

Applying the Regulation (EU) 2015/848 on insolvency proceedings (Part 3)

Myriam Maily writes about the tools available to insolvency practitioners (hereafter, 'IPs') who will need to conclude cross-border insolvency agreements or protocols under the scope of the EIR 2015 (recast).



MYRIAM MAILLY
INSOL Europe Co-Technical Officer

The Recast Insolvency Regulation aims at fostering a proper cooperation between IPs taking into account best practices as set out in the Guidelines adopted by European and International organisations such as UNCITRAL.

In particular, Recital 49 of the EIR 2015 (recast) states that IPs “*should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of*

companies, where this is compatible with the rules applicable to each of the proceedings. (...) Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements may establish a framework of principles to govern multiple insolvency proceedings (...)”.

It is also important for IPs to consider the need to conclude insolvency protocols in light of the fact that, pursuant to the applicable national law, such protocols “*may be approved by the courts involved, where the*

national law so requires.”

In order to help IPs in that regard, guidelines have been published by a number of organisations dealing with cross-border insolvency matters. Apart from the tools necessary for the application of the EIR 2015 *per se* such as the publication of standard forms in order to inform known foreign creditors and to object with regard to group coordination proceedings or the publication of updated information on national proceedings listed into Annex A of the European Insolvency Regulation (see *Part I*), other



IPs SHOULD BE AWARE THAT INSOL EUROPE'S INSOLVENCY REGULATION CASE REGISTER COULD ALSO BE HELPFUL FOR THEIR DAY-TO-DAY PRACTICE



texts have to be put on the scene where there is a need to conclude cross-border insolvency protocols.

For example, the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009) provides relevant information on practical aspects of cross-border cooperation and communication between IPs. In particular, Part III of the Practice Guide deals with cross-border insolvency agreements and provides relevant information on when and how to use them. This third part was built on practical experience and the Annex I of the Practice Guide contains an interesting list of case summaries to illustrate how different issues had been addressed in practice, such as claims resolution including employees' claims (*Sendo*) or intra-group transactions (*Calpine Corporation*), coordinated asset sales (*AgriBioTech Canada, Inc.* or *Alphastar Television Network, Inc.*), coordinated restructuring

plans (*Smurfit-Stone Container Corporation*) or determination of IPs' fees (*360Networks Inc.*), and so on... Furthermore, IPs should be aware that the University of Leiden has made public a part of the International Insolvency Institute's ('IIP') protocols database.

At last but not least, IPs should be aware that INSOL Europe's Insolvency Regulation Case Register could also be helpful for their day-to-day practice as the first decisions delivered by national courts under the EIR 2015 (recast) are now available on the Lexis Nexis dedicated platform. ■

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



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

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