

Regulation (EU) 2015/848 of the European Parliament and of  
the Council of 20 May 2015 on insolvency proceedings (recast)

CHAPTER III

**SECONDARY INSOLVENCY PROCEEDINGS**

*Article 38*

**Decision to open secondary insolvency proceedings**

1 A court seized of a request to open secondary insolvency proceedings shall immediately give notice to the insolvency practitioner or the debtor in possession in the main insolvency proceedings and give it an opportunity to be heard on the request.

2 Where the insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court referred to in paragraph 1 of this Article shall, at the request of the insolvency practitioner, not open secondary insolvency proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditors.

3 Where a temporary stay of individual enforcement proceedings has been granted in order to allow for negotiations between the debtor and its creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary insolvency proceedings for a period not exceeding 3 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 interests of local creditors by requiring the insolvency practitioner or the debtor in possession not to remove or dispose of any assets which are located in the Member State where its 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 insolvency proceedings shall be lifted 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 lifted 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 insolvency practitioner or the debtor in possession has infringed the prohibition on disposal of its assets or on removal of them from the territory of the Member State where the establishment is located.

4 At the request of the insolvency practitioner in the main insolvency proceedings, the court referred to in paragraph 1 may open a type of insolvency proceedings as listed in Annex A other than the type initially requested, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings. The second sentence of Article 34 shall apply.

**Changes to legislation:**

There are outstanding changes not yet made to Regulation (EU) 2015/848 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- Art. 6-83 omitted by virtue of S.I. 2019/146, Sch. para. 7 (as substituted) by [S.I. 2019/1459 Sch. para. 3](#)
- Art. 26-83 omitted by [S.I. 2019/146 Sch. para. 7](#) (This amendment not applied to legislation.gov.uk. Sch. para. 7 substituted before it comes into force by S.I. 2019/1459, reg. 1(2), Sch. para. 3)

**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Signature words omitted by [S.I. 2019/146 Sch. para. 13](#)
- Annex A omitted by [S.I. 2019/146 Sch. para. 14](#)
- Annex B words omitted by [S.I. 2019/146 Sch. para. 15](#)
- Art. 1(1)-(1B) substituted for Art. 1(1) by [S.I. 2019/146 Sch. para. 2\(3\)](#)
- Art. 2(1) omitted by [S.I. 2019/146 Sch. para. 3\(b\)](#)
- Art. 2(1A) inserted by [S.I. 2019/146 Sch. para. 3\(a\)](#)
- Art. 2(3) omitted by [S.I. 2019/146 Sch. para. 3\(b\)](#)
- Art. 2(4) words substituted by [S.I. 2019/146 Sch. para. 3\(c\)](#)
- Art. 2(6)(i) omitted by [S.I. 2019/146 Sch. para. 3\(d\)\(i\)](#)
- Art. 2(6)(ii) words omitted by [S.I. 2019/146 Sch. para. 3\(d\)\(ii\)](#)
- Art. 2(9) omitted by [S.I. 2019/146 Sch. para. 3\(e\)](#)
- Art. 2(10) word omitted by [S.I. 2019/146 Sch. para. 3\(f\)](#)
- Art. 2(11)-(14) omitted by [S.I. 2019/146 Sch. para. 3\(g\)](#)
- Art. 85(3)(a) words omitted by [S.I. 2019/146 Sch. para. 9\(b\)\(i\)](#)
- Art. 92(c) omitted by [S.I. 2019/146 Sch. para. 12](#)