting it adopted the following conclusions unanimously.

The following took part in the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Margot Keßler, draftsman; Maria Berger (for Olivier Duhamel), Christian von Boetticher, Mogens Camre, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Giuseppe Di Lello Finuoli, Pernille Frahm, Evelyne Gebhardt (for Elena Ornella Paciotti), Daniel J. Hannan, Adeline Hazan (for Joke Swiebel), Jorge Salvador Hernandez Mollar, Anna Karamanou, Timothy Kirkhope, Ewa Klamt, Alain Krivine (Fodé Sylla), Baroness Sarah Ludford, Hartmut Nassauer, Hubert Pirker, Gerhard Schmid, Martin Schulz, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke) and Jan-Kees Wiebenga.

BACKGROUND

1. The issues involved

As a general rule, judgments in insolvency proceedings have full legal effect only in the country where they are handed down. The legal effects in other countries of judgments in insolvency proceedings handed down in a national court are governed only in part by bilateral agreements

and principally by national legislation.

Such regulation of cross-border effects at national level constitutes a problem to the extent that insolvency judgments are frequently not recognised in foreign countries. Accordingly, the liquidator of the insolvent debtor has no access to the debtor's foreign assets. That means that creditors must open insolvency or enforcement proceedings in one or more foreign countries as well, and that gives the insolvent debtor time to transfer his assets and protect them from the creditors' attempts to gain access to his estate. The situation is also unsatisfactory in so far as the absence of a uniform procedure prevents all creditors from obtaining an equal measure of satisfaction, and the ranking of one and the same claim in the insolvency proceedings may vary according to where the proceedings are opened. There can, therefore, be no doubt as to the need for common international insolvency legislation.

2. The approach taken by the Regulation

In the establishment of cross-border insolvency legislation, the logic of the single market would support efforts being made as far as possible to provide for proceedings having universal scope, i.e. restriction to one set of proceedings in which the entire assets of the debtor could be seized and the claims of all the creditors dealt with. The Commission's original proposal, which dates back to the early 1960s, was based on that notion. However, it was just that universal approach which the Member States deemed went too far and which resulted in the proposal eventually foundering in the Council in 1984. The differences in the laws on property, especially rights of lien, are considerable, as are the differences in procedural law (with particular regard to the preferential rights of individual creditors). Accordingly, it would have been impossible to make all claims subject to one legal system without corresponding harmonisation measures. However, the Member States were not prepared to undertake the corresponding extensive harmonisation.

This proposal, which essentially takes over the substance of the 1995 agreement on insolvency proceedings that had been reached by the Member States at least on a political level, departs from the principle of universality. Although the distribution of proceeds and the liquidation of assets may be carried out in one set of proceedings, it is possible for several sets of proceedings to run concurrently. In that event, precedence is taken by the main proceedings, which cover both domestic and foreign assets. They therefore have cross-border effect. Secondary proceedings may also be instituted in other countries. Their effect is, however, territorially restricted, since they cover only the assets situated in that country.

The effects of the decision to open the main proceedings concern the other Member States only in the event that the latter do not open any secondary insolvency proceedings themselves. The creditors of the insolvent debtor may lodge their claims in all the proceedings – i.e. in the main proceedings and in any secondary proceedings. However, where a creditor has obtained at least partial satisfaction in one set of proceedings, account thereof is taken in the other proceedings. As regards the issues of the conditions required for the opening of proceedings,

the conduct of the proceedings and the effects of the proceedings, they are totally subject to the rules of the Member State in which the insolvency proceedings are to be, or have been, opened. However, a large number of derogations are made from the principle that the law of the State of the opening of proceedings shall be applicable in order to take account of the differences in the various legal orders. Rights in rem (laws on property) and rights recorded in a public register remain unaffected. Similarly unaffected is the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim. The effects of insolvency proceedings on a contract relating to immovable property are governed solely by the law of the Member State within the territory of which the property is situated. Furthermore, special rules apply to contracts of employment and to the legal status of parties to settlement or payment systems or financial markets.

