

Survey – IT selects IP – situation in selected European jurisdictions

Country	Question 1 Does selection of a practitioner by software exist? (yes/no/for certain kinds of proceedings)	Question 2 To the extent selection by software exists, does it meet the criteria set out in Recital 88 of Directive for the selection by software programmes? <i>(“give due consideration to the practitioner’s experience and expertise”)?</i> (yes/no/partly)	Question 3 To the extent selection by software does not exist, as yet, are you aware of legislative initiatives to introduce it? (yes/no)	Remarks / additional explanations (Please explain here in more detail, should you not be able to answer the questions no 1-3 with a simple “yes” or “no”)
Austria	No	n/a	No	Dr. Hans-Georg Kantner (Kreditschutzverband von 1870)
Belarus	No	n/a	YES	Ulyana Kavalionak (bnt attorneys in CEE) Ad 3) The draft of the new Law “On insolvency and bankruptcy” was brought to the Parliament on 14 July 2016 and is now in the process of preparing for the first reading. Under the draft of

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				the new Law, an economic court uses software for selection of an administrator from the Unified Register of administrators in random order for all types of proceedings.
Bulgaria	No	n/a	No	Stela Ivanova (bnt attorneys in CEE) In Bulgaria, judges are selected by random-based software applications but insolvency managers are not.
Czech Republic	No	n/a	No	Karel Kotrba (bnt attorneys in CEE)
Estonia	No	n/a	No	Kersti Kerstna-Vaks (Judge, Tartu Circuit Court) We have revision of bankruptcy law, but as I know, there is no initiative to change existing system of selection of IP-s. Estonian system is like previous German system. Judge has a key role. We don't have specialized courts, but we have in bigger courts specialized judges, who have their „own lists“ of IP-s. Official list of IP-s is maintained by the Chamber of Bailiffs and Bankruptcy Trustees. Approval of a IP appointed by judge shall be decided by the first meeting of creditors. If IP appointed by judge is not approved by creditors, the creditors shall elect a new IP, whose approval shall be decided by judge. Judge has a right not to approve IP elected by creditors and right to appoint new IP. If court appoints new IP, there is no need for IP to be approved by a meeting of creditors.

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				<p>If courts shall not approve IP elected by creditors, the court ruling shall set out the reasons for refusal to approve IP. This system exists from 1992 and is very much criticized, but is still existing.</p>
France	No	n/a	No	<p>Emmanuelle Inacio (Université du Littoral Côte d'Opale)</p> <p>The IPs are chosen by the court in a discretionary basis from national lists (if we except certain incompatibilities). There is a list for the judicial administrators (representing the interests of the debtor) and a list for the judicial liquidators (representing the interest of the creditors). Indeed, the court appoints one or several administrators and one or several liquidators for each formal procedure. However, in formal restructuring proceedings (safeguard and reorganisation), the appointment of an administrator is optional in cases where the turnover of the debtor is ex VAT of € 3 million and where there are less than 20 employees. In liquidation proceedings, the appointment of an administrator is not mandatory and is only justified in case of continuation of the business in view of a total or partial sale. Moreover, in the pre-insolvency formal safeguard procedure, the debtor may propose the name of an administrator (as in the informal pre-insolvency proceedings where only an IP is appointed) due to the voluntary characteristic of this procedure. In the pre-insolvency formal safeguard procedure and in the insolvency reorganisation procedure, the Public Prosecutor may also propose the name of an</p>

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				<p>administrator, but the court is not bound by this proposal.</p> <p>There is no initiative to change the existing system of selection of IPs which is on the court's hands to a system using IT in France. This should be however considered as the actual system does not offer transparency.</p>
Germany	No	n/a	No	Frank Heemann (bnt attorneys in CEE)
Hungary	YES	No	N/A	<p>Gábor Jánoshalmi (bnt attorneys in CEE)</p> <p>In case the debtor is acknowledged by the government as business organizations of strategic importance, the practitioner is not selected by software but is rather a fully state owned, non-profit company.</p> <p>Between 2009 and 2012 the practitioner's experience was also one aspect by the selection made by the software but this criterion was cancelled due to the fact that it was not possible to meet this expectation with the current system.</p>
Italy	No	No	Not aware of it	Professor Rolandino Guidotti
Latvia	YES for certain types of proceedings	No	No	<p>Karlis Svikis (bnt attorneys in CEE)</p> <p>In all insolvency proceedings – be it of legal entities or of natural persons – an insolvency administrator is randomly selected by a software</p>

