



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

THE QUEST FOR COORDINATION OF PROCEEDINGS IN CROSS BORDER INSOLVENCY CASES

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National Report of Germany

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

According to German law, the notion of “main insolvency proceedings” in the sense of being contrary to “secondary insolvency proceedings” only exists in the context of cross-border (i.e. European or international) insolvency proceedings.

It describes the principal according to which the insolvency proceedings having been opened by an internationally competent court shall principally cover all assets of the debtor regardless of their location in the world unless insolvency proceedings over the assets of the same debtor are opened in another state in order to protect national interests (e.g. rights of local creditors). Such proceedings, however, are restricted to the domestic assets of the debtor.

In purely domestic insolvency proceedings there are no “main” insolvency proceedings but all aspects of the insolvency are dealt with in one procedure to which the rules of the German Insolvency Code (*Insolvenzordnung*, henceforth “InsO”) apply. As these rules already take into account the different interests of the various stakeholders there is no need for subordinate proceedings to protect the rights of certain parties.

With regard to the European and international cross-border insolvency proceedings the notion of main insolvency proceedings is both procedural and substantial:

- In cross-border insolvency cases being subject to the European Council Regulation (EC) No 1346/2000 on Insolvency Proceedings (henceforth “EuInsReg”), i.e. cases with regard to Member States of the European Union other than Denmark, the law of the Member State in which the insolvency proceedings have been opened shall apply to the insolvency proceedings and to the effects of the insolvency proceedings, unless otherwise provided (Section 4 (1) EuInsReg). Hence, the law of the Member State in which the main insolvency proceedings have been opened (*lex fori concursus*) principally governs any issues regarding these insolvency proceedings such as the conditions for opening insolvency proceedings, the role of the insolvency liquidator, the legal position of creditors, the distribution of the proceeds from the realization of assets, the effects on contracts, etc.
- The same is true for international insolvency proceedings, which are not subject to the EuInsReg. These proceedings are governed by the autonomous German law on cross-border insolvency proceedings according to Sections 335 et seq. of the German Insolvency Code (*Insolvenzordnung*, henceforth “InsO”).

According to Section 335 InsO both the insolvency proceedings themselves and their effects shall be governed by the law of the state in which the insolvency proceedings have been opened, unless provided otherwise.

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

The notion of secondary insolvency proceedings exists both with regard to European and international cross-border insolvency cases, however not in purely domestic insolvency cases:

- **European Insolvency Law:**

In European cross-border insolvency cases insolvency proceedings in another Member State than the state where the main proceeding has been opened may be opened in addition to the main insolvency proceedings if the debtor possesses an establishment within that state (Article 3 (2) EuInsReg). These proceedings are called “secondary insolvency proceedings”. They are subordinated to the main insolvency proceedings and run parallel to them (Article 3 (3) EuInsReg).

Secondary insolvency proceedings are limited to the assets located in the Member State where the secondary insolvency proceeding are opened (Article 3 (2) EuInsReg). They can only be winding-up proceedings (Article 3 (3) EuInsReg).

After commencement of the main insolvency proceedings secondary insolvency proceedings may be opened upon application e.g. by the creditors in that Member State in order to protect their interests (this is the vast majority of the cases) or eventually by application of the insolvency liquidator of the main insolvency proceedings for legal reasons (e.g. administration of the entire assets of the debtor would be too complex or if differences among the legal systems involved would cause difficulties; cf. Recital (19) of the EuInsReg).

Furthermore, there is the notion of territorial proceedings, which are basically secondary proceedings opened in a Member State in which the debtor has an establishment, but which is not its centre of main interest (henceforth “COMI”). Territorial proceedings can only be opened by local creditors or where main proceedings cannot be opened under the laws of the Member State where the debtor’s COMI is situated. Unlike secondary they are not limited to winding-up proceedings.

Territorial proceedings may only be opened prior to the opening of the main proceedings (Article 3 (4) EuInsReg). Once the main insolvency proceedings have been opened in a different Member State the territorial insolvency proceedings become secondary insolvency proceedings (Recital (17) of the EuInsReg).

- **Autonomous German International Insolvency Law:**

The autonomous German law on cross-border insolvencies provides for secondary insolvency proceedings, too, in order to protect local creditor’s rights

and interests as well as in order to facilitate cross-border insolvency proceedings in cases of complex financial structures and legal questions involved.

