A pair of ornate, silver-colored scales of justice stands on a dark surface. The scales are slightly tilted, with the right pan being lower. The background is a soft-focus image of a European Union flag, showing the white stars on a blue field.

Training of lawyers on EU instruments on Insolvency Law and Family Law (CiviLAW)

Topic: ARCA Investments Case Study

Speaker: Adam Sigmund

CiviLAW Webinar on Insolvency Law

8 June 2022

Zoom Webinar



The project is co-financed with the support of the European Union's Justice programme

ZIZLAVSKY > **25** *let*



ARCA INVESTMENTS CASE STUDY

Adam SIGMUND

ARCA INVESTMENTS

- Arca Investments (AI) is a **Slovak-Czech investment group**, portfolio of 200 companies (CZE, SVK, GBR, CYP, MLT), active in **finance, energy and real estate**
- **05/2021**, Municipal Court in Prague, **CZE** declared AI's **bankruptcy; 1.900 creditors, debt of 760.000.000 EUR**, largest bankruptcy in CZE and SVK ever
- data:
 - foundation: 2003
 - registered seat: Bratislava, SVK
 - total assets: 807.000.000 EUR (2018)
 - equity: 66.000.000 EUR (2018)
 - profit: 15.000.000 EUR (2018)
- **creditors**: major part in **CZE**, funds, cooperatives, SME, individuals, municipalities, catholic church
- **assets**: major part in **SVK**, CYP, MLT, GBR

REGULATION (EU) 2015/848 – CHALLENGES/LESSONS LEARNED

- level of **knowledge** of EU regulation
- **hotchpot rule**
- **unilateral undertaking**
- **parallel reorganisation** in two member states
- **transition of assets** between main and secondary jurisdictions
- **insolvency registers** (EU, CZE, SVK)

REGULATION (EU) 2015/848 - CHALLENGES

- **THE EXPERTISE IN EU REGULATION (art. 2/8, art. 2/10)**
 - **knowledge of EU regulation remains low** at the level of local first instance insolvency courts
 - SVK - ambiguities regarding the very **moment of initiating secondary insolvency proceedings** ('the time of the opening of proceedings' means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not)
 - CZE - ambiguities regarding the interpretation **of the term "establishment,,**
 - in national jurisdiction: a special and independently **registered business place** in which the trade is operated
 - in the EU: **place of operations** where a debtor carries out (...) a **non-transitory economic activity** with **human means and assets**;

REGULATION (EU) 2015/848 - CHALLENGES

- **THE HOTCHPOT RULE (art. 23/2, art. 49)**
 - the scheme and rules for **the distribution** of recovery from the realisation of assets to be governed by the **national insolvency laws**
 - CZE versus SVK
 - **reorganisation**
 - CZE no minimal recovery versus SVK minimal recovery of 50 % of claims
 - **recast regulation** - equal treatment of creditors – important role of the insolvency administrator in the main proceeding
 - **protection of creditors** by the competence of the **insolvency administrator in the main proceeding to register the claims of all creditors** in any secondary proceedings
 - **surplus of assets** in the secondary proceedings to **be remitted to the main insolvency**

REGULATION (EU) 2015/848 - CHALLENGES

- **THE UNILATERAL UNDERTAKING (art. 36)**
 - **to avoid the opening of secondary insolvency proceedings**
 - **unilateral undertaking** of the insolvency administrator in the main insolvency proceedings
 - **compliance** of the distributing of assets or proceeds received **with the distribution and priority rights under national law** in potential **secondary insolvency proceedings**
 - **insolvency administrator** shall be **liable for any damage** caused to local creditors as a result of its noncompliance with the obligations and requirements for the unilateral undertaking

REGULATION (EU) 2015/848 - CHALLENGES

- **INSOLVENCY REGISTERS (EU, CZE, SVK) (art. 24)**
 - Member States shall establish and maintain registers in which information concerning insolvency proceedings is published (**'insolvency registers'**)
 - **mandatory information:**
 - **date of the opening** of insolvency proceedings
 - **court opening** insolvency proceedings and the **case reference number**
 - **type of insolvency proceedings**
 - whether jurisdiction for opening proceedings is the **main insolvency proceedings jurisdiction** or the **territorial insolvency proceedings/secondary insolvency proceedings jurisdiction**
 - **debtor's and insolvency practitioner's info**
 - **time limit for lodging claims**

REGULATION (EU) 2015/848 - CHALLENGES

• EU INSOLVENCY REGISTER

The screenshot displays the European e-Justice Portal website. The browser address bar shows the URL: e-justice.europa.eu/110/EN/bankruptcy_and_insolvency_registers?init=true. The page features the European Justice logo, a language selector set to English (EN), and a search bar. The main heading is "Bankruptcy and insolvency registers". Below the heading, a text block states: "All EU member countries have insolvency and bankruptcy registers for which you can find information. These registers are in the process of being connected and becoming searchable from a central point." A "PAGE CONTENTS" section includes a "Search national registers" link and a "Find information per region" box with buttons for Belgium, Bulgaria, Czech Republic, Denmark, Germany, and Estonia. To the right, a text block explains that registers record, analyse, and store insolvency information. A list of bullet points describes two types of registers: "countries with dedicated registers" and "countries using other registers". A footer cookie notice states: "Your cookie preferences have been saved. To change your preferences at any time, see our [cookies policy](#) or visit the link in the page footer." The Windows taskbar at the bottom shows the time as 11:59 on 20.05.2022.

European e-Justice Portal - Bankruptcy and insolvency registers

Home > Registers - business, insolvency & land > **Bankruptcy and insolvency registers**

Bankruptcy and insolvency registers

All EU member countries have insolvency and bankruptcy registers for which you can find information. These registers are in the process of being connected and becoming searchable from a central point.

The registers record, analyse and store insolvency information and make it available to the public, albeit in different forms, depending on the country:

- countries with dedicated registers – publish information on all stages of the insolvency proceedings and the parties to the proceedings.
- countries using other registers – the situation is more diverse. Some only publish the name and the status of a company, others include information on all stages of the proceedings.

Information on national registers

Please select the relevant country's flag to obtain detailed national information.

Your cookie preferences have been saved. To change your preferences at any time, see our [cookies policy](#) or visit the link in the page footer. Close

REGULATION (EU) 2015/848 - CHALLENGES

• SVK INSOLVENCY REGISTER

The screenshot shows a web browser window displaying the European e-Justice Portal. The address bar shows the URL: e-justice.europa.eu/110/EN/bankruptcy_and_insolvency_registers?SLOVAKIA&member=1. The page title is "Bankruptcy and insolvency registers" and it is provided by Slovakia. The main content area is titled "Bankruptcy and insolvency registers" and includes a brief overview of the Slovak Insolvency Register. A sidebar on the left contains "PAGE CONTENTS" with links to "What does the Slovak insolvency register offer?", "Is access to the Slovak Insolvency Register free of charge?", and "What is the method for searching the Slovak Insolvency Register?". Below this is a "Related links" section and a "Find information per region" section with a grid of country flags and names: Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, and Italy. The main content area also features a section titled "What does the Slovak insolvency register offer?" which explains that the register is an information system of the public administration available on the website of the Ministry of Justice of the Slovak Republic. It contains information on insolvency proceedings, restructuring proceedings, and debt discharge proceedings pursuant to §10a(2) of Act No 7/2005 on bankruptcy and restructuring and amending some other acts, as amended. Below this is a section titled "The following data are available in the Insolvency Register:" followed by a list of data points: information on proceedings pursuant to Act No 7/2005 with details as follows: name of the court; file reference of the proceedings; name and surname of the judge in charge of the proceedings; names of the applicant and of the debtor; in the case of: 4.1 a natural person, the first name, surname, date of birth, address, 4.2 a natural person engaged in business, the business name, first name, surname if different from the business name, identification number or any other identification, place of business, 4.3 a legal person, the business name, identification number or any other identification, and registered office.

REGULATION (EU) 2015/848 - CHALLENGES

- SVK INSOLVENCY REGISTER

The screenshot shows a web browser window displaying the SVK Insolvency Register. The browser tabs include 'European e-Justice Portal - Bank...', 'RÚ RÚ | Detail konania', and 'RÚ Register úpadcov, verejná časť'. The address bar shows 'rujustice.sk/ru-verejnost-web/pages/konanieDetail.xhtml?konanieId=69040&back=true'. A cookie consent banner is visible at the top. The main content area features a purple header with the 'RÚ Register úpadcov' logo and a 'Prihlásiť sa' button. Below the header, there is a breadcrumb trail: 'Hlavná stránka > Vyhľadanie konania > Reštrukturalizácia č. 33R/5/2021'. The main heading is '(PO) Arca Investments, a.s., IČO 35975041' with the address 'Plynárenská 7/A, 82109 Bratislava'. A navigation bar includes tabs for 'O konaní', 'Aktuality (0)', 'OV (1)', 'Pohľadávky (0)', 'Schôdze (0)', 'Veritelia (0)', and 'Dokumenty'. The main content area displays the following details:

Spisová značka, typ konania:	33R/5/2021, Reštrukturalizácia
Súd:	Okresný súd Bratislava I, odvolací súd Krajský súd v Bratislave
Sudca:	JUDr. Lenka Čadanová
Správca:	-
Stav konania:	19.01.2022 - Začaté reštrukturalizačné konanie
Posledný oznam v OV:	18.01.2022 - Začiatok reštrukturalizačného konania (OV č. 11/2022)
História stavov konania:	19.10.2021 - Podaný návrh na povolenie reštrukturalizácie 19.01.2022 - Začaté reštrukturalizačné konanie
Navrhovatelia:	Louda Lee, Ing., Vodíčkova 41, 11000 Praha 1, Česko
Lehoty:	Na konaní nie sú žiadne lehoty
Na konaní sa nenachádzajú žiadne pohľadávky	
Typ konania podľa územnej platnosti:	--

REGULATION (EU) 2015/848 - CHALLENGES

• SVK INSOLVENCY REGISTER

The screenshot shows a web browser window displaying the SVK Insolvency Register. The page title is "RÚ Register úpadcov". The main content area shows details for a restructuring plan (reštrukturalizácia) for the company (PO) Arca Investments, a.s., IČO 35975041, located at Plynárenská 7/A, 82109 Bratislava. The plan number is 33R/5/2021. The page includes a navigation menu with tabs for "O konaní", "Aktuality (0)", "OV (1)", "Pohľadávky (0)", "Schôdze (0)", "Veritelia (0)", and "Dokumenty". The "Začiatok reštrukturalizačného konania" section is active, showing a list of key dates and events. The "Rozhodnutie" section contains the court's decision text in Slovak, which states that the restructuring plan is approved and that the company must limit its activities to those necessary for the restructuring process.

Tieto internetové stránky používajú súbory cookie. Používaním týchto internetových stránok s tým súhlasíte. Rozumiem

RÚ Register úpadcov Príhlásiť sa

Hlavná stránka > Vyhľadávanie konania > Reštrukturalizácia č. 33R/5/2021

(PO) Arca Investments, a.s., IČO 35975041
Plynárenská 7/A , 82109 Bratislava

O konaní Aktuality (0) **OV (1)** Pohľadávky (0) Schôdze (0) Veritelia (0) Dokumenty

Začiatok reštrukturalizačného konania ← Zoznam OV

Dátum vydania:	10.1.2022
Dátum zverejnenia:	18.01.2022
Zverejnený v OV č.:	11/2022
PDF z oficiálneho OV:	https://www.justice.gov.sk/PortalApp/ObchodnyVestnik/Formular/FormularDetail.aspx?IdFormular=3141310
Autor oznamu:	Okresný súd Bratislava I
Spisová značka:	33R/5/2021
ICS:	1121207416
Vydal:	JUDr. Lenka Čadanová
Vydal FN:	sudkyňa
Odoslal:	Okresný súd Bratislava I
Dlžník:	Arca Investments, a.s. IČO 35975041, Plynárenská 7/A, 82109 Bratislava, Slovenská republika
Navrhovatelia:	Arca Investments, a.s. IČO 35975041, Plynárenská 7/A, 82109 Bratislava, Slovenská republika
Druh:	Uznesenie
Hlavička:	Okresný súd Bratislava I v právnej veci navrhovateľa - dlžníka: Arca Investments, a. s., so sídlom Plynárenská 7/A, 821 09 Bratislava, IČO: 35 975 041, o návrhu na povolenie reštrukturalizácie dlžníka: Arca Investments, a. s., so sídlom Plynárenská 7/A, 821 09 Bratislava, IČO: 35 975 041, takto
Rozhodnutie:	Súd začína reštrukturalizačné konanie voči dlžníkovi: Arca Investments, a. s., so sídlom Plynárenská 7/A, 821 09 Bratislava, IČO: 35 975 041.
Poučenie:	Proti tomuto uzneseniu odvolanie nie je prípustné (§ 198 ods. 1 ZKR). Reštrukturalizačné konanie sa začína zverejnením uznesenia o začatí reštrukturalizačného konania v Obchodnom vestníku (§ 113 ods. 3 ZKR). Za deň doručenia súdneho rozhodnutia sa považuje nasledujúci deň po zverejnení súdneho rozhodnutia v Obchodnom vestníku (§ 199 ods. 9 ZKR). Začatie reštrukturalizačného konania má tieto účinky: a) dlžník je povinný obmedziť výkon svojej činnosti na bežné právne úkony; iné právne úkony dlžníka podliehajú súhlasu správcu, ktorý vypracoval posudok, b) pre pohľadávku, ktorá sa v reštrukturalizácii uplatňuje prihláškou, nemožno začať konanie o výkon

REGULATION (EU) 2015/848 - CHALLENGES

• CZE INSOLVENCY REGISTER


The screenshot displays the European e-Justice Portal interface. The browser address bar shows the URL: e-justice.europa.eu/110/EN/bankruptcy_and_insolvency_registers?CZECH_REPUBLIC&member=1. The page title is "Bankruptcy and insolvency registers". The content is provided by the Czech Republic, as indicated by the Czech flag and the text "Czech Republic". The page provides a brief introduction to the Czech Republic's insolvency register. Below the introduction, there are sections for "What does the Czech insolvency register offer?", "Is access to the Czech insolvency register free of charge?", "Searching the Czech insolvency register", and "History of the Czech insolvency register". A "Find information per region" section lists various countries: Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, and Greece. The page also includes a search bar and a menu.

