INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

THE QUEST FOR COORDINATION OF PROCEEDINGS IN CROSS BORDER INSOLVENCY CASES

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1. **Do you have the notion in you legal system of main insolvency proceedings. Is this notion procedural or substantial? Is this notion purely international or also domestic?**

French insolvency law does not distinguish between main and secondary insolvency proceedings. When insolvency proceedings are opened under the jurisdiction of French courts, and therefore governed by French law[1], subject to the applicability of any contrary international conventions (Cf. *infra*) or European Union (EU) laws, they have a universal scope and apply to all of the debtor's assets, wherever they may be[2].

The absence of the possibility for foreign insolvency proceedings to run in parallel with French proceedings is also characterized by the conditions laid down by French law for the enforcement in France of foreign insolvency proceedings. In order for foreign insolvency proceedings to produce their full effects in France, they must be granted *exequatur*, or enforcement, by the French judiciary[3]. However, a major condition for the enforcement of foreign insolvency proceedings in France is the absence of the prior opening of insolvency proceedings against the same debtor in France[4]. Once proceedings have been opened in France, foreign insolvency proceedings are barred from being granted enforcement in France. Inversely, if foreign insolvency proceedings are granted enforcement in France (in the absence of any concurrent French insolvency proceedings), French courts are subsequently barred from opening insolvency proceedings against the same debtor[5].

As regards international conventions, to our knowledge, the only international convention (excluding EU legislation) relating specifically to cross-border insolvencies currently in force in France is the France-Monaco Convention of 13 September 1950 Relating to Bankruptcy and Judicial Liquidation[6]. Like French law, this Convention does not distinguish between the concepts of main and secondary insolvency proceedings.

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[1] T. Mastrullo, 'Entreprises en difficulté (Droit international et européen", Répertoire de droit des sociétés – Dalloz, §42; L. C. Henry, "Fasc. 3130: Redressement et liquidation judiciaires – Procédures collectives en droit international – Règles de droit commun", JurisClasseur Procédures collectives, §79

[2] Cass. Civ. 1ère, 19 Nov. 2002, *Banque Worms*, Bull. civ. I, No. 275, D. 2002. AJ 3341; Cass. Com., 21 March 2006, *Khalifa Airways*, Bull. civ. IV, No. 74, Bull. Joly 2006. 930.

[3] Article R. 212-8 of the French Code of Judicial Organization.

[4] Cass. Com., 11 April 1995, *BCCI*, Bull. civ. IV, No. 126, D. 1995. 640.

[5] Cass. Com., 11 April 1995, *Ibid*.

[6] T. Mastrullo, "Entreprises en difficulté (Droit international et européen", Répertoire de droit des sociétés – Dalloz, §169-177; A. Martin-Serf, "Fasc. 2200 : Sauvegarde, redressement et liquidation judiciaires – Règles générales de compétence", JurisClasseur Procédures collectives, §67-69.

The notion of "main insolvency proceedings" does, however, exist in the French legal system by virtue of EU Council Regulation (EC) No. 1346/2000 of 29 May 2000, which came into force in France on 31 May 2002[7]. Hence, the concept, which can be defined as proceedings having universal scope, aiming at encompassing all the debtor's assets and being opened in the Member State within the territory of which the centre of a debtor's main interests is located, derives purely from EU law (Recital 12 of Regulation No. 1346/2000).

Rather than interfering with the substance of national legislations, the Regulation prioritizes the coordination between national legal systems by using private international law mechanisms. It essentially sets out conflict of jurisdiction rules, defining, in particular, the conditions of recognition of decisions rendered in the field of insolvency proceedings, as well as rules of conflict of laws. These private international law rules can be considered procedural rules as opposed to the very rare substantives rules of the Regulation (such as Article 5, providing that the rights *in rem* of creditors or third parties over the debtor's assets located in another Member State at the time of the opening of the main proceedings are unaffected by such proceedings).

The notion of "main insolvency proceedings" in Regulation No. 1346/2000 is primarily developed within the framework of such conflict of jurisdiction rules. One can point, for example, to Article 3§1 which determines which courts shall have jurisdiction to open main insolvency proceedings under the Regulation, as well as to Article 16, determining the conditions for the recognition of the judgment opening the main insolvency proceedings in other Member States. Hence, the concept of "main insolvency proceedings" can be considered as being essentially procedural.