3. Evaluation

The substance of this proposal for a regulation is quite different from the original concept of uniform, central insolvency proceedings, not only because secondary proceedings may be opened in addition to the main proceedings but also because numerous derogations have been made from the principle of the uniform application of the law of the State of the opening of proceedings. There are, however, good grounds why that should be so. The legal orders of the Member States vary too widely, and there is no political will to achieve wide-ranging standardisation of procedural law and law on property. That is quite understandable if we bear in mind the fact that national private law systems have evolved over centuries and that persons carrying out legal transactions have every confidence in existing law. In the longer term, radical changes, even those designed to bring about harmonisation, would also result in major uncertainty, excessive recourse to the courts and a huge increase in the number of proceedings opened. For some time at least, harmonisation would be achieved at the expense of legal certainty. That would be totally unacceptable, particularly in sensitive areas such as rights of lien. Thanks to extensive case-law, the substance and scope of the various national rights of lien are to a large extent formalised. That aids the economy, which is dependent on the reliability of the rights of lien. Any disturbance of that trust would have serious consequences. Although it does not actually implement the principle of universality, this proposal for a regulation does represent an improvement in the situation, since it provides for at least the main insolvency proceedings to have cross-border effect. The decision to open the main proceedings is automatically recognised in the other Member States. Provided that no secondary proceedings have been brought in the other Member States, the liquidator in the main proceedings enjoys all the powers entrusted to him under the legislation of the State of the opening of proceedings, even in the other Member States, and he may, in particular, seize assets forming part of the estate, even if they are situated in other Member States. That solves the previous problems resulting from the failure to recognise insolvency judgments in other countries, at least with regard to the liquidation of assets situated in countries which do not have their own independent territorial insolvency proceedings. The justification for making numerous derogations from the principle that the law of the State of the opening of proceedings must be applied in the case of rights in rem, rights recorded in a public register and the like resides in the differences between legal systems and must, therefore, be accepted.

Unlike the main proceedings, secondary proceedings have merely domestic and no cross-border effect. It is to be welcomed that the Regulation lays down provisions governing the relationship between the main proceedings and the secondary proceedings, thereby securing an improvement in the legal situation compared with the situation hitherto.

The admissibility of concurrent proceedings also helps creditors domiciled or habitually resident in a Member State other than the State of the opening of proceedings to the extent that they are not dependent on main proceedings in a foreign country. They may open secondary proceedings in their own country, provided that the debtor has an establishment there. That meets the requirements of local creditors in so far as they are not liable for any additional costs or even losses arising from differences in language or legal systems. A universal approach would undoubtedly have caused problems for creditors, since most of them would be familiar neither with the language of the country in which the main proceedings were being heard nor with the legislative provisions in force there.

The Regulation also lays down provisions designed to prevent potential inequalities of treatment which might arise from the various schemes applied in the Member States for the distribution of proceeds. Accordingly, a creditor may participate in several proceedings simultaneously. Each creditor may lodge his claims in the main proceedings and in the secondary proceedings. However, if a creditor has been granted a percentage of his claim in one set of insolvency proceedings, he may participate in the distribution of total assets in other proceedings only when creditors with the same standing have obtained the same proportion of their claims. That seems to be a sensible and fair solution, one which is in the interests of all the creditors. As regards the overall concept, this may be definitely welcomed. When this Regulation enters into force, the smooth operation of the internal market will come closer to being achieved, and a balance between the interests of the creditors involved will be struck which will be faithful to the Community treaties while still respecting national legal orders.

However, despite this generally positive assessment of the Regulation, a few minor amendments seem to be called for.

Firstly, the concept of the ‘debtor’s centre of main interests’ needs to be defined more strictly since it determines the country where the main proceedings are opened and, hence, constitutes a key element in the Regulation. As things stand, the term is defined in the recitals; however, in order to achieve maximum legal clarity, the definition should be incorporated in the body of the Regulation, specifically in Article 2 thereof, where all the other definitions are set out (Amendments 1 and 2).