Home > Registers - business, insolvency & land > Bankruptcy and insolvency registers

Bankruptcy and insolvency registers

Czech Republic

This section provides a brief introduction to the Czech Republic's insolvency register.

Content provided by:

Czech Republic

What does the Czech insolvency register offer?

The [insolvency register of the Czech Republic](#) is owned and maintained by the [Czech Ministry of Justice](#).

Is access to the Czech insolvency register free of charge?

Access to the register is **free of charge**.









Searching the Czech insolvency register

Using the [advanced search engine](#), you can access the full content of documents on the register, in PDF format.

History of the Czech insolvency register

The register contains information dating from 1st January 2008 onwards.

Find information per region

-  Belgium
-  Bulgaria
-  Czech Republic
-  Denmark
-  Germany
-  Estonia
-  Ireland
-  Greece

REGULATION (EU) 2015/848 - CHALLENGES

- CZE INSOLVENCY REGISTER – TOTAL NUMBER OF DOCS = 5.868

Detail insolvenčního řízení Arca Investments, a.s.

Aktuální stav: Povolena reorganizace Reorganizace
 Spisová značka: MSPH 98 INS 723 / 2021 vedená u Městského soudu v Praze

Základní identifikační údaje
 Jméno/název: Arca Investments, a.s.
 IČ: 35975041 (viz obchodní rejstřík)
 Rodné číslo / Datum nar.: /
 Sídlo společnosti: Bratislava, Plynárenská 7A, PSČ 821 09

Insolvenční správce
 Zrústek a partneri v.o.s. (viz seznam insolvenčních správců)
 - kancelář: Praha, Arbesovo nám. 257/7, PSČ 150 00, Okres Praha 5
Předběžný správce
 Ing. Lee Louda Ph.D. (viz seznam insolvenčních správců)
 - kancelář: Praha 1, Vodňkova 41, PSČ 110 00, Okres Praha 1
Oddělený správce
 Zrústek a partneri v.o.s. (viz seznam insolvenčních správců)
 - kancelář: Praha, Arbesovo nám. 257/7, PSČ 150 00, Okres Praha 5

Historie insolvenčního řízení
 Datum poslední zveřejněné události: 20.05.2022
 Konec lhůty pro přihlášení pohledávek: 12.07.2021
 Datum skončení insolvenčního řízení:
 Mezinárodní příslušnost soudu: čl. 3 odst. 1 nařízení EP a Rady (EU) č. 2015/848

„Lhůta pro podání odvolání proti výroku o mezinárodní příslušnosti činí 15 dnů ode dne doručení rozhodnutí o úpadku, které obsahuje výrok o mezinárodní příslušnosti, a podává se u výše uvedeného insolvenčního soudu.“

„The time limit for lodging an appeal against the operative part on international jurisdiction shall be 15 days of receipt of the insolvency decision which contains the operative part on international jurisdiction. It shall be lodged at the insolvency court stated above.“

Oddíl A - Řízení do úpadku | Oddíl B - Řízení po úpadku | **Oddíl C - Incidenční spory** | Oddíl D - Ostatní | Oddíl P - Přihlášky

Okamžik zveřejnění	Popis	Dokument	Vedlejší dokument *)	Datum právní moci	Senátní značka VS/NS
19.05.2021 14:57	Sdělení insolvenčního správce	plný_text (886 kB)			
19.05.2021 14:58	Sdělení insolvenčního správce	není k dispozici			
19.05.2021 14:58	Sdělení insolvenčního správce Výzva	není k dispozici			
21.05.2021 11:20	Záznam o mylném zařazení	plný_text (194 kB)			
19.05.2021 15:00	Sdělení insolvenčního správce	plný_text (667 kB)			
20.05.2021 09:46	Návrh - doplnění návrhu	plný_text (3092 kB)			
20.05.2021 15:35	Žádost	plný_text (335 kB)			
20.05.2021 16:01	Návrh na určení lhůty	plný_text (417 kB)			
21.05.2021 11:22	Sdělení insolvenčního správce Výzva	není k dispozici			
22.06.2021 13:27	Záznam o mylném zařazení	plný_text (194 kB)			

REGULATION (EU) 2015/848 - CHALLENGES

- CZE INSOLVENCY REGISTER

European e-Justice Portal - Bank x Detail listované osoby - ISIR - x dokument.PDF x RÚ RÚ | Detail záznamu obchodně- x RÚ Register úpadcov, verejná časť x +

isirjustice.cz/sir/doc/dokument.PDF?id=45798040 Aktualizovat

dokument.PDF 1 / 44 90%

Městský soud v Praze
Slezská 9
120 00 Praha 2

V Praze dne 3. ledna 2021

Dlužník/navrhovatel: Arca Investments, a.s.
IČO: 35 975 041
V Celnici 1031/4
Nové Město, 110 00 Praha 1

zastoupený Petrem Kuhnem, advokátem
ev. č. ČAK 10624
BADOKH – Kuhn Dostál advokátní kancelář, s.r.o.
se sídlem 110 00 Praha 1, 28. října 767/12

INSOLVENČNÍ NÁVRH
NÁVRH NA POVOLENÍ REORGANIZACE
Návrh na ustanovení insolvenčního správce
Návrh na ustanovení znalce
Návrh na jmenování prozatímního věřitelského výboru

TÍMTO INSOLVENČNÍM NÁVRHEM DLUŽNÍKA JE ZAHÁJENO NOVÉ INSOLVENČNÍ ŘÍZENÍ POD NOVOU SPISOVOU ZNAČKOU. PŘEDCHOZÍ INSOLVENČNÍ ŘÍZENÍ NA MAJETEK DLUŽNÍKA (sp.zn. MSPH 98 INS 19600/2020) BYLO PRAVOMOCNĚ ZASTAVENO (rozhodnutím Vrchního soudu v Praze, č.j. 1 VSPH 1319/2020-A-30).

Datovou schránkou
Přílohy: plná moc a dále dle seznamu příloh

— BADOKH - Kuhn Dostál advokátní kancelář s.r.o. - 28. října 767/12, 110 00 Praha 1, Česká republika - www.BADOKH.com

Windows taskbar: Doručená pošta - si... (1) WhatsApp - Go... dokument.PDF - G... Filip Topol - Sbohe... ARCA INVESTMENT... 12:17 20.05.2022

REGULATION (EU) 2015/848 - CHALLENGES

• COURT DECISION I. INST (05/2021) – TERRITORIAL PROCEEDINGS

bytem Kpt. Jaroše 695, 742 45 Fulnek

takto:

- I. Z j i š t u j e s e úpadek dlužníka Arca Investments, a.s., IČO 35975041, Plynárenská 7/A, 821 09, Bratislava, Slovenská republika
- II. Zahajuje se místní insolvenční řízení, jež se týká majetku dlužníka na území České republiky dle článku 3 odst.2/ a 4/ nařízení Evropského parlamentu a Rady (EU) 2015/848 ze dne 20. května 2015 o insolvenčním řízení (dále jen Nařízení).
- III. Insolvenčním správcem pro místní insolvenční řízení se ustanovuje Ing. Lee Louda Ph.D., IČO 69326681, sídlem Vodičkova 41, 110 00 Praha 1.
- IV. Účinky rozhodnutí o místním insolvenčním řízení nastávají okamžikem zveřejnění tohoto rozhodnutí v insolvenčním rejstříku (čl. 2 bod 8 Nařízení).
- V. Věřitelé dlužníka, kteří dosud nepřihlásili své pohledávky, se vyzývají, aby své pohledávky přihlásili do dvou měsíců ode dne zveřejnění tohoto usnesení; přihlášky a jejich přílohy se podávají dvojmo u Městského soudu v Praze na předepsaném formuláři, který je zveřejněn na internetových

Shodu s prvopisem potvrzuje: Jana Křížková

REGULATION (EU) 2015/848 - CHALLENGES

- COURT DECISION II. INST (10/2021) – MAIN PROCEEDINGS

proti usnesení Městského soudu v Praze ze dne 11. května 2021, č. j. MSPH 98 INS 723/2021-A-186,

takto:

Usnesení Městského soudu v Praze ze dne 11. května 2021, č. j. MSPH 98 INS 723/2021-A-186, se v bodě II. výroku mění tak, že se zahajuje hlavní insolvenční řízení dlužníka Arca Investments, a.s., IČO 35975041, sídlem Plynářská 7/A, 821 09, Bratislava, Slovenská republika, dle článku 3 odst. 1 Nařízení Evropského parlamentu a Rady (EU) 2015/848 ze dne 20. května 2015 o insolvenčním řízení; v bodě III. výroku se mění tak, že se insolvenčním správcem pro hlavní insolvenční řízení ustanovuje Ing. Lee Louda, Ph.D., IČO 69326681, sídlem Praha 1, Vodičkova 41, Česká republika; v bodě XII. výroku se mění tak, že Městský soud v Praze je mezinárodně příslušný k zahájení hlavního insolvenčního řízení dle článku 3 odst. 1 Nařízení Evropského parlamentu a Rady (EU) 2015/848 ze dne 20. května 2015 o insolvenčním řízení.

Shodu s prvopisem potvrzuje Petr Vojta.

5 MSPH 98 INS 723/2021
4 VSPH 816/2021

Odůvodnění:

REGULATION (EU) 2015/848 - CHALLENGES

- REGISTERED CLAIMS (TOTAL OF 1925)

European e-Justice Portal | Detail lustrované osoby | _1c903a39g293a86gc9m | dokument.PDF | 52 | RÚ RÚ | Detail záznamu obci | RÚ Register úpadcov, verejná | Aktualizovat

isir.justice.cz/isir/ueu/evidence_upadcu_detail.do?id=B8EA44C95A4D42D3E05333F21FAC344B&actSheet=P&page=all&pageB=1&pageC=1&pageD=0&pageP=31

P1896-2	20.07.2021	10.09	Doplnění/oprava/změna přihlášené pohledávky	plný_text (7930 kB)			
P1896-3	30.08.2021	14.53	Směnka	plný_text (1306 kB)			
P1897-1	16.07.2021	08.26	Přihláška pohledávky	plný_text (919 kB)	plný_text (201 kB)		CUBE2.1 s.r.o.
P1898-1	16.07.2021	08.34	Přihláška pohledávky	plný_text (6429 kB)			Valeria Džuganová
P1898-2	20.07.2021	11.35	Doplnění/oprava/změna přihlášené pohledávky	plný_text (6704 kB)			
P1898-3	06.09.2021	13.55	Směnka	plný_text (1529 kB)			
P1899-1	16.07.2021	08.38	Přihláška pohledávky	plný_text (5684 kB)			Radoslav Bendik
P1899-2	07.12.2021	08.46	Směnka	plný_text (1716 kB)			
P1900-1	16.07.2021	08.40	Přihláška pohledávky	plný_text (5639 kB)			Peter Šimko
P1900-2	20.07.2021	09.58	Doplnění/oprava/změna přihlášené pohledávky	plný_text (3912 kB)	plný_text (200 kB)		
P1900-3	18.08.2021	16.50	Doplnění/oprava/změna přihlášené pohledávky Směnka	plný_text (755 kB)			
P1900-4	09.09.2021	11.28	Doplnění/oprava/změna přihlášené pohledávky	plný_text (2499 kB)			
P1901-1	16.07.2021	08.45	Přihláška pohledávky	plný_text (6431 kB)			Ing. Miloslav Beňko
P1901-2	26.07.2021	10.59	Piná moc	plný_text (1067 kB)	plný_text (200 kB)		
P1901-3	27.07.2021	09.37	Směnka	plný_text (1654 kB)	plný_text (200 kB)		
P1902-1	16.07.2021	08.47	Přihláška pohledávky	plný_text (8136 kB)			Martin Bujna
P1902-2	31.08.2021	10.52	Směnka	plný_text (1754 kB)			
P1903-1	16.07.2021	08.49	Přihláška pohledávky	plný_text (5749 kB)			Mgr. Michal Štrpka
P1904-1	16.07.2021	09.00	Přihláška pohledávky	plný_text (4170 kB)			Renata Zetková
P1904-2	24.08.2021	07.20	Piná moc	plný_text (1188 kB)			
P1904-3	09.09.2021	11.20	Směnka	plný_text (1711 kB)			
P1905-1	16.07.2021	09.06	Přihláška pohledávky	plný_text (4992 kB)			Pavel Dragoun
P1905-2	07.04.2022	10.43	Usnesení o odmítnutí přihlášky	plný_text (1495 kB)	plný_text (234 kB)		
P1906-1	16.07.2021	12.51	Přihláška pohledávky	plný_text (4607 kB)	plný_text (201 kB)		Rudolf Šulík
P1906-2	30.08.2021	14.20	Směnka	plný_text (1610 kB)			
P1906-3	30.08.2021	14.25	Směnka	plný_text (1494 kB)			
P1906-4	30.08.2021	14.26	Směnka	plný_text (1609 kB)			
P1906-5	30.08.2021	14.28	Směnka	plný_text (1409 kB)			
P1906-6	29.09.2021	16.21	Doplnění/oprava/změna přihlášené pohledávky Směnka	plný_text (671 kB)			
P1907-1	16.07.2021	13.00	Přihláška pohledávky	plný_text (3846 kB)	plný_text (201 kB)		ZBORAN s.r.o.
P1907-2	30.08.2021	14.22	Směnka	plný_text (1747 kB)			
P1908-1	16.07.2021	13.52	Přihláška pohledávky	není k dispozici			Zora Nováková
P1908-1	16.07.2021	13.52	Přihláška pohledávky Směnka	plný_text (5811 kB)			Zora Nováková
P1909-1	16.07.2021	13.57	Přihláška pohledávky	plný_text (3941 kB)			Cyril Svozil
P1910-1	19.07.2021	08.37	Přihláška pohledávky	plný_text (1143 kB)	plný_text (201 kB)		Urban & Hejduk s.r.o., advokátní kancelář
P1910-2	31.08.2021	11.23	Směnka	plný_text (11290 kB)			
P1911-1	19.07.2021	08.41	Přihláška pohledávky	plný_text (945 kB)	plný_text (201 kB)		Urban & Hejduk s.r.o., advokátní kancelář
P1911-2	30.08.2021	15.34	Směnka	plný_text (3573 kB)			
P1912-1	21.07.2021	15.26	Přihláška pohledávky	plný_text (8038 kB)			MUDr. Vladimír Vondrák
P1912-2	05.08.2021	11.29	Směnka	plný_text (970 kB)			
P1913-1	23.07.2021	10.58	Přihláška pohledávky	plný_text (4996 kB)			MUDr. Jozef Konečný
P1914-1	28.07.2021	11.16	Přihláška pohledávky	plný_text (731 kB)	plný_text (200 kB)		HiLow s.r.o.
P1914-2	29.07.2021	11.05	Jiná podání	plný_text (744 kB)			