2. Do you know the notion of secondary insolvency proceedings? Is this notion purely international or also domestic?

As stated in Question 1, the notion of "secondary insolvency proceedings" is not present in French law, nor in international conventions (excluding EU legislation) relating to cross-border insolvency and currently in force in France.

7 This Regulation is repealed and replaced by Regulation (EU) No. 2015/848 on Insolvency Proceedings, which shall become applicable in France as of 26 June 2017.

The notion exists in the French legal system by virtue of the abovementioned EU Regulation No. 1346/2000. "Secondary insolvency proceedings" can be defined as winding-up proceedings that run parallel to main insolvency proceedings, are opened in the Member State where the debtor has an establishment and whose effects are limited to the assets located in that Member State (Recital 12 of Regulation No. 1346/2000). The concept therefore derives purely from EU law.

3. **Are the material effects of the main proceedings halted when secondary proceedings elsewhere are opened? Please specify, if this is not the case, whether or not the law of the State in which main proceedings are opened shall affect certain rights of third parties or have effect in certain contractual relations, e.g. labour contracts.**

Recital 12 of Regulation No. 1346/2000 provides that secondary proceedings are allowed to be opened and *"run in parallel with the main proceedings"*. The main insolvency proceedings are therefore not halted when secondary proceedings are opened elsewhere.

However, certain effects of the main insolvency proceedings are indeed suspended with regard to Member States in which secondary proceedings are opened. This is expressly provided by article 17§1 of the Regulation, according to which the judgment opening main insolvency proceedings shall not produce the same effects in another Member State as under the law of the State of the opening of the main proceedings if secondary proceedings have been opened in that other Member State.

This is reinforced by Article 28 of the Regulation, whose effect is to bar the extraterritorial application of the law governing the main insolvency proceedings to the secondary proceedings. Indeed, according to this provision, the law applicable to the secondary proceedings is that of the Member State in which the secondary proceedings are opened. Hence, in principle, it is the law of the Member State in which secondary proceedings are opened, and not the law of the Member State of the main proceedings, that shall govern the procedural and substantive effects of the secondary proceedings. Consequently, the law of the Member State in which the main proceedings are opened does not affect rights of third parties or certain contractual relations in the Member State where secondary proceedings are opened, these secondary proceedings being governed by the law of the latter Member State.

Moreover, according to Article 18§1 of the Regulation, the liquidator appointed in the main insolvency proceedings is barred from exercising the powers conferred on him by the law of the Member State of the main proceedings in another Member State if other insolvency proceedings have been opened there. In particular, the liquidator of the main proceedings is barred from removing the debtor's assets from the territory of Member States where secondary proceedings have been opened.

This is not to say, however, that the main insolvency proceedings shall have no effect whatsoever on the secondary proceedings. The Regulation provides that the liquidator in the main proceedings shall have the power to request the opening of secondary proceedings (Article 29(a)), request the stay of the process of liquidation in the secondary proceedings from the court which opened such proceedings (Article 33§1), and propose – if the law applicable to the secondary proceedings permits it - the termination of the secondary proceedings without liquidation by a rescue plan, a composition or a comparable measure (Article 34§1). Furthermore, the liquidator in the secondary proceedings is duty bound to communicate to the liquidator in the main proceedings any information which may be relevant to the main proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings (Article 31§1), as well to give him an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings (Article 31§3). The liquidator in the secondary proceedings is also obligated, if it is possible to meet all claims under the secondary proceedings by the liquidation of the assets in these proceedings, to transfer any assets remaining to the liquidator in the main proceedings (Article 35).

4. Shall the creditors have the right to lodge claims in any of the insolvency proceedings (main and secondary)?

Article 32§1 of the Regulation expressly provides that "[a]*ny creditor may lodge his claim in the main proceedings and in any secondary proceedings*".

5. Are the dividends in all proceedings pooled? In other words, are dividends obtained in proceeding X deducted from dividends to be obtained in other proceedings?

Article 20§2 of the Regulation promotes the equal treatment of creditors on a cross-border level by rationalizing the possibility open to each creditor to lodge claims in any insolvency procedure (main or secondary). Indeed, according to this provision,

> "[…] *a creditor who has, in the course of insolvency proceedings, obtained a dividend on his claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend*".

Hence, for example, if a creditor X has obtained 1,000 Euros in dividends in proceedings A, he shall only share in the dividends of proceedings B after 1,000 Euros have been distributed from these proceedings to creditors of the same ranking or category as creditor X. As such, from the point of view of creditor X, the dividends obtained by him in proceedings A can be said to be deducted from the total dividends available for distribution in proceedings B in the presence of creditors of same ranking or category as him, as creditor X shall only share in whatever dividends remain in proceedings B after the initial 1,000-Euro distribution to the other creditors is made.

