

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

CHAPTER V

INSOLVENCY PROCEEDINGS OF MEMBERS OF A GROUP OF COMPANIES

SECTION 1

Cooperation and communication

Article 56

Cooperation and communication between insolvency practitioners

1 Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent that such cooperation is appropriate to facilitate the effective administration of those proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interest. That cooperation may take any form, including the conclusion of agreements or protocols.

- 2 In implementing the cooperation set out in paragraph 1, insolvency practitioners shall:
- a as soon as possible communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;
 - b consider whether possibilities exist for coordinating the administration and supervision of the affairs of the group members which are subject to insolvency proceedings, and if so, coordinate such administration and supervision;
 - c consider whether possibilities exist for restructuring group members which are subject to insolvency proceedings and, if so, coordinate with regard to the proposal and negotiation of a coordinated restructuring plan.

For the purposes of points (b) and (c), all or some of the insolvency practitioners referred to in paragraph 1 may agree to grant additional powers to an insolvency practitioner appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings. They may also agree on the allocation of certain tasks amongst them, where such allocation of tasks is permitted by the rules applicable to each of the proceedings.

Article 57

Cooperation and communication between courts

1 Where insolvency proceedings relate to two or more members of a group of companies, a court which has opened such proceedings shall cooperate with any other court before which a request to open proceedings concerning another member of the same group is pending or which has opened such proceedings to the extent that such cooperation is appropriate

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to facilitate the effective administration of the proceedings, is not incompatible with the rules applicable to them and does not entail any conflict of interest. For that purpose, the courts may, where appropriate, appoint an independent person or body to act on its instructions, provided that this is not incompatible with the rules applicable to them.

2 In implementing the cooperation set out in paragraph 1, courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with each other, or request information or assistance directly from each other, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3 The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

- a coordination in the appointment of insolvency practitioners;
- b communication of information by any means considered appropriate by the court;
- c coordination of the administration and supervision of the assets and affairs of the members of the group;
- d coordination of the conduct of hearings;
- e coordination in the approval of protocols where necessary.

Article 58

Cooperation and communication between insolvency practitioners and courts

An insolvency practitioner appointed in insolvency proceedings concerning a member of a group of companies:

- (a) shall cooperate and communicate with any court before which a request for the opening of proceedings in respect of another member of the same group of companies is pending or which has opened such proceedings; and
- (b) may request information from that court concerning the proceedings regarding the other member of the group or request assistance concerning the proceedings in which he has been appointed;

to the extent that such cooperation and communication are appropriate to facilitate the effective administration of the proceedings, do not entail any conflict of interest and are not incompatible with the rules applicable to them.

Article 59

Costs of cooperation and communication in proceedings concerning members of a group of companies

The costs of the cooperation and communication provided for in Articles 56 to 60 incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

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Article 60

Powers of the insolvency practitioner in proceedings concerning members of a group of companies

1 An insolvency practitioner appointed in insolvency proceedings opened in respect of a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings:

- a be heard in any of the proceedings opened in respect of any other member of the same group;
- b request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:
 - (i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under point (c) of Article 56(2) and presents a reasonable chance of success;
 - (ii) such a stay is necessary in order to ensure the proper implementation of the restructuring plan;
 - (iii) the restructuring plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and
 - (iv) neither the insolvency proceedings in which the insolvency practitioner referred to in paragraph 1 of this Article has been appointed nor the proceedings in respect of which the stay is requested are subject to coordination under Section 2 of this Chapter;
- c apply for the opening of group coordination proceedings in accordance with Article 61.

2 The court having opened proceedings referred to in point (b) of paragraph 1 shall stay any measure related to the realisation of the assets in the proceedings in whole or in part if it is satisfied that the conditions referred to in point (b) of paragraph 1 are fulfilled.

Before ordering the stay, the court shall hear the insolvency practitioner appointed in the proceedings for which the stay is requested. Such a stay may be ordered for any period, not exceeding 3 months, which the court considers appropriate and which is compatible with the rules applicable to the proceedings.

The court ordering the stay may require the insolvency practitioner referred to in paragraph 1 to take any suitable measure available under national law to guarantee the interests of the creditors in the proceedings.