Zobrazené záznamy: 4501-4650 z 4670
[první předchozí](#) [23](#) [24](#) [25](#) [26](#) [27](#) [28](#) [29](#) [30](#) [31](#) [32](#) [další](#) [poslední](#)
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Rozšířené zobrazení

***) Upozorňujeme uživatele, že vedlejší dokumenty (PDF portfolia) lze otevřít pouze v internetovém prohlížeči Internet Explorer 11.**

Pokud je využíván jiný prohlížeč než Internet Explorer 11, je postup následující:
Vedlejší dokument (PDF portfolio) nejprve uložte do Vašeho počítače tímto způsobem:
 Klikněte na odkaz na dokument pravým tlačítkem myši a zvolte možnost "Uložit jako?", "Uložit odkaz jako?" (název se může mírně lišit v závislosti na Vašem prohlížeči).

REGULATION (EU) 2015/848 - CHALLENGES

• REGISTERED CLAIMS (TOTAL OF 1925)

V. Pohledávky celkem

Celková výše přihlášených pohledávek:	659 498,5 Kč		
Celková výše nezajištěných pohledávek:	659 498,5 Kč	Z toho nepodřízeno:	659 498,5 Kč
Celková výše zajištěných pohledávek:	0 Kč	Z toho nepodřízeno:	0 Kč
Počet pohledávek:	2	Počet vložených stran:	5

Věřitel prohlašuje, že údaje uvedené v přihlášce jsou pravdivé.

VI. Seznam příloh

Povinné přílohy:

- Je-li věřitel právnická osoba - výpis ze zahraničního obchodního rejstříku nebo obdobného registru, pokud nelze tuto skutečnost ověřit podle zákona o základních rejstřích v příslušném registru.
- Kopie smluv, soudních nebo jiných rozhodnutí a dalších listin dokládajících údaje uvedené v přihlášce pohledávky.
- Je-li věřitel zastoupen na základě plné moci a plná moc není založena ve spise – plná moc.
- Nabyli-li věřitel pohledávku postoupením nebo obdobným způsobem po zahájení insolvenčního řízení anebo v posledních 6 měsících před zahájením insolvenčního řízení – čestné prohlášení o tom, kdo je jeho skutečným majitelem podle jiného právního předpisu, včetně uvedení důvodu, pro který se podle jiného právního předpisu považuje za skutečného majitele.

Přílohy:

č.:	Název přílohy:	Jméno souboru:	Velikost:
E1.	Plná moc Orlický - konverze.pdf	Plná moc Orlický - konverze.pdf	760 kB
E2.	Orlický - směnka 000 013.pdf	Orlický - směnka 000 013.pdf	742 kB
E3.	Pokyn klienta na výběr finančních prostředků.pdf	Pokyn klienta na výběr finančních prostředků.pdf	1748 kB
E4.	Pokyn na obstarání koupě.pdf	Pokyn na obstarání koupě.pdf	943 kB
E5.	Protokol o odevzdání a převzetí cenných papírů.pdf	Protokol o odevzdání a převzetí cenných papírů.pdf	415 kB
E6.	Přípis Arca Brokerage House ze dne 17.5.2021- přihlášení do ins. řízení Arca Investments.pdf	Přípis Arca Brokerage House ze dne 17.5.2021- přihlášení do ins. řízení Arca Investments.pdf	1134 kB
E7.	Dávková smlouva.pdf	Dávková smlouva.pdf	2180 kB

REGULATION (EU) 2015/848 - CHALLENGES

• INCIDENTAL DISPUTES (TOTAL OF 212)

isir.justice.cz/isir/ueu/evidence_upadcu_detail.do?tid=B8EA44C95A4D42D3E05333F21FAC344B&actSheet=P&pageA=all&pageB=1&pageC=1&pageD=0&pageP=31

„The time limit for lodging an appeal against the operative part on international jurisdiction shall be 15 days of receipt of the insolvency decision which contains the operative part on international jurisdiction. It shall be lodged at the insolvency court stated above.“

Oddíl A - Řízení do úpadku | Oddíl B - Řízení po úpadku | **Oddíl C - Incidenční spory** | Oddíl D - Ostatní | Oddíl P - Přihlášky

	Okamžik zveřejnění		Popis	Dokument	Vedlejší dokument *)	Datum právní moci	Spisová značka incidenčního sporu	Senátní značka VS/NS
C1 - 1.	27.10.2021	12.54	Nový nápad	plný text (800 kB)			205 ICM 2963 / 2021	
C1 - 2.	31.01.2022	09.23	Pověření asistenta soudce/VŠU	plný text (713 kB)				
C1 - 3.	31.01.2022	09.38	Usn. o výzvě k zaplacení SOP/doplatku SOP	plný text (730 kB)				
C1 - 4.	19.04.2022	11.46	Usnesení - výzva, aby se účastník vyjádřil k žalobě	plný text (835 kB)				
C1 - 5.	17.05.2022	16.07	Sdělení	plný text (727 kB)				
C1 - 6.	17.05.2022	16.15	Vyjádření k žalobě	plný text (1602 kB)				
C2 - 1.	27.10.2021	13.37	Nový nápad	plný text (755 kB)			205 ICM 2966 / 2021	
C2 - 2.	31.01.2022	08.54	Pověření asistenta soudce/VŠU	plný text (697 kB)				
C2 - 3.	31.01.2022	09.14	Usn. o výzvě k zaplacení SOP/doplatku SOP	plný text (705 kB)				
C2 - 4.	12.04.2022	15.53	Usnesení - výzva, aby se účastník vyjádřil k žalobě	plný text (823 kB)				
C2 - 5.	12.05.2022	08.50	Vyjádření k žalobě	plný text (1580 kB)				
C3 - 1.	27.10.2021	15.56	Nový nápad	plný text (2453 kB)			206 ICM 2937 / 2021	
C3 - 2.	27.10.2021	16.00	Pověření asistenta soudce/VŠU	plný text (685 kB)				
C3 - 3.	27.10.2021	16.10	Doplnění žaloby/návrhu	plný text (873 kB)				
C3 - 4.	27.10.2021	16.18	PO-usnesení o nařízení předběžného opatření	plný text (701 kB)		23.11.2021		
C3 - 5.	10.11.2021	13.24	OP - podání odvolání do PO	plný text (775 kB)				
C3 - 6.	16.11.2021	14.43	Usnesení o výzvě k doplnění tvrzení	plný text (771 kB)				
C3 - 7.	02.12.2021	10.03	Doplnění odvolání	plný text (782 kB)				
C3 - 8.	08.12.2021	15.55	Usn. o povinnosti zaplatit SOP	plný text (707 kB)				
C3 - 9.	14.12.2021	09.50	Doplnění odvolání	plný text (702 kB)				
C3 - 10.	29.12.2021	14.33	Vyjádření	plný text (813 kB)				
C3 - 11.	24.01.2022	10.30	Vyjádření	plný text (657 kB)				
C3 - 12.	28.01.2022	10.05	Usnesení o zastavení řízení o odvolání	plný text (736 kB)		15.02.2022		
C3 - 13.	28.01.2022	10.25	Žádost	plný text (692 kB)				
C3 - 14.	28.01.2022	10.49	Připis	plný text (671 kB)				
C3 - 15.	28.01.2022	11.23	Připis	plný text (709 kB)				
C3 - 16.	07.02.2022	14.24	Vyjádření	plný text (720 kB)				
C3 - 17.	01.04.2022	15.10	Připis	plný text (665 kB)				
C3 - 18.	01.04.2022	15.16	Žádost	plný text (694 kB)				
C3 - 19.	04.04.2022	16.30	Návrh	plný text (724 kB)				
C3 - 20.	05.04.2022	14.56	Vyjádření	plný text (723 kB)				
C3 - 21.	10.05.2022	10.32	Usnesení - zamítnutí návrhu na zrušení předběžného opatření	plný text (842 kB)				
C3 - 22.	18.05.2022	08.35	OP - odvolání do rozhodnutí	plný text (799 kB)				
C4 - 1.	29.10.2021	09.37	Nový nápad	plný text (857 kB)			205 ICM 2970 / 2021	
C4 - 2.	29.10.2021	10.56	Doplnění podání žalobce/navrhovatele	plný text (1168 kB)				
C4 - 3.	28.01.2022	11.10	Pověření asistenta soudce/VŠU	plný text (696 kB)				
C4 - 4.	28.01.2022	13.04	Usn. o výzvě k zaplacení SOP/doplatku SOP	plný text (722 kB)				
C4 - 5.	21.02.2022	08.41	Usnesení - výzva, aby se účastník vyjádřil k žalobě	plný text (707 kB)				
C4 - 6.	11.03.2022	13.44	Sdělení	plný text (755 kB)				
C4 - 7.	24.03.2022	10.07	Vyjádření	plný text (2378 kB)				
C4 - 8.	30.03.2022	11.16	Připis	plný text (838 kB)				
C4 - 9.	04.04.2022	15.03	Vyjádření	plný text (676 kB)				
C5 - 1.	02.11.2021	08:23	Nový nápad	plný text (772 kB)			206 ICM 2990 / 2021	
C5 - 2.	02.11.2021	08:28	Pověření asistenta soudce/VŠU	plný text (703 kB)				
C5 - 3.	27.02.2022	12:51	Usn. o povinnosti zaplatit SOP	plný text (742 kB)				
C6 - 1.	02.11.2021	10:01	Nový nápad	plný text (788 kB)			206 ICM 2979 / 2021	
C6 - 2.	02.11.2021	10:12	Pověření asistenta soudce/VŠU	plný text (685 kB)				

BANKRUPTCY DEFINITION WORLDWIDE

„BANKRUPTCY IS A LEGAL PROCEEDING IN WHICH YOU PUT YOUR MONEY IN YOUR PANTS POCKET AND GIVE YOUR COAT TO YOUR CREDITORS.“

JOEY ADAMS



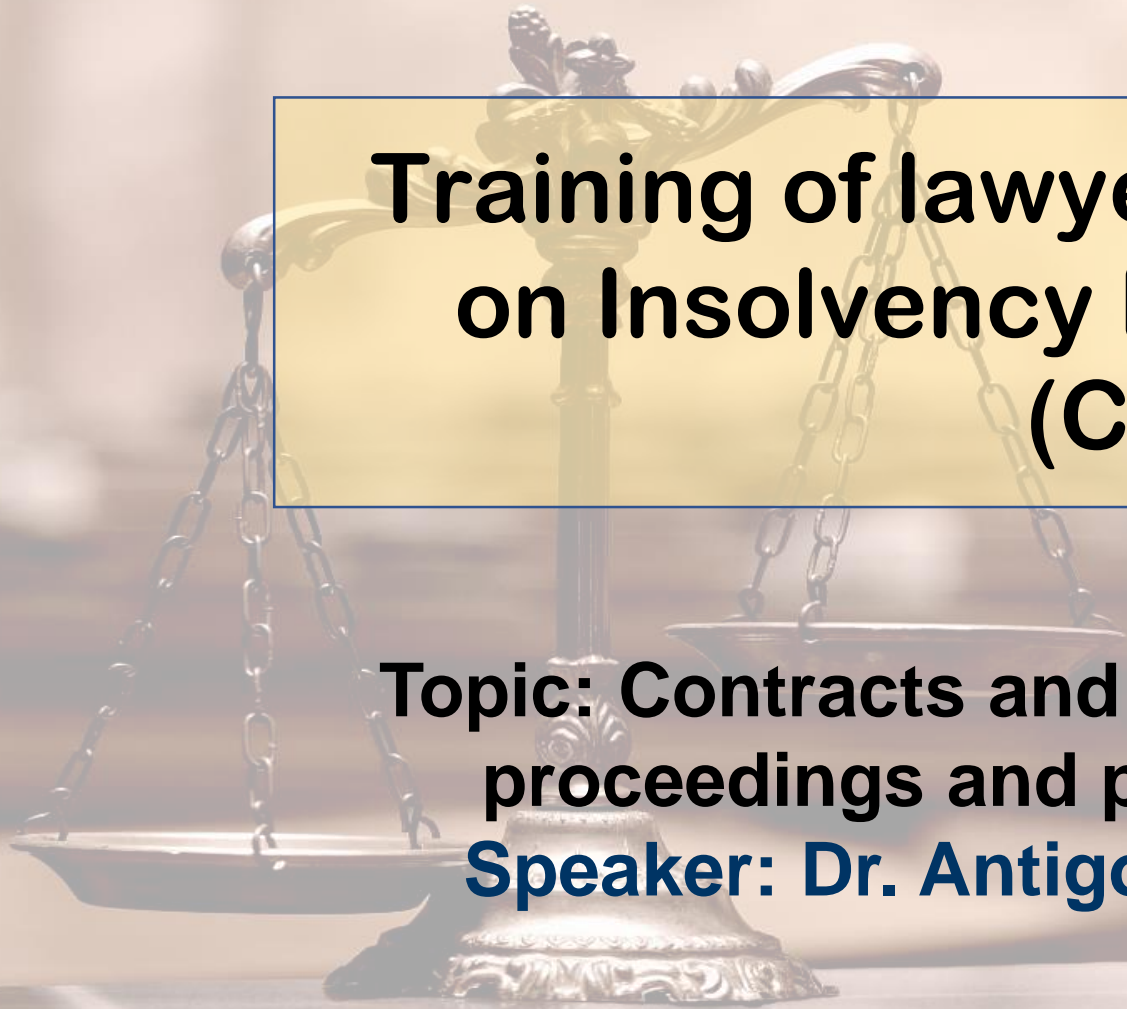
Joey Adams (January 6, 1911 – December 2, 1999),
born **Joseph Abramowitz**, was an American
comedian

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A pair of ornate, golden scales of justice is positioned on the left side of the slide. The scales are set against a background of a white fabric with yellow stars, resembling the European Union flag. The scales are slightly out of focus, with the focus on the text in the center.