6. If by liquidation of assets in any secondary proceedings it is possible to meet all claims, shall the liquidator transfer any remaining assets to the liquidator in the main proceedings?

Article 35 of the Regulation expressly provides that:

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

7. Does the so-called "dominance" of the main proceedings creates a leading role for the liquidator, appointed in the main proceedings, to coordinate all insolvency proceedings pending against the same debtor?

The "dominance" of the main proceedings stems from the content of EU Regulation No. 1346/2000 itself. Such "dominance" is reflected by the leading role attributed to the liquidator of the main proceedings as regards a certain number of procedural initiatives. For instance, the liquidator of the main proceedings can request the opening of secondary proceedings (Article 29), propose the termination of the secondary proceedings when these proceedings can be closed by a rescue measure or a comparable measure (Article 34) or request that the territorial insolvency proceedings opened prior to the opening of insolvency proceedings (in accordance to Article 3§4) be converted into winding-up proceedings, *"if this proves to be in the interests of the creditors in the main proceedings"* (Article 37). He is also entitled to request the stay of the secondary proceedings, it being specified that such request *"may be rejected only if it is manifestly of no interest to the creditors in the main proceedings"* (Article 33).

However, EU Regulation No. 1346/2000 has also instituted a reciprocal duty, for the liquidators of both the main and the secondary proceedings, to cooperate and communicate information to each other (Article 31). As regards this specific duty, the EU Regulation does not provide for any hierarchical order between both liquidators, and does not provide much information about the content of the reciprocal duty. French practice has developed a contractual approach of such a duty, by the signing of detailed protocols

between liquidators of main and secondary proceedings, defining their respective roles in the dealing of the claims lodged against the debtor's estate and the assets of the debtor. A French lower court has, for the first time, authorized the conclusion of such a protocol in a decision dated 29 June 2006 (Nanterre Commercial Court, 29 June 2006, No. 05L0823, *Sendo International Limited*).

8. How do you think the above mentioned issues have been tackled by the new EU Regulation on Transnational Insolvency? If yes, in which way defective or useful?

Our opinion is that most of the issues addressed in Questions 1 to 7 have not been impacted by the new EU Regulation on Transnational Insolvency (Regulation No. 2015/848) compared with former Regulation No. 1346/2000).

The notion of "main insolvency proceedings" has remained unchanged (see Recital No. 23 of Regulation No. 2015/848). The provisions of Regulation No. 1346/2000 suspending the effect of the main insolvency proceedings in a Member State where secondary proceedings have been opened are still present in the new Regulation (see Articles 20, 21 and 35 of Regulation No. 2015/848). The dominance of the main insolvency proceedings over the secondary proceedings is still asserted in Regulation No. 2015/848 (see Articles 37, 46, 47 and 51 of the new Regulation). Creditors still have the right to lodge claims in any of the proceedings (Article 45§1 of the new Regulation). The transfer of any remaining assets after liquidation in the secondary proceedings to the liquidator (now referred to as "insolvency practitioner" under the new Regulation) of the main proceedings is still provided for (Article 49 of Regulation No. 2015/848). Finally, the pooling of dividends is still provided for under the new Regulation (Article 23§2 of Regulation No. 2015/848).

The main impacts of the new Regulation in this regard are the modification of the concept of secondary insolvency proceedings (a), the reinforcement of the powers of the insolvency practitioner of the main proceedings (b), the clarification of certain key notions (c), the introduction of anti-forum shopping measures (d) and the strengthening of the cooperation between the protagonists of the main and secondary proceedings (e).

a) <u>Modification of the concept of secondary insolvency proceedings</u>

One important impact of the new Regulation is that unlike under Regulation No. 1346/2000, secondary insolvency proceedings under Regulation No. 2015/848 do not have to be winding-up proceedings, but can be, like the main insolvency proceedings, any one of the proceedings listed in Annex A of the new Regulation (Articles 2§4 and 38§4).