According to this, secondary insolvency proceedings may be opened over the local assets of the debtor if somewhere else secondary insolvency proceedings have already been opened and if the opening of the foreign insolvency proceeding is recognizable in Germany (otherwise only territorial proceedings could be opened over the local assets).

Just like in the European cross-border insolvency cases the secondary insolvency proceedings run parallel to the main insolvency proceedings.

Territorial insolvency proceedings can be commenced regardless of whether main insolvency proceedings have been opened or not.

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.

Both in European and International Cross-Border Insolvency Cases the main proceedings will continue unaffected if secondary insolvency proceedings are opened elsewhere. However, with regard to the assets of the debtor which are located in the state where secondary insolvency proceedings are being opened the *lex fori concursus*, i.e. the law that applies to the insolvency proceedings and its effects, changes to the law of the state in which the secondary insolvency proceedings have been opened.

Furthermore, there are a number of exceptions from the material effects of the *lex fori concursus* principle.

According to Article 4 EuInsReg (respectively Section 335 InsO) the law of the state in which the insolvency proceedings have been opened only applies unless otherwise provided:

- European Insolvency Law:

Article 5 et seq. EuInsReg determine when the law of the Member State in which the insolvency proceedings have been opened does not affect certain rights of third parties or have effect on certain contractual relations:

- Rights in rem

According to Article 5 (1) EuInsReg the opening of insolvency proceedings does not affect the *rights in rem* of creditors or third parties in respect of

assets belonging to the debtor which are located within the territory of another Member State at the time of the opening of proceedings.

Since the rights in rem are typically important for granting of credits, it was regarded as important to have a special reference for such *rights in rem* **diverging from the law of the Member State where the insolvency proceedings have been opened** (Recital (25) of the EuInsReg).

The *rights in rem* shall therefore normally be determined according to the *lex situs*.

- Set-off

According to Article 6 (1) EuInsReg the creditors' right to demand set-off of their claims against the claims of a debtor is not affected by the opening of insolvency proceedings where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

The creditor shall be able to rely on his right to set-off at the time when the claim arises (Recital (26) of the EuInsReg).

- Reservation of title

Neither does the opening of the insolvency proceedings against a purchaser of an asset affect the seller's rights based on a reservation of title where **at the time of the opening of the proceedings the asset is situated within in the territory of a Member State other than the State of the opening of the proceedings** (Article 7 (1) EuInsReg).

- Contracts relating to immoveable property

According to Article 8 EuInsReg the effects of insolvency proceedings on a contract conferring the right to acquire or make use of immoveable property are not subject to the *lex fori concursus* but shall be governed solely by the law of the Member State within the territory of which the immoveable property is situated.

- Employment contracts

The law of the Member State where the insolvency proceedings have been **opened does not affect employment contracts unless these are governed by the same law.**

Recital (28) of the EuInsReg states that “in order to protect employees and **jobs the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to**

such employment must be determined by the law applicable to the agreement in accordance with the general rules on conflict of law”.

Accordingly, Article 10 EuInsReg provides an exemption from the *lex fori concursus* ruling that the effects of insolvency proceedings on employment contracts and relationships shall solely be governed by the law of the Member State applicable to the contract of employment.

Any other insolvency law questions, such as whether the employees’ claims are protected by preferential rights and what status such preferential rights may have, should, however, be determined by the law of the opening State (Recital (28) of the EuInsReg).

- Autonomous German International Insolvency Law:

Just like the EuInsReg the autonomous German international insolvency law exempts certain issues from the *lex fori concursus*, e.g.:

- Contracts relating to immoveable property

According to Section 337 InsO the effects of the insolvency proceedings on a contract relating to a *right in rem* in an immovable object or a right to use an immovable object shall not be governed by the *lex fori concursus* but shall be subject to the law of the state in which the object is situated.

- Employment contracts

Furthermore, the effects of the insolvency proceedings on employment shall solely be subject to the law which is relevant to the employment in accordance with Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I - Regulation). The *lex fori concursus* does therefore not apply.

- Set-off

Finally, the rights of creditors to set-off their claims shall remain unaffected by the opening of insolvency proceedings if in accordance with the law applicable to the debtor's claim they are entitled to set-off at the time of opening the insolvency proceedings.