Training of lawyers on EU instruments on Insolvency Law and Family Law (CiviLAW)

Topic: Contracts and rights related to insolvency proceedings and protection of third parties

Speaker: Dr. Antigoni ALEXANDROPOULOU

CiviLAW Webinar on Insolvency Law

8 June 2022

Zoom Webinar



The project is co-financed with the support of the European Union's Justice programme



General rule: the lex fori concursus - Art. 7 Regulation 2015/848

- The Law of the State of the opening of the insolvency proceedings determines the effects of the insolvency proceedings (opening, conduct, closure) both procedural and substantive.

Relevant case law: MG Probud Gdynia, C-444/07



Art. 7 (2) Non-exhaustive list of examples

...

Set-offs – Art. 7(2)(d)

Current contracts – art. 7(2)(e)

...

Ranking of claims, distribution of proceeds, rights of creditors who have been paid through the enforcement of security or set-off – art. 7(2)(i)

...

Exceptions to the rule

***“Save as otherwise provided in the Regulation”*: Art. 8-18**

Rationale (recital 67): to protect legitimate expectations of the contracting parties

- -**Third parties rights in rem** –Article 8;
- -**Set-off** –Article 9;
- -**Reservation of title** –Article 10.
- -**Contracts relating to immoveable property** –Article 11;
- -Payment systems and financial markets –Article 12;
- -**Contracts of employment** –Article 13;
- -**Rights subject to registration** –Article 14;
- - **European patents with unitary effect and Community trade marks** – Article 15
- - **Detrimental Acts** - Article 16
- -**Protection of third party purchasers** -Article 17;
- -Effects on pending lawsuits and arbitral proceedings –Article 18.



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Set-off (art. 9)

The rule: art. 7(2)(d)

The exception:

- A creditor can demand the set-off of his claim against the claims of the insolvent debtor provided the law applicable to the insolvent debtor's claim allows a set-off (even if the *lex concursus* prohibits a set-off).
- Determination of the applicable law to the debtor's claim in accordance with the ordinary rules of private international law.
- The law applicable to the debtor's claim may be the law of a third country (the regulation doesn't say of a MS).

Relevant case-law: *CeDe Group AB v KAN S.p. z o.o.*, C-198/18



Reservation of title (art. 10)

- When the title over the asset is not transferred upon delivery but upon payment.
 - The opening of insolvency proceedings against the purchaser of an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of the insolvency proceedings the asset is situated within the territory of a MS other than the MS of the opening of the insolvency proceedings (10(1)).
- fraudulent transfer of assets
- clause in the contract about not moving the asset from a specific MS's territory until payment is made.



- The opening of insolvency proceedings against the seller of an asset after delivery, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a MS other than the state of the opening of the insolvency proceedings (10(2)).

Relevant case law: German Graphics Graphische Maschinen GmbH v Alice van der Schee, C-292/08



Rights in rem (art. 8)

- The lex concursus shall not affect rights in rem
- Rationale (Recital 68): importance of third parties rights *in rem* for the granting of credit.
- Rights in rem:
 - Rights that the debtor has granted to third parties over his/her property as security for the repayment of a debt.
 - Over all assets, tangible or intangible, movable or immovable.
- Conditions:
 - the right in rem has been created before the opening of the insolvency proceedings.
 - the right must be in a different MS than the one of the opening of the proceedings.
- The lex concursus will govern the rights of creditors who have been paid in part through the enforcement of security (art. 7(2)(i)).



Relevant case law:

-Hermann Lutz v Elke Bäuerle, C-557/13

-ERSTE Bank Hungary Nyrt v Magyar Állam and Others, C-527/10

-SCI Senior Home v. Gemeinde Wedemark and Hannoversche Volksbank eG, C-195/15



Contracts relating to immovable property (art. 11)

Contract to acquire or make use of immovable property

- The effects of the insolvency proceedings will be governed by the law of the MS **where the immovable property is situated** (lex situs).
- What is immovable property: lex situs
- Whether a particular right resulting from a contract falls under the scope of art. 11: lex situs
- Para. 2 empowers the court of the insolvency proceedings to decide on certain issues.

Contracts of employment art. 13

- The law of the MS applicable to the contract of employment (*lex contractus*, including the MS insolvency law).
- Including contract, law or collective bargaining agreements.
- Lex contractus: art. 8 Rome I Regulation
- If the employment agreement is governed by the law of a third country=>lex concursus.
- Para. 2 empowers the court or the local authorities to take action under certain circumstances.
- Questions other than re. the effects of the insolvency proceedings on the contract=>lex concursus eg. if their claim has priority over other claims



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Effects on rights subject to registration - art. 14

- Rights of the debtor in immovable property, a ship, or an aircraft subject to registration in a public register.
- Applicable law: the law of the MS of the authority which keeps the register
- With regard to third countries national conflict of law rules (of the lex concursus) apply.
- Protects the system of registration and the legal certainty provided by it => art. 14 applies re. the question of admissibility and registrability of a right and their consequences (eg. declaratory function or condition of the creation of a right?).





European patents with unitary effect and Community trade marks

– Art. 15

- European patents, community trademarks and other similar Rights (eg. designs) established by EU law may be included only in the main insolvency proceedings (art. 3(1)).
- National patents/trademarks: possibility to open local proceedings.
- Art. 15 applies also on rights in rem over the above rights.



Detrimental acts

- The rule: Art. 7(2)(m) *lex concursus*

Acts prior to the opening of the insolvency proceedings: can they be set aside or avoided?

Voidness, voidability or unenforceability of acts detrimental to the body of creditors.

- The exception: Art. 16

Relevant case law: Lutz v. Bäuerle

- *Vinyls Italia SpA in liquidation v Mediterranea di Navigazione SpA*
- *Nike European Operations Netherlands BV v Sportland Oy*



Protection of third party purchasers - Art. 17

The validity of the disposal of an immovable asset

or a ship/aircraft subject to registration, or securities the existence of which requires registration by law =>

Is subject to the law of the MS (including its insolvency law) where

- the immovable asset is situated or
- the authority keeping the register is located.

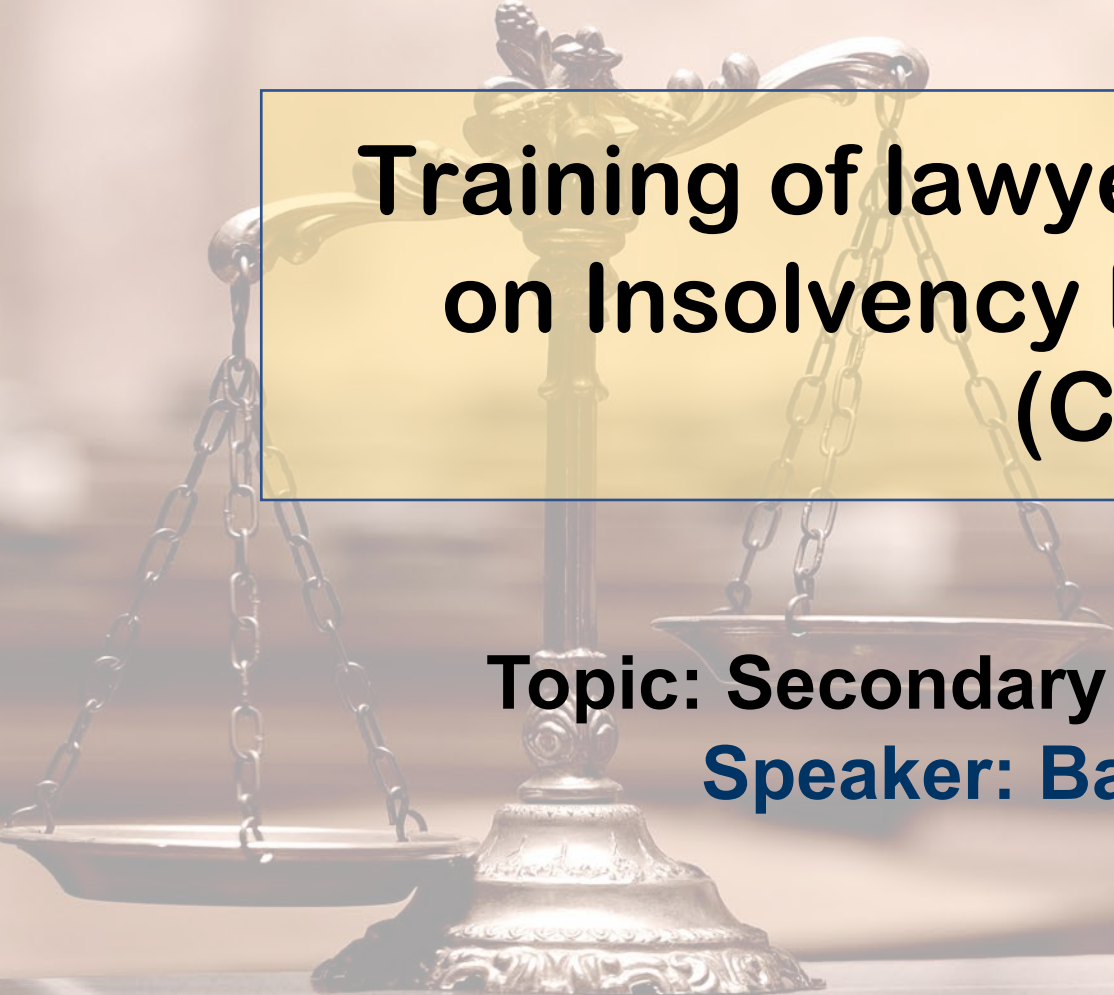
Rationale: protection of the good faith of third parties (and reliance on public registers).

Training of Lawyers on EU
Instruments on Insolvency
and Family Law



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THANK YOU FOR YOUR ATTENTION !!!

A pair of ornate, silver-colored scales of justice stands on a decorative base. The scales are positioned on the left side of the frame, with the pans hanging from a central point. The background is a blurred, light-colored surface, possibly a table or a wall, with a soft, warm glow.

Training of lawyers on EU instruments on Insolvency Law and Family Law (CiviLAW)

Topic: Secondary insolvency proceedings
Speaker: Bartosz Sierakowski

CiviLAW Webinar on Insolvency Law
8 June 2022
Zoom Webinar



The project is co-financed with the support of the European Union's Justice programme