This should help avoid problems such as the one raised before the European Court of Justice (ECJ) in the *Bank Handlowy vs. Christianapol* case[8]: in this case, the Court was faced with a question on how to articulate a *procédure de sauvegarde* opened in France as main proceedings – providing that the debtor could pay off its debt over ten years coupled with the inalienability of certain assets - with judicial liquidation proceedings opened in Poland as secondary proceedings. While the French government and the debtor argued that the opening of the secondary proceedings in Poland should be prohibited in this case since such proceedings are incompatible with the purpose of the main proceedings in France, the ECJ refused to take this position and allowed the opening of the Polish proceedings. The Court did, however, to the purpose of ensuring the effective coordination between main and secondary proceedings in such a scenario, lay down the principle whereby

> *"It is for the court having jurisdiction to open secondary proceedings to have regard to the objectives of the main proceedings and to take account of the scheme of the Regulation, in keeping with the principle of sincere cooperation."*

However, this principle does not help preventing the occurrence of such incoherent situations where main debt-restructuring proceedings (whose purpose is to improve or restore the debtor's liquidity so that it can continue its operations) run in parallel with secondary winding-up proceedings (aimed essentially at the debtor's dissolution and the redistribution of its assets amongst creditors) elsewhere.

By providing that secondary proceedings can be any of the proceedings listed in Annex A, and hence not necessarily having to be winding-up proceedings, the new Regulation allows for the possibility of opening secondary proceedings that are more coherent with the purposes of the main proceedings when these main proceedings are aimed primarily at debt restructuring rather than the winding-up of the debtor.

b) Reinforcement of the powers of the insolvency practitioner of the main proceedings

Another innovation brought about by Regulation No. 2015/848 is the possibility for the insolvency practitioner in the main proceedings who wishes to avoid the opening of secondary proceedings elsewhere to do so by giving a unilateral undertaking (that must be accepted by the majority of known local creditors) that when distributing the assets located in the Member State where secondary proceedings could be opened or the proceeds received as a result of their realization, 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 (Article 36§1 of the new Regulation).

[8] ECJ case C-116/11, 22 Nov. 2012, D. 2013. 468, note R. Damman & H. Leclair de Bellevue ; D 2013. 2293, obs. S. Bollée ; Rev. Sociétés 2013. 184, obs. L. C. Henry.

The provisions of Article 36 of Regulation No. 2015/848 enshrine the practice of certain liquidators in main proceedings under Regulation No. 1346/2000, which involved the undertaking by these liquidators to apply local legislation to creditors in Member States where secondary insolvency proceedings could be opened to the purpose of avoiding the opening of such secondary proceedings[9].

c) Clarification of certain key notions

One important achievement of Regulation No. 2015/848 is that it now provides clear definitions on key notions. For example, Article 3 now defines the centre of main interests as "*the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties*". Such definition was already set out at Recital 13 of Regulation No. 1346/2000 but it certainly improves legal certainty to have it written in the enactment terms.

Regarding companies, Regulation No. 2015/848 confirmed the ECJ's *Interedil* decision by stating that the presumption that the location of the registered office is the debtor's centre of main interests can be rebutted "*where the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other State*" (Recital 30).

Regarding individuals, the new Regulation provides a definition of the centre of main interests, presumed to be "*that individual's place of business*" when exercising an independent business or professional activity or "*the place of the individual's habitual residence*" (Article 3), a point which was not addressed by Regulation No. 1346/2000.

d) Introduction of anti-forum shopping measures

There is also the introduction of anti-forum shopping measures, in the interest of all of the debtor's creditors. For example, the presumptions attached to the debtor's centre of main interests may not apply when the debtor has changed its registered office/place of

[9] A clear example of such practice can be seen in the *Rover France* case that led up to a judgment by the Commercial Court of Nanterre on 19 May 2005 (No. 2005P00666, D. 2005. 1787, note R. Dammann): in this case, main proceedings had been opened in England against MG Rover Group Ltd. as well as several of its European subsidiaries, including SAS Rover France. In order to avoid the opening of insolvency proceedings against SAS Rover France in France, the English liquidators made an escrow agreement to block a certain amount of money intended to pay wages to SAS Rover France employees up to the maximum amount that would be due to these employees in the context of judicial winding-up proceedings subject to French law. The Commercial Court took this agreement into account when ruling that the English judgment opening the main proceedings against SAS Rover France did not violate French public order and was therefore enforceable in France. This reasoning was later confirmed on appeal by the Court of Appeal of Versailles on 15 December 2005 (No. 05/04273, D. 2006. 142, obs. A. Leinhard; D. 2006. 379, note R. Dammann).