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

Both in European and in international cross-border insolvency cases creditors may lodge their claims in the main proceedings and in any secondary insolvency proceedings to the full amount (Article 32 (1) EuInsReg / Section 341 (1) InsO).

Furthermore, even the liquidators of the main and secondary insolvency proceedings shall lodge the claims of the creditors, which have been lodged in the proceedings for which they were appointed in the other proceedings if this is beneficial for the creditor's interests (Article 32 (2) EuInsReg / Section 341 (2) InsO).

In view of the fact that the powers of the insolvency liquidator are determined by the respective *lex fori concursus*, Section 341 (2) InsO only applies to German insolvency liquidators, who shall lodge the local creditor's claims in foreign insolvency proceedings. Foreign insolvency administrators, however, cannot be obliged to lodge the claims of the creditors of the insolvency proceedings for which they were appointed in German main or secondary insolvency proceedings by this provision.

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?

The dividends are not directly pooled in all insolvency proceedings of the debtor. If, however, a creditor has lodged claims in several insolvency proceedings of the debtor and participates in the distribution of the proceeds of these proceedings, the dividends obtained in any of the proceedings are deducted from the dividends to be obtained in other proceedings in order to ensure equal treatment of creditors.

Therefore, a creditor having obtained dividends from insolvency proceedings of the debtor may only participate in the distribution of proceeds for the dividends in other insolvency proceedings of that debtor if creditors with the same standing have obtained the same proportion of their claims (Article 20 (2) EuInsReg / Section 342 (2) InsO).

Unequal treatment, however, may arise, where creditors take advantage of different priority rules among the various *lex fori concursus* or of different assets of the debtor and submit their claims in another jurisdiction, where their claims would be given a higher priority and/or have better chances of being the subject of a distribution. In such cases, unequal treatment of creditors, however, can barely be avoided.

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?

Both in European and international insolvency proceedings the liquidator of any secondary insolvency proceedings is obliged to transfer any remaining surplus to the foreign insolvency administrator of the main insolvency proceedings if the full amount of all claims could be satisfied in the secondary insolvency (Article 35 EuInsReg / Section 358 InsO).

Again, it is again important to note that Section 358 InsO in international insolvency proceedings only applies to German insolvency liquidators of secondary insolvency proceedings.

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

In view of the fact that the effective realisation of the debtor's assets can only be ensured if the concurrent main and secondary insolvency proceedings are closely coordinated, the liquidator appointed in the main proceedings has far reaching powers to intervene in and influence the secondary insolvency proceedings (cf. for European cross-border insolvency cases Recital (20) of the EuInsReg):

- European cross-border insolvency cases

In European cross-border insolvency cases, the liquidator appointed in the main insolvency proceedings may, for example, make proposals on the liquidation or use of the assets in the secondary proceedings (Article 31 (3) EuInsReg).

Furthermore, upon the request of the liquidator appointed in the main insolvency proceedings the courts having opened the secondary insolvency proceedings shall temporarily stay the liquidation of the debtor's assets in the secondary proceedings if the special interests of the creditors of the secondary insolvency proceedings are sufficiently safeguarded (Article 33 EuInsReg).

Finally, the liquidator of the main insolvency proceeding may even propose a restructuring plan or other means (e.g. a settlement agreement) to be taken in the secondary insolvency proceedings if such measures may end the secondary insolvency proceedings without liquidation (Article 34 (1) EuInsReg).

- International cross-border insolvency cases

Also in international cross-border insolvency cases the insolvency liquidator appointed in the main insolvency proceedings has far reaching rights in the concurrent secondary insolvency proceedings. The insolvency liquidator of the main insolvency proceedings may, for example, propose a restructuring plan to be taken in the secondary insolvency proceedings just like the insolvency liquidator may do so in European cross-border insolvency cases (Section 357 (3) InsO).

Unlike in European cross-border cases, the insolvency liquidator in international cross-border insolvency cases, however, may not request the temporary suspension of the secondary insolvency proceedings.

Again, it is again important to note that due to the principle of *lex fori concursus* Section 357 InsO only applies to German insolvency liquidators of secondary insolvency proceedings.

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?

- a. Relation of main and secondary insolvency proceedings, specifically: Are the material effects of the main proceedings halted when secondary proceedings are opened elsewhere?