The court may extend the duration of the stay by such further period or periods as it considers appropriate and which are compatible with the rules applicable to the proceedings, provided that the conditions referred to in points (b)(ii) to (iv) of paragraph 1 continue to be fulfilled and that the total duration of the stay (the initial period together with any such extensions) does not exceed 6 months.

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SECTION 2

Coordination

Subsection 1

Procedure

Article 61

Request to open group coordination proceedings

1 Group coordination proceedings may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group, by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.

2 The request referred to in paragraph 1 shall be made in accordance with the conditions provided for by the law applicable to the proceedings in which the insolvency practitioner has been appointed.

3 The request referred to in paragraph 1 shall be accompanied by:

- a a proposal as to the person to be nominated as the group coordinator ('the coordinator'), details of his or her eligibility pursuant to Article 71, details of his or her qualifications and his or her written agreement to act as coordinator;
- b an outline of the proposed group coordination, and in particular the reasons why the conditions set out in Article 63(1) are fulfilled;
- c a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;
- d an outline of the estimated costs of the proposed group coordination and the estimation of the share of those costs to be paid by each member of the group.

Article 62

Priority rule

Without prejudice to Article 66, where the opening of group coordination proceedings is requested before courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 63

Notice by the court seised

1 The court seised of a request to open group coordination proceedings shall give notice as soon as possible of the request for the opening of group coordination proceedings and of the proposed coordinator to the insolvency practitioners appointed in relation to the members of the group as indicated in the request referred to in point (c) of Article 61(3), if it is satisfied that:

- a the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;

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- b no creditor of any group member expected to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and
- c the proposed coordinator fulfils the requirements laid down in Article 71.

2 The notice referred to in paragraph 1 of this Article shall list the elements referred to in points (a) to (d) of Article 61(3).

3 The notice referred to in paragraph 1 shall be sent by registered letter, attested by an acknowledgment of receipt.

4 The court seised shall give the insolvency practitioners involved the opportunity to be heard.

Article 64

Objections by insolvency practitioners

- 1 An insolvency practitioner appointed in respect of any group member may object to:
- a the inclusion within group coordination proceedings of the insolvency proceedings in respect of which it has been appointed; or
 - b the person proposed as a coordinator.

2 Objections pursuant to paragraph 1 of this Article shall be lodged with the court referred to in Article 63 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1 of this Article.

The objection may be made by means of the standard form established in accordance with Article 88.

3 Prior to taking the decision to participate or not to participate in the coordination in accordance with point (a) of paragraph 1, an insolvency practitioner shall obtain any approval which may be required under the law of the State of the opening of proceedings for which it has been appointed.

Article 65

Consequences of objection to the inclusion in group coordination

1 Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which it has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.

2 The powers of the court referred to in Article 68 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.

Article 66

Choice of court for group coordination proceedings

1 Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member

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State having jurisdiction is the most appropriate court for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.

2 The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 68.

3 Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.

4 The request for the opening of group coordination proceedings shall be submitted to the court agreed in accordance with Article 61.

Article 67

Consequences of objections to the proposed coordinator

Where objections to the person proposed as coordinator have been received from an insolvency practitioner which does not also object to the inclusion in the group coordination proceedings of the member in respect of which it has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner to submit a new request in accordance with Article 61(3).

Article 68

Decision to open group coordination proceedings

1 After the period referred to in Article 64(2) has elapsed, the court may open group coordination proceedings where it is satisfied that the conditions of Article 63(1) are met. In such a case, the court shall:

- a appoint a coordinator;
- b decide on the outline of the coordination; and
- c decide on the estimation of costs and the share to be paid by the group members.

2 The decision opening group coordination proceedings shall be brought to the notice of the participating insolvency practitioners and of the coordinator.

Article 69

Subsequent opt-in by insolvency practitioners

1 In accordance with its national law, any insolvency practitioner may request, after the court decision referred to in Article 68, the inclusion of the proceedings in respect of which it has been appointed, where:

- a there has been an objection to the inclusion of the insolvency proceedings within the group coordination proceedings; or
- b insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.

2 Without prejudice to paragraph 4, the coordinator may accede to such a request, after consulting the insolvency practitioners involved, where

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- a he or she is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in points (a) and (b) of Article 63(1) are met; or
- b all insolvency practitioners involved agree, subject to the conditions in their national law.