the source of the law

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





main
insolvency
proceedings

territorial insolvency
proceedings

secondary insolvency
proceedings



Opening

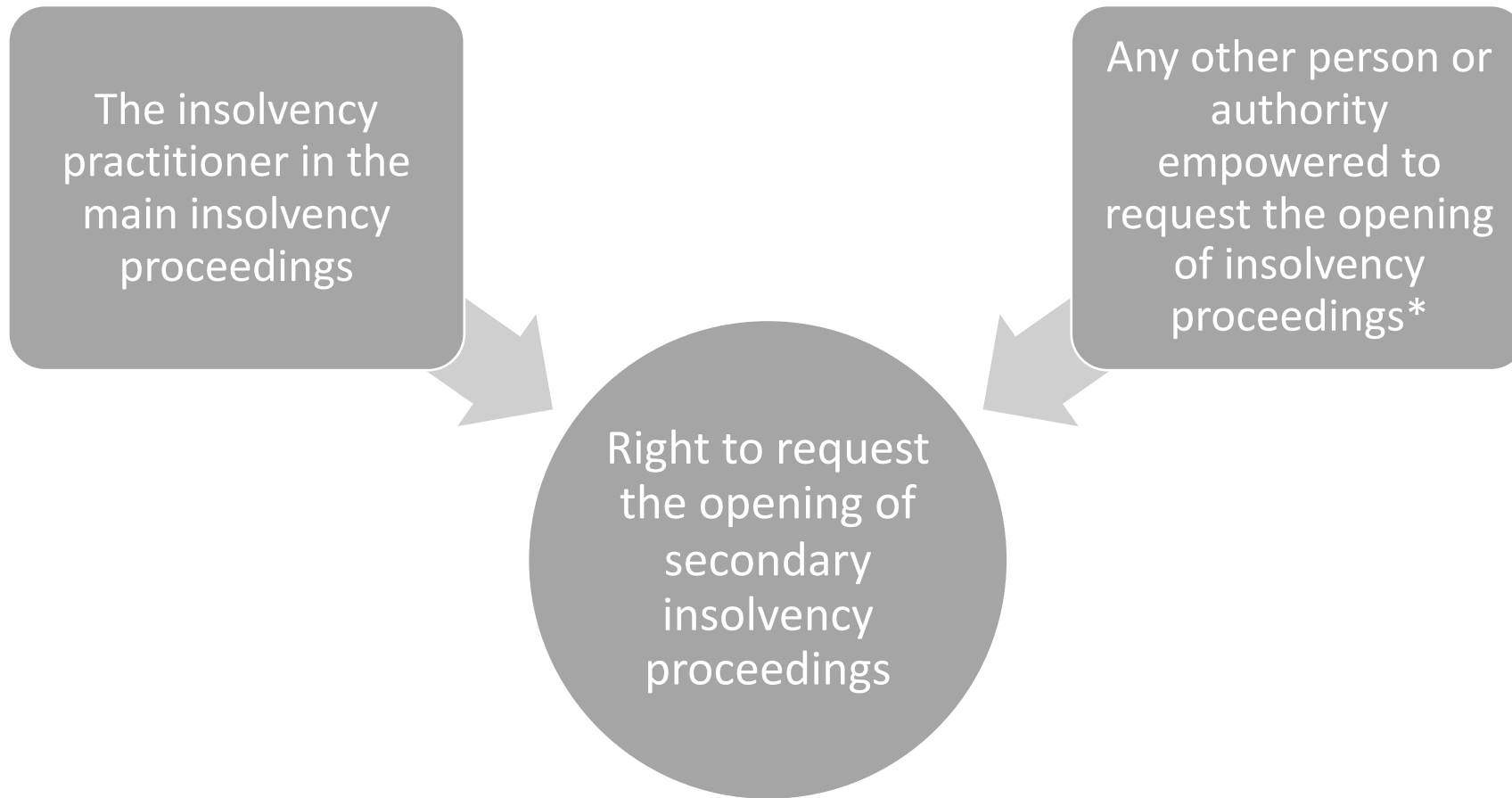
- Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment.

Assets

- The effects of secondary insolvency proceedings are limited to the assets located in that State.

The law

- That of the Member State within the territory of which the secondary insolvency proceedings are opened.



Training of Lawyers on EU Instruments on Insolvency and Family Law



#CIVILAW



*under the law of the Member State within the territory of which the opening of secondary insolvency proceedings is requested.

Decision to open secondary insolvency proceedings

A court seised 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



give it an opportunity to be heard on the request.

Training of Lawyers on EU Instruments on Insolvency and Family Law



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Protective measures

- The court 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.



Judicial review of the decision to open secondary insolvency proceedings



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The insolvency practitioner in the main insolvency proceedings may challenge the decision to open secondary insolvency proceedings before the courts of the Member State in which secondary insolvency proceedings have been opened on the ground that the court did not comply with the conditions and requirements of Article 38.



Advance payment of costs and expenses



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Where the law of the Member State in which the opening of secondary insolvency proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

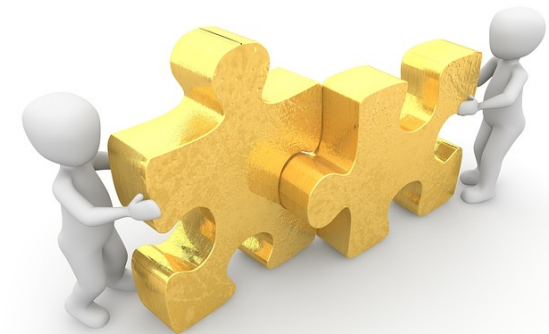




Cooperation and communication between insolvency practitioners

The insolvency practitioner in the main insolvency proceedings and the insolvency practitioner or practitioners in secondary insolvency proceedings concerning the same debtor shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings.

Such cooperation may take any form, including the conclusion of agreements or protocols.





In implementing the cooperation the insolvency practitioners shall:

as soon as possible communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor, or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information

explore the possibility of restructuring the debtor and, where such a possibility exists, coordinate the elaboration and implementation of a restructuring plan

coordinate the administration of the realisation or use of the debtor's assets and affairs; the insolvency practitioner in the secondary insolvency proceedings shall give the insolvency practitioner in the main insolvency proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary insolvency proceedings

Cooperation and communication between courts



It may, in particular, concern:

- coordination in the appointment of the insolvency practitioners
- communication of information by any means considered appropriate by the court
- coordination of the administration and supervision of the debtor's assets and affairs
- coordination of the conduct of hearings
- coordination in the approval of protocols, where necessary





an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings

an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open other territorial or secondary insolvency proceedings is pending or which has opened such proceedings

an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open main insolvency proceedings is pending or which has opened such proceedings

Cooperation and communication between insolvency practitioners and courts



- creditors

Any creditor may lodge its claim in the main insolvency proceedings and in any secondary insolvency proceedings



- the rights of the creditor

The insolvency practitioner shall be entitled to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

Stay of the process of liquidation of assets



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The court which opened the secondary insolvency proceedings shall stay the process of realisation of assets in whole or in part on receipt of a request from the insolvency practitioner in the main insolvency proceedings.





Stay of the process of liquidation of assets

In such a case, it may require the insolvency practitioner in the main insolvency proceedings to take **any suitable measure to guarantee the interests of the creditors** in the secondary insolvency proceedings and of individual classes of creditors.





The court shall terminate the stay of the process of liquidation of assets:



at the request of the insolvency practitioner in the **main** insolvency proceedings



- of its own motion,

- at the request of a creditor or at the request of the insolvency practitioner in the **secondary** insolvency proceedings

if that measure no longer appears justified, in particular, by the interests of creditors in the main insolvency proceedings or in the secondary insolvency proceedings

Assets remaining in the secondary insolvency proceedings



If, by the liquidation of assets in the secondary insolvency proceedings, it is possible to meet all claims allowed under those proceedings, the insolvency practitioner appointed in those proceedings shall immediately **transfer any assets remaining to the insolvency practitioner in the main insolvency proceedings.**



Power of the insolvency practitioner to propose restructuring plans

Where the law of the Member State where secondary insolvency proceedings have been opened allows for such proceedings to be closed without liquidation by a restructuring plan, a composition or a comparable measure, the insolvency practitioner in the main insolvency proceedings shall be empowered to propose such a measure in accordance with the procedure of that Member State.



The closure of insolvency proceedings shall not prevent the continuation of other insolvency proceedings concerning the same debtor which are still open at that point in time.



Thank you.



**Zimmerman
Sierakowski
i Partnerzy**



Bartosz Sierakowski

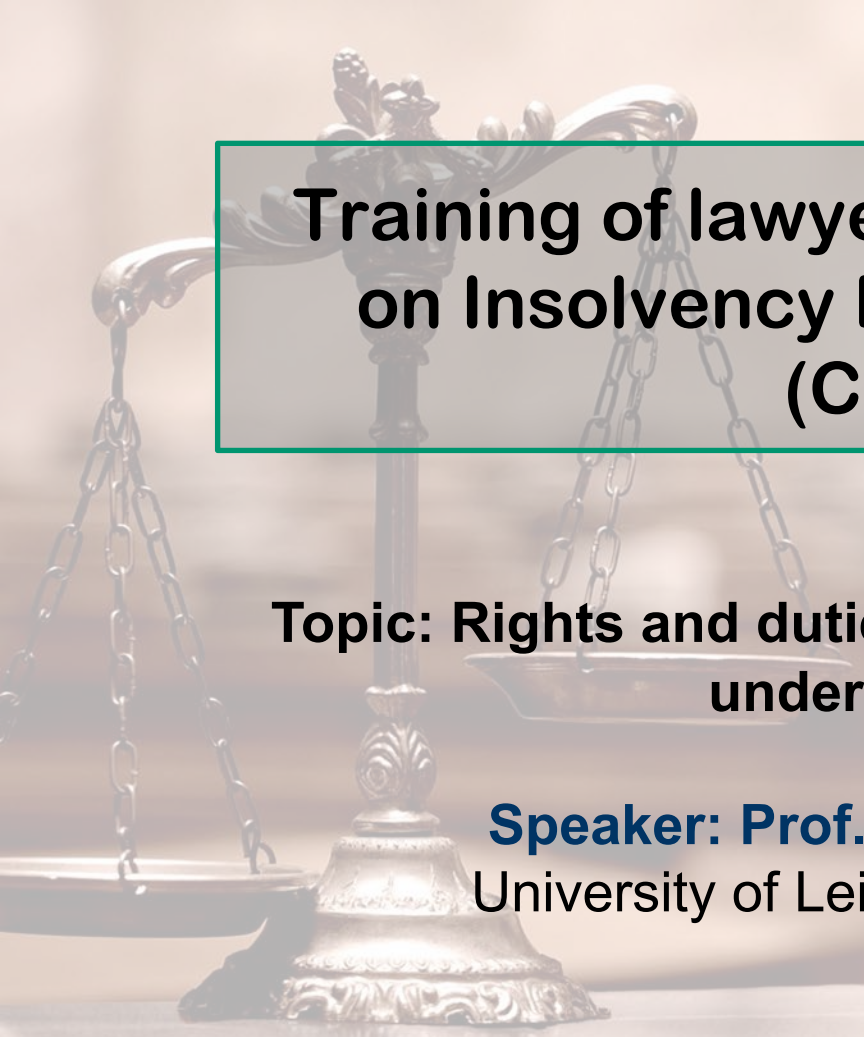
Wspólnik, radca prawny, doradca restrukturyzacyjny

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A pair of ornate, silver-colored scales of justice stands on a dark surface. The scales are slightly out of focus, with the background being a blurred image of a European Union flag. The scales have a central pillar and two pans hanging from chains.

Training of lawyers on EU instruments on Insolvency Law and Family Law (CiviLAW)

**Topic: Rights and duties of insolvency practitioners
under the EIR 2017**

Speaker: Prof. Dr. em. Bob Wessels
University of Leiden/Leiden Law School

CiviLAW Webinar on Insolvency Law
8 June 2022
Zoom Webinar



The project is co-financed with the support of the European Union's Justice programme



Main and secondary proceedings

Recital 48 EIR 2015:

(48) Main insolvency proceedings and secondary insolvency proceedings can contribute to the efficient administration of the debtor's insolvency estate or to the effective realisation of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings. Proper cooperation implies *the various insolvency practitioners and the courts involved cooperating closely*, in particular by exchanging a sufficient amount of information. In order to ensure *the dominant role of the main insolvency proceedings, the insolvency practitioner in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings* which are pending at the same time....



The IP 3.0

Article 26(1) PRD (2019/1023)

Practitioners in procedures concerning restructuring, insolvency and discharge of debt

Member States shall ensure that:

- (a) practitioners appointed by a judicial or administrative authority in procedures concerning restructuring, insolvency and discharge of debt ('practitioners') receive *suitable training* and have the *necessary expertise* for their responsibilities;
- (b) the conditions for eligibility, as well as the process for the appointment, removal and resignation of practitioners are clear, transparent and fair;
- (c) in appointing a practitioner for a particular case, *including cases with cross-border elements*, due consideration is given to the *practitioner's experience and expertise*, and to *the specific features of the case*; and
- (d) in order to avoid any conflict of interest, debtors and creditors have the opportunity to either object to the selection or appointment of a practitioner or request the replacement of the practitioner.

ELI Business Rescue Report

Recommendation 1.12:

The European and national legislators should set professional and ethical standards for insolvency practitioners and ensure that the relevant professional bodies are consulted and involved in the creation of such standards and that they take into account best practices for appropriately regulated professional parties as set out in principles and guidelines on regulation of the restructuring and insolvency profession developed or adopted by European and international non-governmental organisations active in the area of restructuring and insolvency.

Such standards should at least contain

- (i) rules on licensing and registration, (ii) supervision and discipline, (iii) qualification and training,
- (iv) an appointment system, (v) work standards during administration, (vi) legal powers and duties,
- (vii) remuneration, (viii) reporting and communication and
- (ix) ethical working standards (including rules on conflict of interests and (x) a complaint procedure).