In Article 3 (3) of the European Parliament and European Council Regulation (EC) No 2015/848 on Transnational Insolvency (henceforth “New EuInsReg”), secondary insolvency proceedings are defined as any proceedings opened subsequently to proceedings having been opened in accordance with Article 3 (1) New EuInsReg under the jurisdiction of another Member State (“main insolvency proceedings”). Main insolvency proceedings can be opened in the Member State in which the debtor’s centre of main interest is situated.

Secondary insolvency proceedings — that cannot be winding-up proceedings anymore — can only be opened if there is an establishment within the territory of the other Member State. Furthermore, the effects of secondary proceedings are restricted to the assets of the debtor situated in the territory of the latter Member State, Article 3 (2) New EuInsReg. Therefore, the main proceedings’ position has rather been strengthened; it has a dominant role according to the New EuInsReg.

Secondary insolvency proceedings are regulated in more detail in Chapter III, Articles 34 et seq. New EuInsReg.

There is no specific regulation concerning the material effects of the main proceedings in case secondary proceedings are opened or may be opened. In

general, secondary proceedings run parallel with main proceedings. However, several regulations are provided ensuring a dominant role of the main proceedings. This finds its expression in the insolvency practitioners' possibilities to intervene in secondary proceedings.

Firstly, the insolvency practitioner in the main proceedings may give a unilateral undertaking that when distributing the assets located in the Member State in which secondary proceedings could be opened, it will comply with the distribution and priority rights under national law of the secondary proceedings Member State, Article 36 (1) New EuInsReg. He may do so in order to avoid the opening of secondary proceedings, since secondary proceedings may also hamper the efficient administration of the insolvency estate.

Secondly, the insolvency practitioner has several possibilities for intervening in secondary proceedings which are already pending at the same time. In particular, the insolvency practitioner is able to propose a restructuring plan or composition (Article 47 New EuInsReg) or apply for a suspension of the realization of the assets in the secondary proceedings (Article 46 New EuInsReg).

Taking into consideration the above mentioned regulations, it can be concluded that the material effects of the main proceedings are not halted when secondary proceedings are opened elsewhere, but that the proceedings have to be coordinated when it comes to the distribution of assets located within the territory of the Member State the secondary proceedings are opened in. Nonetheless, main proceedings have a dominant role so that the insolvency practitioner of the main proceedings has several possibilities to intervene in planned or opened secondary proceedings.

- b. Shall the law of the State in which main proceedings are opened affect certain rights of third parties or have effect on certain contractual relations, e.g. labour contracts?

Just like in the EuInsReg Articles 8 et seq. New EuInsReg regulate how insolvency proceedings affect certain rights of third parties or have effect on certain contractual relations:

- Rights in rem

According to Article 8 (1) New EuInsReg the opening of insolvency proceedings does not affect the rights in rem of creditors or third parties in respect of assets belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings since there is a particular need for a special reference diverging from the law of the opening state. Such rights are of considerable importance for the

granting of credit. Therefore, rights in rem are normally determined according to the *lex situs* and not affected by the opening of insolvency proceedings.

- Set-off

Article 9 (1) New EuInsReg states that the creditors' right to demand the set-off of their claims against the claims of a debtor is not affected by the opening of insolvency proceedings, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

- Reservation of title

Article 10 (1) New EuInsReg regulates that the opening of insolvency proceedings against the purchaser of an asset does not affect sellers' rights based on a reservation of title where the asset is situated within in the territory of a Member State other than the State of the opening of proceedings.

- Employment contracts

According to Article 13 New EuInsReg, the effects of insolvency proceedings on employment contracts and relationships are governed solely by the law of the Member State that is applicable to the contract of employment. If secondary proceedings may be opened in a certain Member State, the courts of this said state shall retain jurisdiction to approve the termination or modification of the employment contracts even if no proceedings have been opened. These rules have been established in order to protect employees and jobs (Recital (72) of the New EuInsReg). Any other questions relating to the law of insolvency are to be determined by the law of the Member State in which the insolvency proceedings have been opened (main and secondary).

- c. Creditors' right to lodge claims in any of the insolvency proceedings (main and secondary)

According to Article 45 (1) New EuInsReg (Chapter III) any creditor may lodge its claim in the main insolvency proceedings and in any secondary insolvency proceedings.