business or habitual residence within 3 or 6 months prior to the request for the opening of insolvency proceedings (Article 3). Moreover, as regards individuals, the presumption that their centre of main interests is located at their habitual residence may be rebutted *"where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and wheresuch filing would materially impair the interests of creditors whose dealings with the debtor took place prior to relocation"* (Recital 30). Such statement is clearly in line with French case law, which had held a similar ruling before the enactment of the new Regulation[10].

e) Strengthening of the cooperation between the protagonists of the main and secondary proceedings

Another major change is that the new Regulation has detailed and reinforced the duty of cooperation between the protagonists of both principal and secondary proceedings:

- The new Regulation expressly emphasizes that the insolvency practitioners must *"explore the possibility of restructuring the debtor and, where such a possibility exists, coordinate the elaboration and implementation of a restructuring plan"* (Article 41), which is in line with the general, positive, trend of favoring the debt restructuring rather than liquidation.
- Regulation No. 2015/848 expressly provides that *"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."* (Article 41, see also, Recital No. 46). Such provision enshrines the practice of detailed protocols concluded between insolvency practitioners to define their respective roles (See Question 8 above). Allowing contractual arrangement on a case-by-case basis rather than defining a strict frame for the coordination of insolvency practitioners is a pragmatic and flexible approach, which should be approved.
- In the new text, the duty of providing information is conditioned upon the fact that *"appropriate arrangements are made to protect confidential information"*. We believe that the Regulation could have defined what constitutes *"confidential information"* in order to avoid disputes in this respect and favor coordination.
- Finally, the new Regulation has instituted a duty to cooperate between courts (Article 42) and between insolvency practitioners and courts (Article 43). Such provisions, even if they may be difficult to implement in practice and will certainly require the enactment of local procedural laws by the Member States, are likely to facilitate the coordination between the insolvency practitioners.

[10] Colmar Court of Appeal, 26 June 2013, No. 13/00143, Jurisdata No. 2013-024482.

9. How do you think the above mentioned issues have been tackled by the UNCITRAL Model Law on Cross-Border Insolvency? If yes, in which way defective or useful?

The UNCITRAL Model Law also distinguishes between principal proceedings, opened in the State where the debtor has its *"centre of main interests"*, and secondary proceedings, opened in the States where the debtor has an *"establishment"*. However, contrary to former Regulation No. 1346/2000 and new Regulation No. 2015/848, the UNCITRAL Model Law does not provide any definition of what constitutes a *"centre of main interests"*: It only states that: *"in the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests"* (Article 16). However, we believe it is important to have a definition of this core concept, in order to help judges in deciding when this presumption can be rebutted. This should be improved in the new Model Law and it is interesting to note that UNCITRAL has planned to adopt the same definition and criteria as the one stated in EU Regulation No. 2015/848 (See UNCITRAL Doc A/CN.9/WG.V/WP.112).

Contrary to the EU Regulation (see Article 7 of Regulation No. 2015/848), the UNCITRAL Model Law does not contain any rules of conflict of laws. In most countries, the insolvency proceedings are governed by the law of the State where the proceedings were opened, but each country has set its own exceptions to this rule. For this reason, discrepancies exist which can create legal uncertainty, as noticed by UNCITRAL itself. The revision of the Model Law should be the occasion to insert provisions regarding rules of conflict of laws (UNCITRAL's Legislative Guide on Insolvency Law, 2004, p.67 *et seq.*), which will surely render coordination between international insolvency proceedings more efficient.

According to the UNCITRAL Model Law, foreign decisions have effect in the local State only subject to its prior recognition. This is also detrimental to coordination as it may lead to situations where several principal proceedings are opened in different States at the same moment (before being recognized in other States).

Finally, the UNCITRAL Model Law contains very detailed rules on the coordination between the insolvency practitioners and between the courts, and has inspired the revised provisions of EU Regulation No. 2015/848 on this subject.

10. Are there other salient aspects of the EU Regulation on Transnational Insolvency or the UNCITRAL Model Law on Cross-Border Insolvency that are key to answer the need and quest for coordination in cross borders insolvency proceedings?

One important aspect of coordination in cross-border insolvency proceedings is the coordination of insolvency proceedings opened against companies of a same group.