ELI

EUROPEAN
LAW
INSTITUTE

<https://www.europeanlawinstitute.eu/projects-publications/completed-projects-old/insolvency/>



IP in EIR 2015

Powers:

- “IP”: broad concept of Art. 2(5) / Annex B / 114 national names for such persons or bodies
Germany lists 10 names, Austria 9, Italy 8 and Malta 6, where Spain list 2 names and Lithuania just one.
- Automatic recognition of insolvency proceedings opened in a MS means the recognition of the appointment of the IP and of its powers in all other MSs
- Nature, scope of “office”, rights and obligations of the liquidator are determined by the lex concursus (Art 7.2(c)). *Liabilities??*



Insolvency practitioner (IP) (Cont'd)

- Art. 21(1): the main IP may transfer assets out of the State in which they are situated; he must respect however Art. 8 (Third parties right in rem) and Art. 7 (Reservation of title)
- Defence of creditors: request opening of secondary proceedings
- Art. 21(3): the IP's duty to comply with the law of the MS within the territory of which it intends to take action exercising its powers
- However: main IP has “dominant” position, e.g.
 - Avoid opening secondary proc. (Art. 36 undertaking)
 - Ask for stay of process of realisation
 - Ask court to convert in other type of proc.
 - *See 2022-06-doc1*
- Anyway, they have to cooperate

Coordination main and secondary proceeding(s)



Cross-border cooperation and communication – EIR 2015

- Renewed recital 48
- Renewed Art. 41 (former 31)
CoCo between IPs
- Art. 42
CoCo between courts
- Art. 43
CoCo between IPs and courts

Including: use of *protocol*
or court approving it





E.g. Article 42—Cooperation and communication between courts

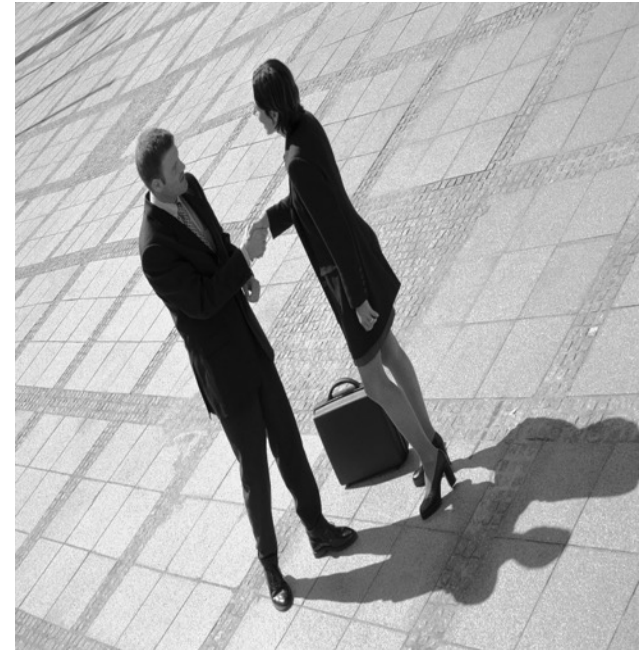
3. The cooperation referred to ... may be implemented by any means that the court considers appropriate. It may, in particular, concern:

- (a) *coordination in the appointment* of the insolvency practitioners;
- (b) *communication of information* by any means considered appropriate by the court;
- (c) coordination of the *administration and supervision* of the debtor's assets and affairs;
- (d) coordination of the *conduct of hearings*;
- (e) coordination in the *approval of protocols*, where necessary.

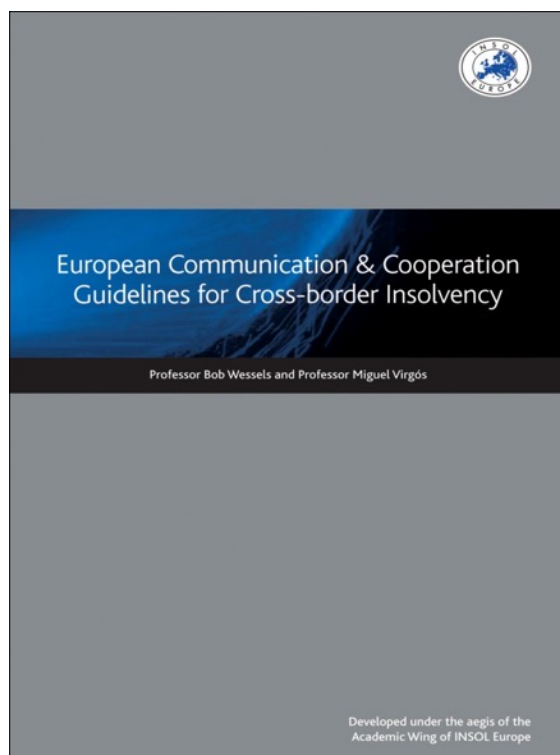
Shaping and Modeling “Cooperation”?

Recital 48, last line:

‘.... When cooperating, IPs and courts should take into account best practices for cooperation in cross-border insolvency cases, as set out in principles and guidelines on communication and cooperation adopted by European and international organisations active in the area of insolvency law, and in particular the relevant guidelines prepared by the United Nations Commission on International Trade Law (Uncitral)’



<https://www.insol-europe.org/download/documents/1113>





European Communication and Cooperation Guidelines For Cross-border Insolvency

CoCo Guidelines 2007

CoCo Guidelines (18 in number)

Endorsement by INSOL Europe

Status – “Soft law” / best practices

Promotes coordination, using ‘Protocols’ (includes “Checklist Protocol”)

- Examples:
 - Requirements for practitioners
 - Language
 - Fees and costs



CoCo Guidelines - Guideline 4

- 4.2. A liquidator is required to act with the appropriate knowledge of the EC Insolvency Regulation and its application in practice.
- 4.3. A liquidator is required to act honestly, objectively, fairly and expeditiously in dealing with all parties concerned, including the courts.



CoCo Guidelines - **Guideline 10**

- 10.1. Liquidators shall determine the language in which Communications take place on the basis of convenience and the avoidance of costs. The court is advised to allow use of other languages in all or part of the proceedings if no prejudice to a party will result.
- 10.2. Courts are encouraged, to the maximum extent permissible under national law, to accept any documents related to those communications in language decided upon under Guideline 10.1, without the need for a translation into the language of proceedings before them.



CoCo Guidelines - Guideline 11 Fees and costs

11.2. Obligations and fees incurred by the liquidator in the main proceedings prior to the opening of any secondary proceedings but concerning assets to be included in the estate of these latter proceedings in principle will be funded by the estate corresponding to the secondary proceedings.



CoCo Guidelines Appendix I Checklist Protocol

A Protocol is designed to apply within the framework of the EC Insolvency Regulation and all liquidators should be acquainted with the terms referred to in the Regulation, the Guidelines and in a Protocol. See Guideline 4.1. In practice, cooperation – and therefore a Protocol – will particularly refer to certain basic requirements and to specific issues to be addressed in the cross-border insolvency case at hand.

Basic requirements for a Protocol

1. A clause should be inserted, stating that nothing contained in the protocol shall be construed to increase, decrease or otherwise affect in any way the independence, sovereignty or jurisdiction of the relevant national courts.
2. An additional clause should be inserted, stating that the courts involved shall be entitled at all times to exercise its independent jurisdiction and authority with respect to matters presented to the courts and the conduct of the parties appearing in such matters, including the court's ability to provide appropriate relief on an ex parte basis or a limited notice basis.
3. A clause could be inserted, stating that where there is any discrepancy between the Protocol and the Guidelines either one of them (the Protocol or the Guidelines) will prevail.



Basic requirements

- **Basic requirements with regard to liquidators**

- 1. Statement of the status of the liquidators.
- 2. Statement that each of the liquidators is subject only to the jurisdiction of its own court.
- 3. Statement of the right of each of the liquidators to be heard as a foreign representative in the other insolvency proceedings.
- 4. Statement of each of the liquidators that they will communicate and cooperate with each other as best as possible under the application of the European Communication and Cooperation Guidelines For Cross-border Insolvency.

- **Basic requirements with regard to the debtor**

- 1. Statement of identity of the debtor and its management.
- 2. Statement of the involvement of the debtor prior to certain steps taken.

- **Basic requirement with regard to the proceedings**

- 1. Statement of type (main, secondary) and nature (domestic name) of the insolvency proceedings.
- 2. Statement of specific topics, like mandatory involvement of certain third parties or bodies and to certain mandatory forms to use.
- 3. Statement of the use of language.
- 4. Statement of division of costs.
- 5. Statement relating to methods of exchanging and sharing information.



Specific issues for cooperation

- 1. The goal of co-operation.
- 2. The performance of certain acts and timescales to realise this goal.
- 3. The coordination of issuing information to be communicated to creditors.
- 4. The coordination of lodging of claims.
- 5. The sharing of information on claims lodged, the verification and disputes concerning claims.
- 6. The ranking of creditors.
- 7. The description and disposal of relevant assets.
- 8. The actions planned or underway in order to recover assets, including action to obtain payment from debtors.
- 9. The location of assets.
- 10. The actions to obtain payment from debtors.
- 11. The initiation of actions to set aside detrimental acts.
- 12. The filing of actions against third parties in relation to the insolvent company.
- 13. The right to demand performance or to terminate an executory contract.
- 14. The exercise of any voting rights.
- 15. The decisions relating to (post-commencement) financing, including the provision of security.
- 16. The filing of additional insolvency petitions concerning establishments in other Member States.
- 17. The process of drawing up or the submission of a liquidation or reorganisation plan.
- 18. The distribution of any kind of dividends.
- 19. The application of the hotch-potch rule.
- 20. The applicable law on certain issues.
- 21. The closure of any insolvency proceedings and its effect on the continuation of other insolvency proceedings.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
:
In re : Chapter 11
:
Nortel Networks Inc., *et al.*,¹ : Case No. 09-10138 (KG)
:
Debtors. : Joint Administration Pending
:
: RE: D.I. 18
:-----X

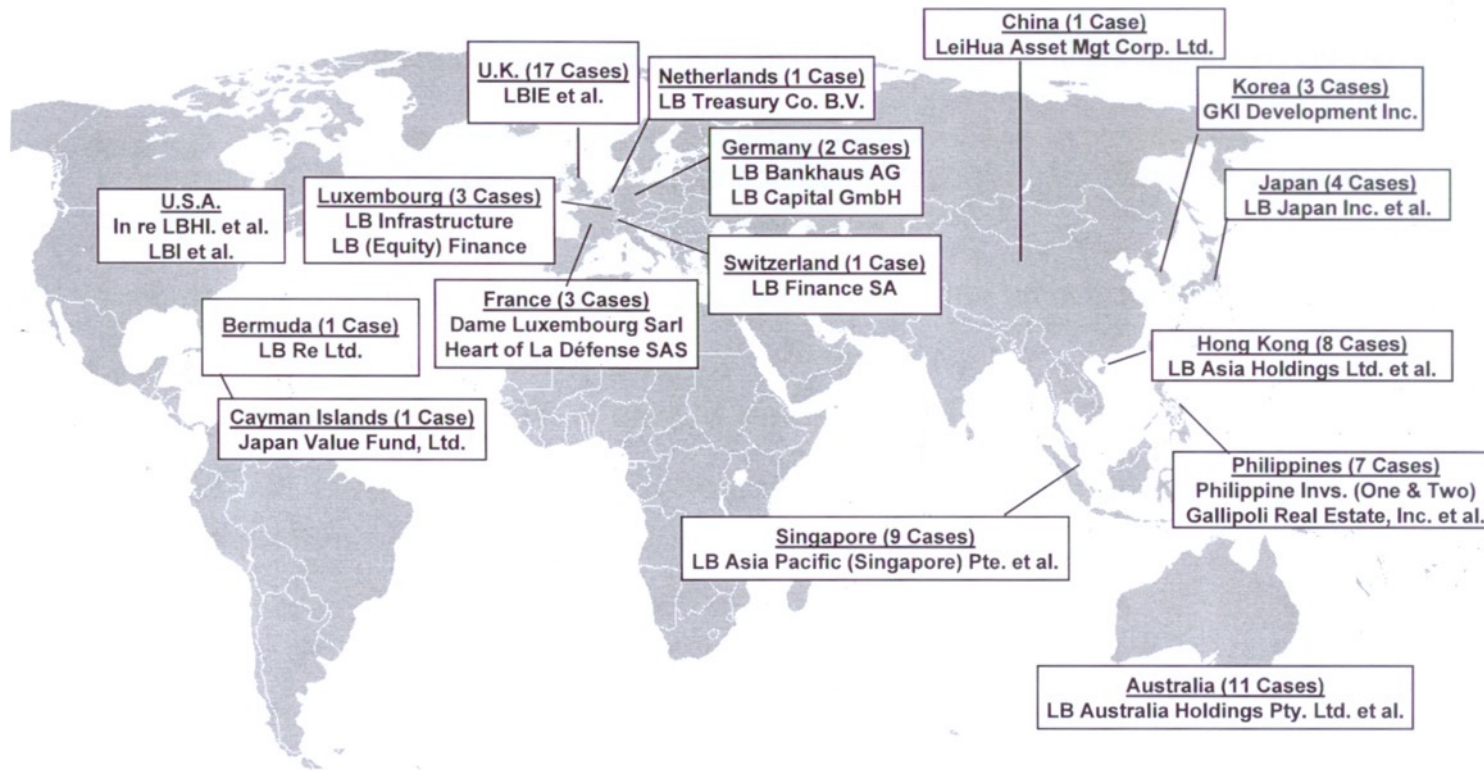
**ORDER PURSUANT TO 11 U.S.C. §§ 105(a)
APPROVING CROSS-BORDER COURT-TO-COURT PROTOCOL**

Upon the motion, dated January 14, 2009 (the "Motion"),² of Nortel Networks Inc. and its affiliated debtors, as debtors and debtors in possession in the above-captioned cases (the "Debtors"), for entry of an order, as more fully described in the Motion, pursuant to section 105(a) of title 11 of the United State Code (the "Bankruptcy Code"), approving that certain cross-border court-to-court protocol attached thereto as Exhibit B (the "Protocol"); and upon consideration of the Declaration of John Doolittle in Support of First Day Motions and Applications, filed concurrently with the Motion; and adequate notice of the Motion having been given as set forth in the Motion; and it appearing that no other or further notice is necessary; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having determined that

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Alteon WebSystems, Inc. (9769), Alteon WebSystems International, Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286) and Nortel Networks Cable Solutions Inc. (0567).

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

I. International Overview



1.3. The aims of this Protocol are:

- 1.3.1. **Coordination** – To promote international cooperation and the coordination of activities in the Proceedings; and to provide for the orderly, effective, efficient, and timely administration of the various Proceedings in order to reduce their cost and maximize recovery for creditors.
- 1.3.2. **Communication** – To promote communication among Official Representatives and Committees; and to provide, wherever possible, for direct communication among Tribunals.
- 1.3.3. **Information and Data Sharing** – To provide for the sharing of information and data among Official Representatives in order to promote effective, efficient, and fair administrations, and to avoid duplication of effort and activities by the parties.
- 1.3.4. **Asset Preservation** – To identify, preserve, and maximize the value of the Debtors' worldwide assets for the collective benefit of all creditors and other interested parties.
- 1.3.5. **Claims Reconciliation** – To avoid the unfair treatment of creditors by coordinating the claims process; and in particular, to provide for a consistent and measured approach to the calculation and adjudication of intercompany claims that avoids unnecessary intercompany litigation.
- 1.3.6. **Fair Distribution** – To cooperate in marshalling the assets of the Debtors in order to obtain a fair distribution of funds and maximize recovery for all of the Debtors' creditors.
- 1.3.7. **Comity** – To maintain the independent jurisdiction, sovereignty, and authority of all Tribunals.