Article 53 New EuInsReg (Chapter IV) regulates that any foreign creditor may lodge claims in insolvency proceedings by any means of communication which are accepted by the law of the state of the opening of proceedings. Furthermore, the creditor does not need to be represented by a lawyer to lodge

his claims. The creditors shall be informed immediately as soon as insolvency proceedings are opened, Article 54 (1) New EuInsReg. Since the wording of Article 53 New EuInsReg does not distinguish between main and secondary proceedings and Chapter IV is systematically positioned after the regulations about the secondary proceedings, it can be assumed that the previously mentioned regulations apply to both main and secondary proceedings.

d. **Dividends obtained in all proceedings/Surplus in any secondary proceedings**

Article 49 New EuInsReg clearly regulates that the insolvency practitioner appointed in the secondary proceedings shall immediately transfer any assets remaining to the insolvency practitioner in the main insolvency proceedings if, by liquidation of assets in the secondary proceedings, it is possible to meet all claims allowed under the secondary proceedings.

- e. Does the liquidator appointed in the main proceedings have a leading role because of the so-called dominance of the main proceedings and does that create a right to coordinate all insolvency proceedings pending against the same debtor?

Due to the newly strengthened dominant role of the main insolvency proceedings, the liquidator appointed in the main proceedings has several possibilities to intervene in the secondary proceedings (see above 1. a.).

In order to avoid secondary insolvency proceedings, the insolvency practitioner appointed in the main proceedings has the right to give a unilateral undertaking in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, Article 36 New EuInsReg. This undertaking has to assure that when distributing those assets or the proceeds received as a result of their realisation, 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. The court of the main insolvency proceedings will not open secondary insolvency proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditor, Article 38 (2) New EuInsReg.

Article 38 (4) New EuInsReg states that the liquidator of the main insolvency **proceedings may request that the court of the secondary insolvency proceedings may open a type of insolvency proceedings as listed in Annex A other than the type initially requested, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local**

creditors and coherence between the main and secondary insolvency proceedings.

He can also 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 New EuInsReg, see Article 39 New EuInsReg.

When it comes to the realization or use of the assets in the secondary insolvency proceedings, the dominant role of the main proceedings and therefore of the insolvency practitioner in the main proceedings as well is expressed by Article 41 (2) (c) New EuInsReg. The liquidator in the secondary proceedings is obliged to give the liquidator in the main proceedings an early opportunity to submit proposals on the realization or use of the assets in the secondary proceedings.

Considering the abovementioned regulations, the liquidator of the main proceedings does have several rights to intervene in the secondary proceedings and therefore some kind of a leading role. However, he does not have the explicit right or duty to coordinate all insolvency proceedings against the same debtor. Nevertheless, the purpose to protect all creditors' interests leads to an immanent obligation to coordinate all insolvency proceedings pending against the same debtor.

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 on Cross-Border Insolvency has not been adopted as part of the German legislation.

However, Recital (48) of the New EuInsReg states that insolvency practitioners and courts should take into account 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). This especially includes the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation **providing information for practitioners and judges on practical aspects of cooperation and communication in cross-border insolvency cases.** Therefore, although the UNCITRAL Model Law on Cross-Border Insolvency does not apply directly to EU insolvency cases, the UNCITRAL's basic ideas and concepts can have an indirect influence.

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?

- International jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them, Art. 6 New EuInsReg

As soon as insolvency proceedings are opened in accordance with Article 3 New EuInsReg, the courts of the Member States within the territory of this state have jurisdiction for any action deriving directly from the insolvency proceedings and closely linked with them.

- European Insolvency Register, Articles 24 et seq. New EuInsReg

In order to improve the provision of information to relevant creditors and courts and to prevent the opening of parallel insolvency proceedings, Article 24 (1) New EuInsReg regulates that all Member States shall establish and maintain one or several registers in which information concerning insolvency proceedings is published (so called ‘insolvency registers’). Mandatory information is amongst other things the date of the opening of insolvency proceedings, the court opening insolvency proceedings and the case reference number, if any. Furthermore, Article 25 (1) New EuInsReg states that the Commission shall establish a decentralized system for the interconnection of insolvency registers being composed of the insolvency registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system. The mandatory information referred to in Article 24 (2) New EuInsReg has to be available free of charge, Article 27 (1) New EuInsReg.