3 The coordinator shall inform the court and the participating insolvency practitioners of his or her decision pursuant to paragraph 2 and of the reasons on which it is based.

4 Any participating insolvency practitioner or any insolvency practitioner whose request for inclusion in the group coordination proceedings has been rejected may challenge the decision referred to in paragraph 2 in accordance with the procedure set out under the law of the Member State in which the group coordination proceedings have been opened.

Article 70

Recommendations and group coordination plan

1 When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to in Article 72(1).

2 An insolvency practitioner shall not be obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan.

If it does not follow the coordinator's recommendations or the group coordination plan, it shall give reasons for not doing so to the persons or bodies that it is to report to under its national law, and to the coordinator.

Subsection 2

General provisions

Article 71

The coordinator

1 The coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.

2 The coordinator shall not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.

Article 72

Tasks and rights of the coordinator

- 1 The coordinator shall:
 - a identify and outline recommendations for the coordinated conduct of the insolvency proceedings;

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- b propose a group coordination plan that identifies, describes and recommends a comprehensive set of measures appropriate to an integrated approach to the resolution of the group members' insolvencies. In particular, the plan may contain proposals for:
 - (i) the measures to be taken in order to re-establish the economic performance and the financial soundness of the group or any part of it;
 - (ii) the settlement of intra-group disputes as regards intra-group transactions and avoidance actions;
 - (iii) agreements between the insolvency practitioners of the insolvent group members.
- 2 The coordinator may also:
- a be heard and participate, in particular by attending creditors' meetings, in any of the proceedings opened in respect of any member of the group;
 - b mediate any dispute arising between two or more insolvency practitioners of group members;
 - c present and explain his or her group coordination plan to the persons or bodies that he or she is to report to under his or her national law;
 - d request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and
 - e request a stay for a period of up to 6 months of the proceedings opened in respect of any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested; or request the lifting of any existing stay. Such a request shall be made to the court that opened the proceedings for which a stay is requested.
- 3 The plan referred to in point (b) of paragraph 1 shall not include recommendations as to any consolidation of proceedings or insolvency estates.
- 4 The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.
- 5 The coordinator shall perform his or her duties impartially and with due care.
- 6 Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in the costs compared to the cost estimate referred to in point (d) of Article 61(3), and in any case, where the costs exceed 10 % of the estimated costs, the coordinator shall:
- a inform without delay the participating insolvency practitioners; and
 - b seek the prior approval of the court opening group coordination proceedings.

Article 73

Languages

- 1 The coordinator shall communicate with the insolvency practitioner of a participating group member in the language agreed with the insolvency practitioner or, in the absence of an agreement, in the official language or one of the official languages of the institutions of the Union, and of the court which opened the proceedings in respect of that group member.

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2 The coordinator shall communicate with a court in the official language applicable to that court.

Article 74

Cooperation between insolvency practitioners and the coordinator

1 Insolvency practitioners appointed in relation to members of a group and the coordinator shall cooperate with each other to the extent that such cooperation is not incompatible with the rules applicable to the respective proceedings.

2 In particular, insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his or her tasks.

Article 75

Revocation of the appointment of the coordinator

The court shall revoke the appointment of the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member where:

- (a) the coordinator acts to the detriment of the creditors of a participating group member;
or
- (b) the coordinator fails to comply with his or her obligations under this Chapter.

Article 76

Debtor in possession

The provisions applicable, under this Chapter, to the insolvency practitioner shall also apply, where appropriate, to the debtor in possession.

Article 77

Costs and distribution

1 The remuneration for the coordinator shall be adequate, proportionate to the tasks fulfilled and reflect reasonable expenses.

2 On having completed his or her tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member, and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.

3 In the absence of objections by the insolvency practitioners within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.

4 In the event of an objection, the court that opened the group coordination proceedings shall, upon the application of the coordinator or any participating insolvency practitioner, decide on the costs and the share to be paid by each member in accordance with the criteria set out in

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paragraph 1 of this Article, and taking into account the estimation of costs referred to in Article 68(1) and, where applicable, Article 72(6).

5 Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

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