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				<p>from a list of administrators, run by the Latvian Court Administration.</p> <p>However, in Legal Protection Proceedings (proceedings whose goal is to restore debtor's solvency, agreed upon by creditors) creditors can suggest administrator (supervisor) for the proceedings in question. Here, no software is involved.</p>
Lithuania	YES for certain types of proceedings	PARTLY	No	<p>Frank Heemann (bnt attorneys in CEE)</p> <p>Ad 1) exists for standard bankruptcy proceedings, i.e. for the vast majority of all corporate insolvency proceedings, however not for restructuring proceedings, certain special type of corporate bankruptcy proceedings (i.e. out-of-court bankruptcy proceeding) and not for bankruptcy proceedings of natural persons</p> <p>Ad 2) the software gives consideration to the practitioner's experience and expertise, also to the size of the debtor company and othe criteria. However, one can argue if the current solution meets the criteria of "due" consideration.</p> <p>Ad 3) a new insolvency code is expected to be introduced soon. In its current draft version it does not, however, modify the current software selection criteria.</p>
Poland	No	No	No	<p>Jarosław Sobstel (bnt attorneys in CEE)</p>

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<p>Portugal</p>	<p>YES</p> <p>with possibility for the judge to deviate from applying random selection</p>	<p>No</p>	<p>n/a</p>	<p>Catarina Serra (Supreme Court Judge):</p> <p>As a rule, in insolvency proceedings, IPs are selected by a software programme. The aim of the software programme (in place since 2015) is to ensure random selection and equality in the selection of IPs. Only when random selection by a software programme is not possible is the judge allowed to appoint an IP from a list. In such a case, the judge may indeed take into account IP’s experience and expertise. He may also consider the debtor’s suggestions in special cases (e.g. special complexity, corporate groups).</p> <p>What causes “impossibility”? The law does not specify this. We may assume the impossibility is due to the technical reasons you refer. Note, however, that, as stated in the report, if the company’s size, the company’s activity or the special transcendence of the proceedings justify it, it is possible for the judge to deviate from the random selection</p> <p>Under certain circumstances, creditors are able to replace the IP appointed by the judge</p> <p>In general, creditors are not comfortable with the random selection’s method, since it does not allow them to anticipate and eventually control IP’s decisions in the proceedings.</p>
<p>Russia</p>	<p>YES</p> <p>for certain kinds of proceedings</p>	<p>No</p>	<p>YES</p>	<p>Dmitry Konstantinov (Ilyashev & Partners)</p>

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				<p>Ad 1) applied only to proceedings initiated by the debtor; software does not chose the IP itself, but IPs association instead.</p> <p>Ad 2) the rule is not just because Russia is not an EU member, but because IPs themselves are not chosen.</p> <p>Ad 3) There is no initiative officially in the parliament, but it is actively discussed. In this country legislative initiatives normally are discussed among experts (or politicians outside the parliament), introduced to authorities (which are controlled by the leading party) and then go to the parliament. It is quite possible that in a few years reform if IPs appointment will be introduced.</p> <p>Comment: After 2015 we had a slightly different system (IPs directly were chosen by software), but it was for the transition period.</p>
Slovakia	YES	No	N/A	Dávid Oršula (bnt attorneys in CEE)
Spain	No	n/a	The current project for the Royal Legislative Decree approving the consolidated text of the Insolvency Act (under Parliamentary consideration yet) makes no reference to IT selection of the IP	<p>José Carles (Carles Cuesta Abogados)</p> <p>There is no IT that selects IP in Spain. The Judge selects the IP from a list (allegedly in order) and, if extra requirements are needed due to the size of the insolvency proceeding, the Judge can appoint the person he considers from the list (no IP/algorithms do this work, it is still the Judge himself/herself, unfortunately).</p> <p>If not selected in order of the list, the Judge is legally bound to justify this decision in any of this criteria: specialization or previous experience in</p>

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				the sector of the activity of the insolvent debtor, experience with financial instruments used by the debtor for his financing or with collective dismissals (art. 27.5 , paragraph 2, of the Spanish Insolvency Act)
UK	No	n/a	no current legislative initiatives to introduce it	David Grant (Locke Lord LLP)
Ukraine	YES	No	No	<p>Dmitry Konstantinov (Ilyashev & Partners)</p> <p>Ad 1) The court uses the software which randomly chooses an IP. However, in practice a chosen IP refuses to manage the procedure. In such cases creditors and debtors offer their candidates.</p> <p>Ad 3) The new Insolvency Law of Ukraine should come into force in a few months. The biggest change in IP selection process is that the computer choses 3 IPs and the judge appoints one of them (I suppose now it is not perfectly clear whether it should be a solo decision of the judge, or creditors are asked as well). It is also noticeable that I have asked three Ukrainian lawyers (acting as IP at the same time) and they are quite sceptical about the existing system, but they are ultimately against appointment IPs by a judge from his own list due too high corruption risk.</p>