

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

Myriam Maily writes about what insolvency actors need to know before applying the Regulation (EU) 2015/848 of 20 May 2015 (OJ L 141 of 05.06.2015, p. 19-72) on insolvency proceedings (hereafter “EIR 2015 (recast)”) entered into force on 26 June 2017



MYRIAM MAILLY
INSOL Europe Co-Technical Officer

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).”

If a majority of (if not all) insolvency practitioners appointed in cross-border insolvency proceedings is already familiar with the guidelines published by UNCITRAL, and in particular the explanatory texts entitled “UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective (2011)” and “UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009)”, other texts should however be taken into consideration.

Principles and Guidelines

Indeed, a number of non-binding recommendations exists 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 well 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



THESE SOFT LAW INSTRUMENTS SHOULD ENCOURAGE AN EFFECTIVE COMMUNICATION BETWEEN COURTS IN INSOLVENCY CASES WITH CROSS-BORDER EFFECTS



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/europeaninsolvencyregulation



For updates on new technical content recently published on the INSOL Europe website, visit: www.insol-europe.org/technical-content/introduction or contact Myriam Mailly by email: technical@insol-europe.org



Links

Email:
technical@insol-europe.org

LinkedIn:
www.linkedin.com

Twitter:
[@INSOLEurope](https://twitter.com/INSOLEurope)

Resources
www.insol-europe.org/resources

Glossaries
www.insol-europe.org/technical-content/glossaries

Updated Insolvency Laws
www.insol-europe.org/technical-content/updated-insolvency-laws

State Reports
www.insol-europe.org/technical-content/state-reports

How to become an insolvency practitioner across Europe?
www.insol-europe.org/technical-content/how-to-become-an-ip-across-europe



National Insolvency Statistics
www.insol-europe.org/technical-content/national-insolvency-statistics

National Case Law
www.insol-europe.org/technical-content/national-case-law

EIR Reform – Process
www.insol-europe.org/technical-content/european-insolvency-regulation

EIR Case Register
www.insolvencycases.eu

INSOL Europe Studies
www.insol-europe.org/technical-content/insol-europe-studies

Working Groups
www.insol-europe.org/about-us/about-our-working-groups



CITR Group is the first group in Romania which focuses on providing solutions for companies facing financial difficulty irrespective of their past performance. By combining over **15 years of experience in the areas of insolvency and restructuring**, the group covers all areas of business restructuring related to both in and out of court proceeding through its three specialist divisions:

CITR - the leader of the insolvency market in Romania, with a team of over 120 professionals, 40 insolvency practitioners and 9 branches nationwide

CIT Restructuring - the advisory company that specializes in out of court business restructuring procedures, providing services in three main areas: restructuring and turnaround advisory on distressed companies, NPL management and corporate finance

CIT Resources - Company specializing in identifying investment opportunities in the local or international markets.



Green Court, 4th Gara Harăstrău Street, 3rd Floor, District 2, Bucharest
+40 213 266 014/015 | bucuresti@citr.ro