

Abstract

The aim of this PhD thesis is to analyse the current status of European insolvency law and with the help of both national and European judicial decisions put together an overview of practical obstacles that insolvency courts, debtors, creditors and insolvency trustees across Europe are facing when dealing with cross-border insolvencies.

At the very core of this topic stands the European Insolvency Regulation (“**EIR**”) which was adopted in 2015 and is effective within the member states as of June 2017. Since this regulation was put together as a recast of its predecessor, i.e. the original insolvency regulation adopted in 2000 and effective as of 2002, naturally this research is oriented at comparing the two legislative acts and mainly assessing whether or not the recast EIR managed to overcome some of the inconsistencies in the wording of the original EIR, often resulting in conflicting interpretations and a great deal of preliminary rulings filed with the Court of Justice of the EU. Apart from looking into good old instruments of private international law such as the scope, the jurisdiction, the choice of law and the recognition and enforcement rules governed by the EIR, this thesis also focuses on topics that are very bankruptcy-specific and dissimilar to anything we know from other fields of law. These areas include the special procedural rules distinguishing between main and secondary insolvency proceedings which have previously always been governed by the rule of the first proceeding having the privilege of maintaining the going-concern value of the debtor’s business whereas all the other secondary proceedings had to by operation of law result in liquidation of the assets.

The recast EIR brings a fundamental twist which basically changes the whole doctrine of EU insolvency law by allowing all proceedings to aim at restructuring. This major transformation in paradigm together with the inclusion of special rules on dealing with insolvencies of members of one group of companies shows just how much insolvency law affects businesses and economic growth within the European Economic Area and how willingly EU lawmakers are adjusting insolvency legislation to prevent unnecessary winding-up of vital businesses.

The signal is clear - restructuring a business while preserving its operations, employment and business relationships is the desired outcome of cross border insolvencies within the EU.