



**LEASEUROPE'S RESPONSE TO EUROPEAN COMMISSION CONSULTATION  
ON THE FUTURE OF EUROPEAN INSOLVENCY LAW**

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Leaseurope ID: 16013361508-12  
21 June 2012

## **About Leaseurope**

Leaseurope brings together 44 member associations representing the leasing, long term and/or short term automotive rental industries in the 32 European countries in which they are present. The scope of products covered by Leaseurope members' ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment and real estate). It also includes the short term rental of cars, vans and trucks.

The Federation's mission is to represent the European leasing and automotive rental industry, ensuring the sector's voice is heard by European and international policy makers.

## GENERAL OBSERVATIONS

Leaseurope welcomes this opportunity to respond to this consultation which aims to address whether possible improvements should be made to the Insolvency Regulation which is currently in place.

In the past, Leaseurope has closely followed the topic of the accessibility of information on debtor's assets, and responded in 2008 to the *European Commission's Green Paper on the enforcement of judgments in the European Union: the transparency of debtors' assets*.

Leaseurope would like to highlight that access to information on debtor's whereabouts and their financial situation is an issue of paramount importance for European leasing companies. The lack of accessibility to or availability of information on debtor's assets strongly hampers domestic as well as cross-border debt recovery.

As noted by the European Commission, the good functioning of cross-border insolvency proceedings relies on the exchange of information. Leaseurope welcomes, in principle all initiatives that aim to increase the availability of information and improve creditors' (lessors) access to existing national registers on a reciprocal basis. We would therefore not oppose the creation of an EU register for insolvency cases, provided that the leasing industry is consulted on this matter in due course.

### Leaseurope believes that insolvency law represents a balancing of several objectives:

- It aims at protecting creditors' (lessor) rights;
- Safeguarding the interests of shareholders and customers; and
- Avoiding liquidation of potentially viable companies.

Within this context in many Member States insolvency law fosters discipline and honesty in financial management and facilitates the rehabilitation or orderly market exit of companies that are inefficient.

Nonetheless, substantial disparities among national insolvency regimes can be identified with regard to their underlying policy considerations, structure and content.

The EC Regulation No 1346/2000 does not harmonize national substantive laws in the field of insolvency. According to Recital 11 to the Regulation: "*This Regulation acknowledges the fact that, as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different*".

However, despite these considerations Leaseurope would be in favour of a harmonization of European insolvency law in the field of corporate insolvencies, as it would protect the value of the assets of the estate, thereby returning greater value to creditors (lessors) and shareholders and reduce the migration of financially troubled companies to jurisdictions with more workable restructuring provisions.

## Consultation Response

### **2. Which principal changes, if any, would you suggest improving the existing legal framework for cross-border insolvency in the EU?**

Leaseurope would like to advocate for the harmonization of European corporate insolvency laws as it would be beneficial to the lessor in protecting the value of the assets of the estate, thereby returning greater value to the lessor. In addition such harmonization would reduce the migration of financially troubled companies to jurisdictions with more workable restructuring provisions.

The establishment of insolvency registers is strongly supported by Leaseurope as it would facilitate the exchange of information and enable proper functioning of cross-border insolvency proceedings.

### **3. In your view, has it created problems that the Insolvency Regulation does not, in principle, apply to pre-insolvency or hybrid proceedings and that the effects of such proceedings are therefore not recognized EU-wide?**

Leaseurope believes that these stages, both the pre-insolvency and hybrid proceedings should be covered by the Regulation, as they can often also happen in a cross border context. These processes often result in the successful restructuring of the failing business. This means that creditors i.e. the lessors will be able to recover the debts owed to them if the business survives. Otherwise when the liquidator is appointed, there is a tendency to divide the divestment of the debtor amongst the creditors in the collective insolvency proceedings so each creditor stands to gain less.

### **4. Should the Insolvency Regulation accommodate national legal procedures which provide for the restructuring of a company at a pre-insolvency stage or which leave the existing management in place?**

Please see previous response.

### **6. In your view, has it created problems in practice that the Insolvency Regulation does not contain provisions for the recognition of insolvency proceedings outside the EU or the coordination between proceedings inside and outside the EU?**

The fact that the Insolvency Regulation does not contain provisions for the recognition of insolvency proceedings outside the EU could cause problems in cases whereby a lessor leases an asset to a lessee in a third country and if for instance insolvency proceeding are begun against the debtor (lessee). A suggestion could be to draft a list of equivalent third countries, and all of these could sign up to the rules contained in the Insolvency Regulation and this would facilitate such an endeavor.

**7. In your view, is it appropriate that jurisdiction for opening main insolvency proceedings is determined by the location of the debtor's center of its main interests ("COMI")? If so, how should it be amended?**

Leaseurope can see the logic in the view that the jurisdiction for opening the main insolvency proceedings is determined for a “company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof of the contrary”. However, Leaseurope would also be in favour of the creditor’s jurisdiction being considered as a jurisdiction for opening the main insolvency proceedings in the absence of swift action in the debtor’s jurisdiction.

**12. Has the system of secondary proceedings in general been helpful to protect the interests of local creditors or to facilitate the administration of complex cases? If so, how could it be changed?**

Leaseurope believes that the system of secondary proceedings has been helpful as it allows proceedings to be administered in jurisdictions where the debtor (lessee) has an establishment (branch etc.)

**13. Does the coordination between main and secondary proceedings work satisfactorily overall? If so, how could it be improved?**

Leaseurope would like to advocate for more defined criteria to be applied for the opening of all insolvency proceedings (as stated in the European Parliament’s note on the Harmonization of Insolvency Law at European level (2012)), as the power of the liquidator in the main proceedings is affected when secondary proceedings are administered. This provides a lack of legal certainty and should be rectified.

**15. Has it created any problems that the Insolvency Regulation does not contain a duty of cooperation between the insolvency practitioners and the foreign court or between the relevant courts themselves?**

Leaseurope would like to suggest that an insolvency register be created at EU level, and this would serve to facilitate more cooperation between the relevant courts and between the insolvency practitioners and the foreign courts. Another alternative could be that in the absence of an insolvency register, a duty of cooperation between these entities be explicitly provided for in the future review of the Regulation.