Regulation No. 2015/848 has set forth new rules applicable to groups of companies, aiming at answering the need and quest for coordination in cross-border insolvency proceedings (See Articles 56 to 77). First, Regulation No. 2015/848 provides that insolvency practitioners of the proceedings opened against several companies of a same group must cooperate with each other, in a way which is similar to the cooperation expected from insolvency practitioners of main and secondary proceedings. The Regulation provides that such cooperation must be encouraged by the conclusion of protocols and by a cooperation between the courts. Second, the new Regulation provides that *"group coordination proceedings"* may be opened upon request of an insolvency practitioner appointed in proceedings opened against a member of a group of companies (Articles 61 *et seq.*). Such group coordination proceedings will entail the designation of a *"group coordinator"*, who will be entitled to make recommendations, propose a group coordination plan, propose the settlement of intra-group disputes, etc. (Article 72).

Such provisions are indisputably an important step forward in the quest for coordination. Together with the new definition of the centre of main interests (See Question 8), it should contribute to answer the need for coordination recently expressed by several State courts, including French courts.

In this respect, French courts have recognized, in France, main proceedings opened in England against a French subsidiary of an English company[11] and retained jurisdiction to open main proceedings against foreign subsidiaries of a French company[12]. More recently, French courts have retained jurisdiction to open principal insolvency proceedings against a foreign holding[13]. In these decisions, the courts have relied upon several indicators, now

[11] Cass. Com, 27 June 2006, *Daisytek*, No. 03-19863, Bull. 2006 IV n°149 p.159; Court of Appeal of Versailles, 15 December 2005, *Rover*, No. 05/04273, Dalloz 2006 p.379.

[12] First Instance Civil Court of Nanterre, 14 and 15 February 2006, *EMTEC*, Dalloz, 2006 p.793.

[13] Cass. Com. 8 March 2011, *Coeur Défense*, No. 10-13988, 10-13989, 10-13990, Bull. 2011, IV, n° 33 and Court of Appeal of Versailles, 19 January 2012, No. 11/03519, Jurisdata No. 2012-002287.

enshrined by Regulation No. 2015/848 (See Question 8) to rebut the presumption that the "*centre of main interests*" is located at the registered office of the debtor in order to gather, before a unique court, insolvency proceedings related to a same group of companies.

French domestic law has pushed this logic even further, in a recent reform coming into force in March 2016, by providing that a single court has jurisdiction to open insolvency proceedings against all the companies of the same group (new Article L. 662-8 of the Commercial Code)[14].

It should be noted, however, that the provisions related to group coordination proceedings are not mandatory, which is a major weakness. The effectivity of the coordination in fact depends on the good will of the insolvency practitioners appointed in each insolvency proceedings involving companies of a same group. They can indeed refuse to participate in the group coordination proceedings (Article 65) and refuse to follow the coordinator's recommendations (Article 70).

11. Are there other devices that the EU Regulation on Transnational Insolvency or the UNCITRAL Model Law on Cross-Border Insolvency should have regulated or adopted to enhance further coordination in cross borders insolvency proceedings?

Contrary to EU Regulation No. 2015/848 (See Question 10), the UNCITRAL Model Law does not contain any provision with regard to groups of companies. We can only approve the willingness of UNCITRAL to favor a better coordination of the proceedings opened against the companies of a same group, in view of the revision of the Model Law (See UNCITRAL's Legislative Guide on insolvency Law, Part III, 2010, p.83 *et seq.*).

On a more general point of view, we can hope for the emergence of a broad international, binding device on international insolvency proceedings. On the one hand, EU Regulation No. 2015/848 is a very complete text on coordination of cross-border proceedings, but its scope of application is limited to EU Member States. On the other hand, the UNCITRAL Model Law is a great attempt to standardize domestic laws on international insolvency but the countries which adopt this Model Law can adapt it, which

[14] Please note that in the same reform, to favor an appropriate treatment of complex matters, French law has also established a limited number of specialized courts, having exclusive jurisdiction to open insolvency proceedings when several criteria are met (related to the number of employees, turnover, etc.). Such courts also have exclusive jurisdiction to open insolvency proceedings pursuant to EU Regulations (New Article L. 721-8 of the Commercial Code).

leaves room for discrepancies between local legislations. Besides, it has not been adopted by many countries as of today[15].

The conclusion of an international convention between the European Union and other countries would be a significant step forward in the quest for coordination of cross-border insolvency proceedings.

[15] France has not adopted the Model Law and French law on international insolvency is very different from the Model Law. For instance, French law does not distinguish between principal and secondary proceedings. French law is built upon the principle of the universality of insolvency proceedings, even when such proceedings are opened in France because of the location in France of a mere establishment of the debtor (Cass. Com, 21 March 2006, *Khalifa Airways*, No. 04-17869, Bull. 2006 IV N° 74 p. 73).