Applying the Regulation (EU) 2015/848 on insolvency proceedings (Part 2)


Cooperation
Pursuant to Recital 48 of the EIR 2015 (recast) a proper cooperation between the actors involved in cross-border insolvency proceedings “implies the various insolvency practitioners and the courts involved cooperating closely, in particular by exchanging a sufficient amount of information (…). When cooperating, insolvency practitioners 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).”

Principles and Guidelines
Indeed, a number of non-binding recommendations exist in the area of cross-border communication and cooperation and is (or can be) used in European jurisdictions (and beyond).

First of all, one should remember that the European Communication and Cooperation Guidelines For Cross-Border Insolvency (also known as ‘CoCo Guidelines’) (2007) were drafted to provide some substantial and procedural guidance to those involved in main and secondary insolvency proceedings in the context of the EU Insolvency Regulation (2000). These Guidelines were used for example in the Nortel case (See CJEU, case C-649/13 and especially the opinion of the Attorney-General).

That is why in 2015, the EU Cross-Border Insolvency Court-to-Court Cooperation Principles (also known as the ‘EU JudgeCo Principles and Guidelines’) have been adopted. These guidelines were specifically drafted to be...
used in the context of the EU Insolvency Regulation (recast). The text is divided into two parts: a first one which contains 26 Principles including subjects such as cross-border sales or cross-border reorganisation plans, and a second one, containing 18 Guidelines related to the EU Cross-Border Insolvency Court-to-Court Communications Guidelines, intended to facilitate communications in individual cross-border cases.

Along these “European” guidelines, the American Law Institute/International Insolvency Institute (ALI-III) Global Principles and Guidelines (2012) may also be useful. These updated guidelines are suitable for being used in a global context (common law or civil law jurisdictions).

In addition, Guidelines designed mostly for common law jurisdictions have also been published: The Judicial Insolvency Network Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (“JIN Guidelines”). These guidelines aim at facilitating protocols which improve court-to-court communication and cooperation on a case-by-case basis.

These soft law instruments should encourage an effective communication between courts in insolvency cases with cross-border effects. As the EU Insolvency Regulation (recast) is now applicable, let it work!

Links relating to this article and other relevant information are available on the INSOL Europe website at: www.insol-europe.org/technical-content/europeaninsolvency-regulation

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