2. Notice

- 2.1. The Official Representatives in each forum, as well as any Committees established in each Proceeding, shall receive notice of all matters in which they have an interest in all Proceedings, by email if possible, otherwise by overnight mail delivery service or fax.
- 2.2. Notice of any meetings, court hearings, or statutory deadlines shall be provided by each Official Representative to all other Official Representatives by email as far in advance as possible.

13. **Execution and Application**

13.1. This Protocol shall not prejudice the rights of the Official Representatives to seek the substantive consolidation of their proceedings in accordance with applicable law.

13.2. This Protocol shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators, trustee, receivers, custodians, or curators, as the case may be. Nothing herein shall create a right for any entity that is not a party to the Protocol.

13.3. Any request for the entry of an order which is contrary to the provisions of this Protocol must be made on notice to all Official Representatives and their respective Committees by the proponent of the order.

13.4. Each party represents and warrants to the other that its execution, delivery, and performance of this Protocol are within the power and authority of such party and has been duly authorized by such party, except to the extent that Tribunal approval is required.

13.5. This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by facsimile signature, which shall be deemed to constitute an original signature.

13.6. The Tribunals of each forum shall retain jurisdiction over the parties for the purpose of enforcing the terms and provisions of this Protocol or approving any amendments or modifications thereto.

13.7. The parties hereto are hereby authorized to take such actions and execute such documents as may be necessary and appropriate to implement and effectuate this Protocol.

13.8. This Protocol shall be deemed effective upon its approval by the Tribunals of each forum where a Proceeding is pending.

IN WITNESS WHEREOF, the parties hereto have caused this Protocol to be executed either individually or by their respective attorneys or representatives hereunto authorized.

Dated:

[], []

[], 2009

EU Cross-Border Insolvency Court-to-Court Cooperation Guidelines



Universiteit Leiden

NOTTINGHAM
LAW SCHOOL
Nottingham Trent University



The EU JudgeCo Principles serve as a practical tool

- 26 non-binding principles on case management of courts and the equal treatment of creditors and principles about the judicial decisions itself, on its reasoning and for instance on providing a stay or moratorium. Several principles relate to the course of the proceedings, such as notifications and authentication of documents, and principles on the outcome of judicial cooperation, for instance cross-border sales, assistance to a reorganisation or rules for binding creditors to an international reorganisation plan, and
- 18 EU Cross-Border Insolvency Court-to-Court Communications Guidelines ('EU JudgeCo Guidelines'), a set of very practical guidelines to facilitate communications in individual cross-border cases.
- The EU JudgeCo Principles and Guidelines will strengthen efficient and effective communication between courts in EU Member States in insolvency cases with cross-border effects.
- <https://www.universiteitleiden.nl/en/research/research-projects/law/eu-judgeco-platform>



2020 Example

- Result of judicial interprofessional cooperation between judicial institutes of France, Belgium, Spain and Poland, in the form of a set of guidelines for judicial cooperation
- Have been devised based on the professional training prepared by these countries' judicial training throughout 2020
- These guidelines aim at facilitating efficient cooperation between courts in terms of insolvency proceedings, taking into account other formulated standards in this area, such as (i) the 2007 'Insol European Communication and cooperation guidelines for cross border insolvency', (ii) the 2009 UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation and (iii) the standards adopted in 2012 by III (International Insolvency Institute) on Coordination of Multinational Enterprise Group Insolvencies. See https://www.enm.justice.fr/sites/default/files/guide_de_bonnes_pratiques_insolvency_en_v2.pdf. See also <https://www.insol-europe.org/eu-study-group-links>.



Protocols - recent literature / tools

- <https://bobwessels.nl/blog/2021-06-doc5-to-protocol-or-not-to-protocol-insolvency-law/>
 - Vattermoli/Madaus/Pasquariello/Castells 2021**
 - Kokorin/Wessels 2021
- ** Model protocols in French, German, Italian and Spanish
- <https://www.project-top.eu/news/e-books/>

Thank you for your attention!




Bob Wessels

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A pair of ornate, silver-colored scales of justice stands on a decorative base. The scales are positioned on the left side of the frame, with the pans hanging from a central point. The background is a soft-focus image of a European Union flag, showing the white stars on a blue field.

Training of lawyers on EU instruments on Insolvency Law and Family Law (CiviLAW)

**Topic: Jurisdictional issues in insolvency
proceedings and applicable law**

Speaker: Maria Carla Giorgetti (Italy)

CiviLAW Webinar on Insolvency Law

8 June 2022

Zoom Webinar



The project is co-financed with the support of the European Union's Justice programme



Cross-border insolvency:

the situation where the insolvent debtor has assets in more than one state or some of the creditors do not reside in the state where the insolvency proceedings take place.

In these cases, the active and passive mass is located in several States and this implies a necessary interaction between them.



The fact that each State can regulate insolvency autonomously creates difficulties of coordination between several procedures simultaneously pending in different fora with the risk of an overall inefficient insolvency management, of a contrast of judges and uncertainty in the execution phase.



The legislative evolution on the matter to date has seen the adoption of the following acts:

- 1) Unicitral Model Law in 1997
- 2) Regulation (EC) n. 1346/2000
- 3) Regulation (EC) 2015/848 (as modified by Regulation (EC) 2260/2021)

1) Model Law on Cross-Border Insolvency:

- Already known as UNCITRAL Model Law. It has represented the first step towards the reorganization in the matter, in the intent of offer a common discipline of the subject.
- It was adopted in 1997 by the United Nations Commission on International Trade Law in order not to create a single discipline for all States in the world, but to act as a model in the drafting of their national legislation, in compliance with the particularities and differences between individual internal procedures. It wasn't so successful (It has been adopted by 44 Countries).





2) Regulation (EC) 1346/2000

- The Regulation introduces the *COMI* criterion: “center of main interests” means the place where the debtor habitually carries out the management of his interests and is therefore recognizable by third parties.

- The Regulation applies only to procedures in which the center of the debtor’s main interests is within the Community.

- The procedure introduced by the Regulation in 2000 is universal and includes all the debtor's assets.
- However, to protect all the different interests, the Regulation allows to open a secondary procedure in the Member State where the debtor has a dependency, whose effects are limited to assets located in that State. Binding provisions of coordination with the main procedure also allow for compliance with the requirements of uniformity within the Community.



3) Regulation (EC) 2015/848 - as modified by Regulation (EU) 2021/2260

- 2105 Regulation was introduced to remedy the criticalities of the 2000 regulation, in particular the definition of a "*center of main interests*";
- it completely replaced the 2000 regulation;
- to date, the 2021 regulation has amended annexes A and B of the regulation, which contain the types of national insolvency proceedings (art. 2.4 Reg. 2015/848) and the national insolvency administrators





- European jurisprudence had tried to clarify that, for the purposes of identifying jurisdiction, *COMI* should be understood as the place where the debtor habitually and recognizable by third parties carries out the management of his interests.
- According to the position of the European Court, the EU Reg. 848/2015 clarifies that the *COMI* is the place where the debtor exercises the management of his interests in a habitual and recognizable way by third parties.



- Article 3.1 established that *"The courts of the Member State in whose territory the center of the main interests of the debtor is located (main insolvency procedure) are competent to open the insolvency proceedings. The center of main interests is the place where the debtor exercises the management of his interests in a habitual and recognizable way by third parties"*.

- The Regulation establishes uniform conflict-of-law rules that replace national rules of private international law.
- As a rule, it applies the law of the Member State in which the proceedings started (*lex concursus*). This conflict of laws rule applies to both the main insolvency proceedings and the local proceedings.
- The *lex concursus* determines all the effects of the insolvency procedure, whether procedural or substantive, on the subjects and legal relationships concerned. It governs all the conditions for opening, carrying out and closing insolvency proceedings.





However, it is quite possible that courts of different Member States could be considered competent to open cross-border insolvency proceedings, thus generating a conflict of jurisdiction and a conflict of applicable laws.

Positive conflicts of jurisdiction:

in such cases, the jurisdiction must be identified in application of the **prevention criterion** (one that was opened first as the main procedure).

This moment is meant as that in which the procedure begins to produce effects, coinciding with the moment in which the opening decision, which underlies it, begins to be recognized in the other Member States.

This moment, however, depends on the regulation of each State.





Negative conflicts of jurisdiction:

The resolution of negative conflicts of jurisdiction - this case is certainly rarer than the previous one - is more complicated, as a consequence of the difficulty in identifying the *COMI*.

However, in the lack of a specific provision, according to a part of doctrine, the jurisdiction can be identified based on the place where the debtor has a site, so as to be able to establish an independent territorial procedure in respect with paragraph 4 of art. 3 of Regulation 2015/848.



**Training of lawyers on EU instruments on
Insolvency Law and Family Law
(CiviLAW)**

**Topic: Preventive restructuring frameworks, on
discharge of debt and disqualifications**

Speaker: Martí Batllori

CiviLAW Webinar on Insolvency Law

8 June 2022

Zoom Webinar



The project is co-financed with the support of the European Union's Justice programme

BACKGROUND



- EC estimations
- Discrepancies and barriers, forum shopping
- Origins
- Regulation (EU) 2015/848 on insolvency proceedings across EU borders.
- EC Group of Experts

DIRECTIVE



-Objective:

Remove obstacles

-Scope:

-preventive restructuring framework and early warning tools with a view to preventing insolvency and ensuring their viability for debtors;

-procedures aimed to discharge of debt for entrepreneurs who are insolvent but honest

-measures to increase the efficiency of procedures concerning restructuring insolvency and discharge of debt

DIRECTIVE

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and Family Law



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-New rules

Early warning

Early restructuring

Breathing space before enforcement

Minority creditors

Access to financing

Court proceedings

Discharge period

DIRECTIVE

-**Early warning** tools and access to information

Innovation

Public business health system

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-Preventive restructuring frameworks

likelihood of insolvency

to preventing insolvency and ensuring their viability, without prejudice to other solutions for avoiding insolvency

Options

Restructuring plans

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-Discharge of debt

Importance of second chance

Options to States

3 years plan

Scope of persons

List of debts

DIRECTIVE: IMPLEMENTATION

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-Deadline 17 July 2021. One year extension

-8 out of 27:

Germany

Greece

France

Croatia

Lithuania

Austria

Portugal

Slovakia

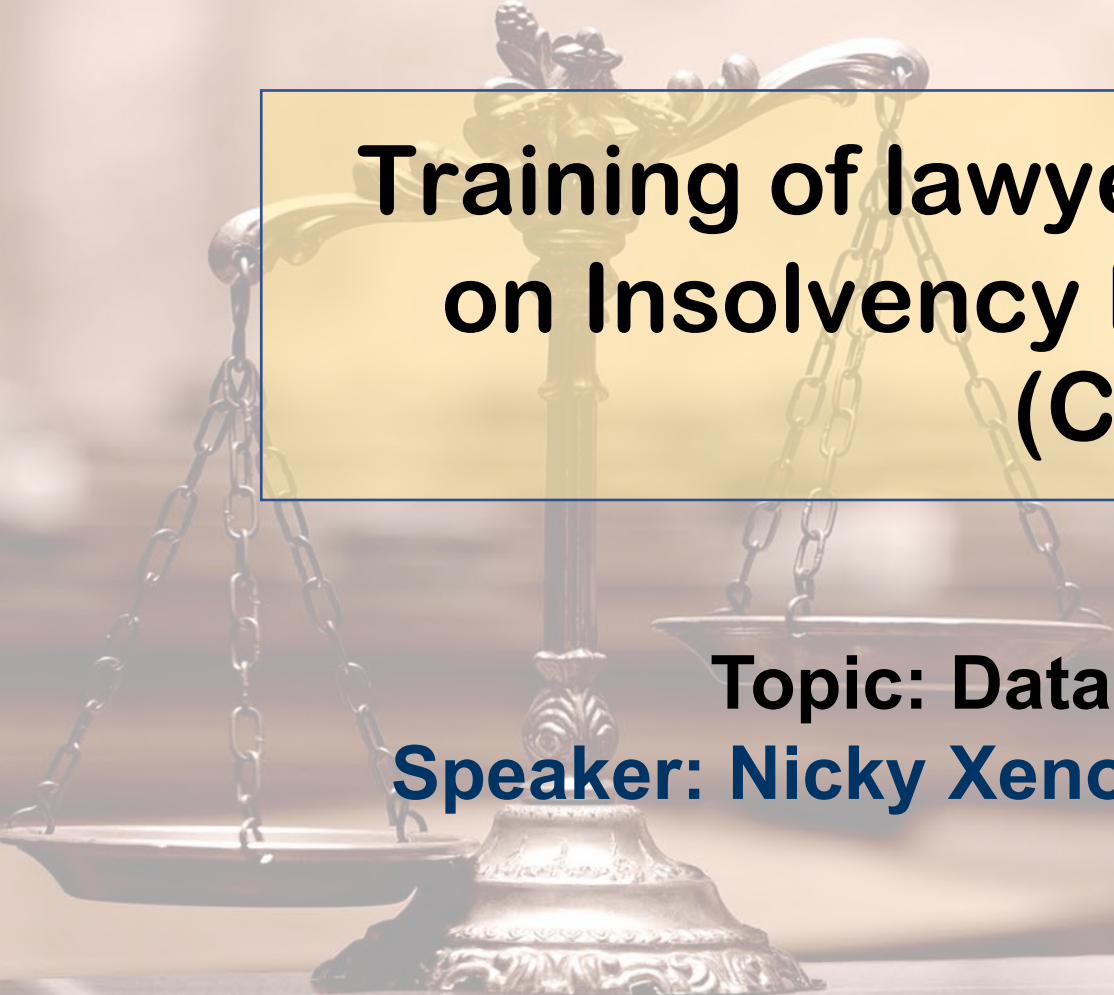
CONCLUSION

Future harmonisation

Training of Lawyers on EU
Instruments on Insolvency
and Family Law



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A pair of ornate, silver-colored scales of justice stands on a white surface. The scales are slightly out of focus, with the background showing a blurred European Union flag with its characteristic yellow stars on a blue field.