Member States are obliged to establish the insolvency registers by June 26, 2019, according to Article 92 (c) New EuInsReg.

- Regulations to improve cooperation and communication between insolvency practitioners and courts in main and secondary proceedings, Articles 41, 42, 43 New EuInsReg

Article 41 New EuInsReg regulates that the insolvency practitioners in main and secondary proceedings concerning the same debtor shall cooperate with each other taken in any form. They are obliged to communicate to each other as soon as possible and to explore possibilities of restructuring the debtor and to coordinate the elaboration and implementation of a restructuring plan.

According to Article 42 New EuInsReg, a court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, is

obliged to cooperate with any other court before which a request is pending, or which has opened proceedings.

Article 43 New EuInsReg regulates the cooperation and communication between insolvency practitioners and courts.

According to Recital (48) of the New EuInsReg, “main insolvency proceedings and secondary insolvency proceedings can contribute to the efficient administration of the debtor’s insolvency estate or to the effective realization of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings”. It remains to be seen how the regulations about cooperation and communication can contribute to the above stated aims because, firstly, there are no sanctions provided in case of violation of the stated obligations, and secondly, a violation of the obligation to cooperate might be difficult to prove except in obvious cases.

- **Insolvency Proceedings of members of a group of companies**

In Chapter V, the New EuInsReg introduces rules on the insolvency proceedings of groups of companies.

Section 1 regulates communication and cooperation in such proceedings. According to Articles 56, 57 and 58 New EuInsReg, the actors involved in the proceedings are obliged to cooperate properly where insolvency proceedings have been opened for several companies of the same group. The regulations are comparable to those in Articles 41, 42, 43 New EuInsReg (see above).

Section 2 regulates the coordination in the form of group coordination proceedings. According to Article 61(1) New EuInsReg, group coordination proceedings may be requested by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group. The other appointed insolvency practitioners may object (Article 64 New EuInsReg) within 30 days of receipt of notice of the request for the opening of group coordination proceedings. According to Article 65 (1) New EuInsReg, those proceedings are not included in the group coordination proceedings (so called opt-out). After the 30 days have elapsed, the court may open group coordination proceedings and appoint a coordinator (Article 68 New EuInsReg). According to Article 70 (1) New EuInsReg, the coordinator may only recommend. Though the insolvency practitioners “shall” consider the coordinator’s recommendations, they are not obliged to follow the recommendations. They only have to give the persons or bodies they are to report to under national law and the coordinator the reasons for not following the coordinator’s recommendations (see Article 70 (2) New EuInsReg).

- **Enforcement of insolvency court judgements and orders**

According to Recital (6), the New EuInsReg shall provide for regulations regarding the recognition and enforcement of judgements issues in such proceedings. Furthermore, Recitals (65) states that the New EuInsReg shall provide for the immediate recognition of judgements concerning the opening, conduct and closure of insolvency proceedings, and of judgements passed in direct connection with such insolvency proceedings.

Therefore, Chapter II New EuInsReg introduces rules on the recognition of insolvency proceedings. According to Article 19 (1) New EuInsReg, the principle is that any judgement opening insolvency proceedings handed down by a court of a Member State shall be recognized in all other Member States. Article 32 New EuInsReg regulates that all judgements handed down by a court whose judgement concerning the opening of proceedings is recognized in accordance with Article 19 and which concern the course and closure of insolvency proceedings shall also be recognized with no further formalities. They shall be enforced in accordance with Regulation (Eu) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.

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?

- Liability for non-observance of the obligations in group coordination proceedings

The above regulations on group coordination proceedings mainly include the obligation to coordinate and cooperate in insolvency proceedings of groups of companies. Since there are no regulations concerning liability for non-observance of the coordination and cooperation obligations, the national liability rules must set incentives to follow the regulations. It remains to be seen how the rules can contribute to the aim to protect the interests of the creditors in each of the different proceedings.

- Alternative dispute resolution

The New EuInsReg does not sufficiently provide for regulations on alternative dispute resolution. One of the few regulations is Article 72 (2) (b) New EuInsReg which states that the coordinator in insolvency proceedings of members of a group of companies may mediate any dispute arising between two or more insolvency practitioners of group members.

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