Secondly, it would be sensible – as in the proposals for regulations on Brussels I, Brussels II and the service of documents – to ascertain, after an appropriate interval, whether or not the Regulation has proved successful in practice or what amendments are required. Since, pursuant to Article 211 of the EC Treaty, it is the duty of the Commission to ensure the proper application of the Regulation, the Commission should be required to draw up the corresponding report and, where appropriate, propose amendments. However, given the

complexity of the proceedings, the five-year period laid down in Article 65 of the Brussels I Regulation⁴ and in Article 44 of the Brussels II Regulation⁵ – not to mention the three-year period laid down in Article 24 of the Regulation on the service of documents - seems too brief for that purpose. On the other hand, should the Regulation demonstrate serious shortcomings in practice, a ten-year period would be too long. Accordingly, the first report should be submitted to the European Parliament, the Council and the Economic and Social Committee seven years after the entry into force of the Regulation. In addition, the concept should be taken over from Article 24 of the Regulation on the service of documents that reports along the lines of the initial report should be submitted every five years thereafter. A corresponding article – a new Article 44a – should therefore be inserted (Amendment 3).

Thirdly, and finally, it should be proposed that the task of amending the annexes be entrusted to the Commission. Pursuant to the third indent of Article 202 of the EC Treaty, ‘the Council shall confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down.’ There is no apparent reason in this instance for the Council to depart from the rule whereby the Commission enjoys implementing powers and to retain for itself the right to amend the annexes. On the contrary, it would appear more logical for the power to amend the annexes to be conferred on the Commission and for the Commission to be assisted by a regulatory committee in accordance with the procedure laid down in Article 5 of the Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (Amendment 4).

CONCLUSIONS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

(Amendment 1) Thirteenth recital

Insolvency proceedings may be opened in the Member State where the debtor has the centre of his main interests. Main insolvency proceedings have universal scope, they aim at encompassing all the debtor's assets on a world-wide basis and at affecting all creditors,

Insolvency proceedings may be opened in the Member State where the debtor has the centre of his main interests. Main insolvency proceedings have universal scope, they aim at encompassing all the debtor's assets on a world-wide basis and at affecting all creditors,

⁴ OJ C 376, 28.12.1999, p. 1.

⁵ COM(99) 220 final – 99/0110 (CNS)

wherever located. The centre of main interests is taken as meaning a place with which a debtor regularly has very close contacts, in which his manifold commercial interests are concentrated and in which the bulk of his assets is for the most part situated. The creditor is also very familiar with that place.

wherever located.

Justification

The ‘debtor’s centre of main interests’ is not a generally recognised term and therefore needs to be properly defined. That definition belongs with the other definitions in Article 2 of the Regulation.

(Amendment 2)
Article 2(i) (new)

‘centre of main interests’ shall mean the place where the debtor has his main commercial interests and carries on other economic activities and with which he therefore has very close contacts.

Justification

See justification to Amendment 1.

(Amendment 3)
Article 44a (new)

The Commission shall submit a report on the application of this Regulation to the European Parliament, the Council and the Economic and Social Committee no later than 7 years after its entry into force and every 5 years thereafter. Where appropriate, proposals for the amendment of the Regulation to cope with any changes in circumstances shall be annexed to that report.

Justification

Pursuant to Article 211 of the EC Treaty, it is the duty of the Commission to ensure that the Regulation is properly implemented. Accordingly, it should be required to draw up an appropriate report for submission to the other institutions, as provided for in the proposals for regulations on Brussels I, Brussels II and the service of documents.

(Amendment 4)
Article 45

The Annexes to this Regulation may be amended by decision of the Council.

The Annexes to this Regulation shall be amended by the Commission, which shall be assisted by a regulatory committee in accordance with the procedure laid down in Article 5 of Council Decision 1999/468/EC. The period referred to in Article 5(6) shall be three months.

Justification

Pursuant to the third indent of Article 202 of the EC Treaty, ‘the Council shall confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down.’ It would, therefore, seem more logical for the Commission to be entrusted with the task of amending the annexes.