Training of lawyers on EU instruments on Insolvency Law and Family Law (CiviLAW)

Topic: Data Protection Issues

Speaker: Nicky Xenofontos – Advocate, Cyprus

CiviLAW Webinar on Insolvency Law

8 June 2022

Zoom Webinar



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Data Protection Issues

Insolvency:

- In insolvency proceedings, practitioners become aware of important information relating to a company's structure and financial information and hence they should know what personal data they hold, and accordingly, how they must treat it. Licensed IPs are required to keep records of their appointments, including a duty to keep records relating to the directors of the companies in respect of which they are appointed.
- The IP may also personally hold other information they have a duty to deal with, for example, list of debtors, list of creditors and the dividend distribution to the creditors, which may contain personal data. These records are kept by the IP and are not the same as the records of the insolvent company or bankrupt (although these may also be physically held by the IP).
- Where an IP is appointed, they will also become the data controller of the personal data held by the insolvent company. This is because the IP will control the purpose and manner in which the personal data is processed by the insolvent company. The IP must therefore comply with the relevant requirements of data protection laws, the local Cypriot laws and EU Regulations when dealing with personal data held by the insolvent company as well as all other personal data held in these various capacities.
- The GDPR (2016/679) was transposed into national law on the 31 July 2018 and applies to personal data only, whether held in electronic or hard copy form.



Data Protection Issues

Practical Points:

During their appointment, IP's are likely to encounter personal information both in relation to the insolvent entity itself (e.g. the company's customer and employee databases) and also in relation to information generated in the course of their appointment as office holder (e.g. creditor, debtor and director information where such individuals are natural, living persons). Given the scope of the GDPR (including the sanctions for non-compliance), IP's and their advisors should ensure they are well aware of the obligations and identify, pre-appointment, the relevant compliance issues to be addressed.

Therefore, IPs:

- Should data that has come into their possession and which part of all the data is subject to protection (in the context of them carrying out their duties and activities relating to the proceedings, and which personal data is being processed that can be based on a valid legal basis within the meaning of Article 6 of the GDPR (e.g. for the processing of data to the extent necessary for the legitimate interests being pursued by the data controller/processor).



Data Protection Issues

Practical Points:

- Review what personal data will be held, where it came from, where it is held and what purpose it is retained for
- Be alive to the need to demonstrate compliance: keep adequate records of what data is collected, the basis for collecting it, how long is it kept for and if shared/transferred outside EU
- Ensure there are adequate procedures in place for promptly responding to individual requests (data subject's rights)
- Review data breach response procedures for insolvent company (and IP's firm policy where breach may relate to practitioner-generated data)
- When appointed over major data holding companies (especially financial businesses) consider level of risk to the rights of individuals and ensure adequate measures (including IT security) is in place (this will be of significant importance when selling data assets in a formal insolvency process)
- Review any current privacy notices and ensure they are GDPR compliant
- Consider the types of processing activities you/the company carries out and identify and document the lawful basis for doing so
- Where consent is required, check how a data subject's consent has been sought, recorded and managed and consider what remedial steps may be required to bring it up to GDPR standard. To be GDPR compliant, where consent is required, it must be freely given, specific, informed and unambiguous
- Consider designating a person to carry out the Data Protection Officer functions set out in the GDPR (if not already in place).

Data Protection Issues

The European Insolvency Regulation ('EIR') Recast



The EIR has a separate chapter on data protection of insolvency registers and data transferred when selling an insolvent company.

- **Chapter VI** on Data Protection (Articles 78 – 83) is, compared with the Insolvency Regulation of 2000 which has been replaced, entirely new. It is a logical consequence of the introduction of a system of **interconnected insolvency registers**, which will increase flows of information transcending national borders, and gathered and exchanged throughout the EU, often electronically. The Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, amongst others by promoting their provisions concerning the protection of personal data.
- The allocation in the EIR Recast of a separate chapter on data protection indicates the heightened importance of this topic at the EU level. In the cross-border insolvency context, this issue becomes particularly relevant when applied to information contained in insolvency registers and (standard) notifications and claim forms. This information often contains the name, postal address, e-mail address (if any) and personal identification number (if any) of a creditor, which may all constitute personal data. Furthermore, in insolvency practice information regarding debtors of the insolvent debtor or data of subscribers or clients of an insolvent debtor (for example a child day-care centre, a fitness centre or a list of clients from a shop or an employment agency) will frequently be transferred separately as part of the sale of an insolvent business. Insolvency, indeed, is rather privacy sensitive.

Data Protection Issues

The European Insolvency Regulation ('EIR') Recast



- ➔ Scope of the EIR: Applies the types of insolvencies listed in Annex A that each MS has.
- ➔ Regarding data protection issues, Chapter VI states that processing of data in MS insolvency registers shall so be done by communicating to the Commission, the name of the natural or legal person, public authority, agency or any other body to exercise the functions of controller with a view to its publication on the European e-Justice Portal. MS must ensure that the technical measures for securing personal data processed are implemented (Article 24). Likewise, the Commission shall ensure security of such data as well.
- ➔ Regarding storage of information from the inter-connected national databases, no personal data relating to data subjects shall be stored in the e-Justice Portal.
- ➔ Regarding access to the registers, this is accessible from the e-Justice Portal for as long as the stored information remains accessible under national law.

Data Protection Issues

Final Thoughts

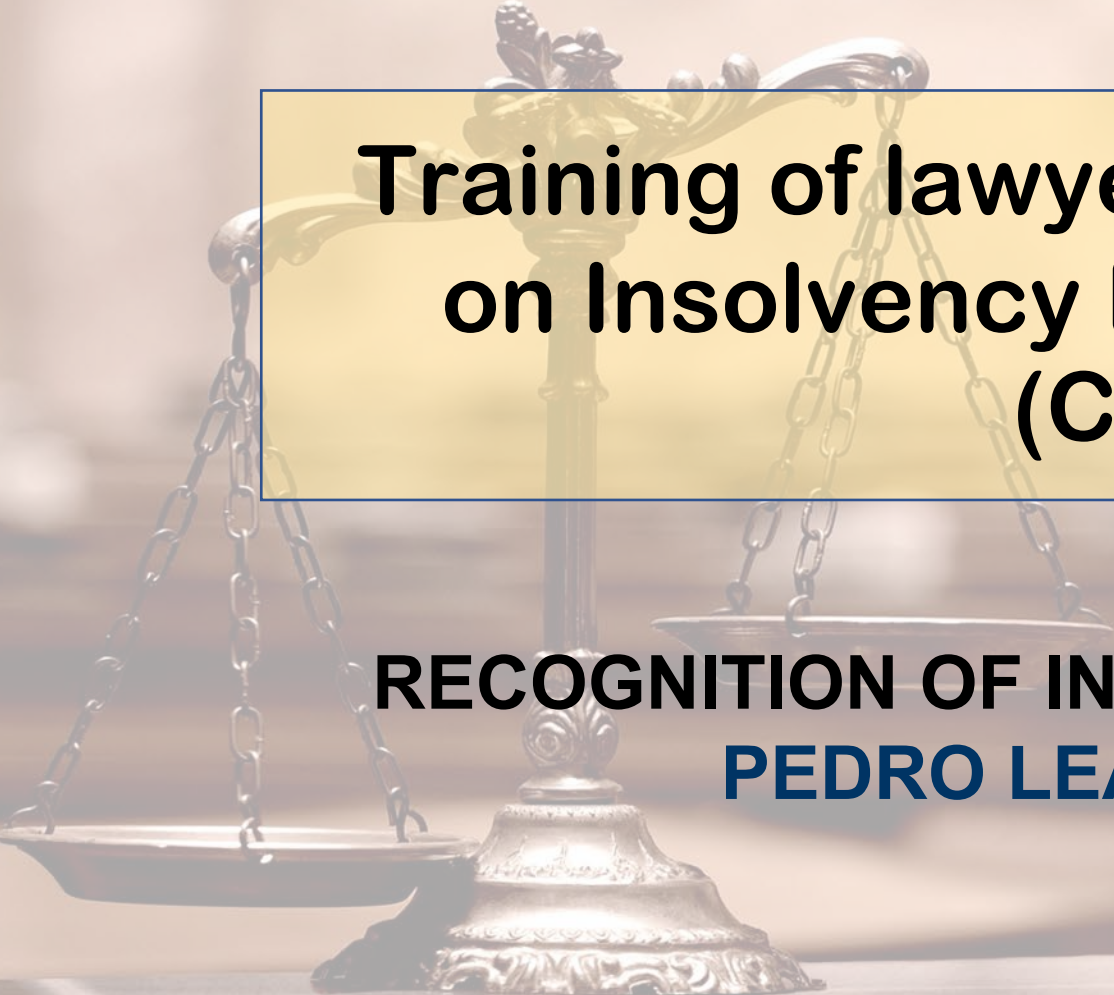


Even though the issue of data protection during insolvency proceedings may not seem too evident as one's mind automatically usually travels to the status of an entity, the company in insolvency is nevertheless actually quite apparent in light of data protection laws and regulations that IPs have a great deal of information coming into their possession that will be processed, stored and used to carry out the purpose of their appointment.

Data protection compliance should be towards the top of each IPs list prior to accepting appointment and they should be aware of the risks when handling an entities affairs and making decisions based on the information collected and that will be used during insolvency procedures.



Nicky Xenofontos, Advocate
N. Xenofontos LLC
Law Firm
Cyprus

A pair of ornate, silver-colored scales of justice stands on a decorative base. The scales are positioned on the left side of the frame, with the pans hanging from a central point. The background is a soft-focus image of a courtroom with rows of wooden benches.

Training of lawyers on EU instruments on Insolvency Law and Family Law (CiviLAW)

RECOGNITION OF INSOLVENCY PROCEEDINGS
PEDRO LEARRETA OLARRA

CiviLAW Webinar on Insolvency Law
8 June 2022
Zoom Webinar



The project is co-financed with the support of the European Union's Justice programme



GENERAL PRINCIPLE:

- i. The **automatic and immediate recognition** within the territory of the European Union of any judgement handed down by a tribunal of a member state “opening insolvency proceedings”:
 - a. Based on mutual trust (grounds for non-recognition are reduced to minimum).
 - b. Therefore, no power is granted to scrutinize that court's decision by the tribunals of any other member state.

- ii. **Goals of the system:**
 - a. To provide legal certainty in cross-border insolvency: common effects in the whole territory.
 - b. To promote efficiency of insolvency proceedings: territory should not be an obstacle to reach a solution.
 - c. To eliminate inequalities: so the competition is free indeed.
 - d. **As a result:** the insolvency proceedings in any member state are deemed to be **universal** (they aim to encompass all the debtor’s assets and affect all creditors wherever they are).



GENERAL PRINCIPLE:

- iii. The “**recognition**” of the judgment in another state means:
 - a. No further formalities (no need of *exequatur proceedings*) to be effective.
 - b. Same effects (in any other member state) as under the law of the State of the opening of proceedings.

- iv. It is **automatic**:
 - 1. Legal exceptions: no jurisdiction of the court handing down the judgment.
 - 2. “Centre of the debtor’s main interests” (place where the debtor conducts the administration of its interests on a regular basis and is ascertainable): It is an *autonomous concept of open character*.
 - 3. Presumption: place of the “registered office”.
 - 4. The possibility of opening territorial insolvency proceedings (“secondary”):
 - 1. Assets of the debtor (situated in the territory of another member state).
 - 2. Restriction of creditor’s rights against assets (only if they give their consent).



GENERAL PRINCIPLE:

v. It is immediate:

a. From the moment that it becomes effective in the state of the opening:

- a. Before the Courts: The insolvency practitioner's appointment shall be evidenced by a certified copy of the original decision appointing it or by any other certificate issued by the court which has jurisdiction.
- b. Before third parties: No legalization or other similar formality shall/should be required.

b. Also where insolvency proceedings cannot be brought against that debtor in other Member States.



SOME RULES REGARDING THE INSOLVENCY PRACTICIONER

i. Powers:

a. May be exercised in another member state:

1. Restrictions:

- As long as no other insolvency proceedings are opened there.
- As long as no preservation measure to the contrary has been taken there.

2. Conditions: comply with the law of the member state within the territory of which it intends to take action.

b. No coercive measures, no right to rule on legal proceedings or disputes.



SOME RULES REGARDING THE INSOLVENCY PRACTICIONER

ii. Right to avoid the opening of secondary proceedings:

- a. By giving a unilateral “undertaking” in respect of the assets located in the member state in which it could be opened: the court seized of a request to open secondary insolvency proceedings should be able to refuse that request if it is satisfied that the undertaking adequately protects the general interests of local creditors.
- b. When distributing those assets or the proceeds, it will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that member state.
- c. Law applicable to the distribution of proceeds from the realization of assets, to the ranking of creditors' claims, and to the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the member state in which secondary insolvency proceedings could have been opened.



SOME RULES REGARDING CREDITORS RIGHTS.

- i. Lodge claims in insolvency proceedings by any means of communication, which are accepted by the law of the State of the opening of proceedings, both in the main insolvency proceedings and in any secondary insolvency proceedings.

- ii. Use the standard claims form.

GARRIGUES

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