

MODERN TRENDS IN THE PROCESS OF UNIFICATION AND HARMONIZATION OF COMPANY LAW



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European Commission legislative initiative

- Legislative initiative is preceded by the evaluation of existing acquis.
- Review clauses in legislative acts
- Assessment by the Commission
- Report may be accompanied by legislative proposal

AG opinion in the Case C-116/11

- 55. The fact that secondary winding-up proceedings can disrupt or even frustrate the purpose of such rescue proceedings is made clear by the submissions of the referring court. This is indeed an undesirable outcome. **It is apparent, not least from the shift in many Member States' insolvency laws away from pure winding-up proceedings towards rescue and reorganisation proceedings, and the resulting additions made to Annex A to the Regulation in recent years, (24) which have increasingly included rescue proceedings,** that the latter proceedings are gaining increasing importance and ought therefore also to fall within the ambit of the Regulation.
- 56. **Apart from the additions to the Annex, however, the wording of the Regulation has remained otherwise unchanged, which can lead to contradictions and practical problems in individual cases, as the present case demonstrates.** In order that rescue proceedings may be conducted effectively and efficiently within the framework of the Regulation, the relevant rules on the coordination of procedures must therefore be interpreted in a manner consistent with the objectives pursued by the Regulation, which interpretation, as Christianapol rightly submits, must take into account the way in which the Regulation has evolved. Such an interpretation may at the same time serve to mitigate the adverse consequences of initiating secondary proceedings, as described by the referring court.
- 65. A set of express rules on the coordination of proceedings where the main proceedings are rescue proceedings would therefore be welcome. In my view, there is something to be said for allowing secondary proceedings to take the form of rescue proceedings too. As I have shown above, the Regulation already permits parallel rescue proceedings to a large extent. **It would therefore be only logical for it also to give express permission for such proceedings and to lay down corresponding rules on coordination. This,** however, is a decision for the European Union legislature.

Impact Assessment of the Insolvency Regulation Recast proposal

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

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

SWD(2012) 416 final) 12.12.2012

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

The narrow scope of secondary proceedings can constitute an obstacle to the successful restructuring of a company having 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 for the continuation of business and the saving of jobs**.

The problem can be illustrated by a case which is currently pending before the Court of Justice of the European Union:

Case example: Bank Handlowy and Ryszard Adamiak v. Christianopol sp.zoo (C116/11)

In her conclusions of 24 May 2012, advocate-general Kokott strongly encouraged the European Legislator to modify the Regulation:

New ideas – challenges for EU company law

- Fighting against the phenomenon of the abusive letter box companies
- Harmonisation of incorporation requirements
- Harmonization of disqualification of directors
- Group of companies
- Artificial Intelligence in Company Law

Thank You for your attention

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