

INSOL Europe Insolvency Tech & Digital Assets Wing

This new section of eurofenix will bring you the most relevant news in the field of insolvency tech and digital assets. To contribute an article to a future edition, please send your proposal to: insolvencytech@insol-europe.org or the individual Chairs: [Dávid Orsula david.orsula@bnt.eu](mailto:Dávid.Orsula@david.orsula@bnt.eu) [José Carles j.carles@carlescuesta.es](mailto:José.Carles@carlescuesta.es) [Laurent Le Pajolec lpa@exco.pl](mailto:Laurent.LePajolec@lpa@exco.pl)

Was court-life across Europe prepared for the COVID-19 crisis?

José Carles, Laurent Le Pajolec and David Orsula, co-chairs of the Insolvency Tech & Digital Assets Wing, report on how the Coronavirus crisis has changed the relationship of lawyers and insolvency practitioners with Courts within the European Union and in other countries.

CCOVID-19 and the correspondent lockdown measures have affected our lives in many ways. From a legal perspective, it has proven that jurisdictions that were already adapted to technology have provided a better response in the administration of justice.

This means, ultimately, better guarantees towards the right of legal protection of European citizens as well as a guarantee of the effectiveness of the principle of separation of powers. Therefore, the relevance of technology within the administration of justice has become more evident than ever: *nowadays, without technology, there is no effective justice.*

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In Italy, local courts are authorised to hold hearings online through MS Teams and Skype

What is the situation in different European countries after the coronavirus outbreak?



Italy
Giorgio Corno
and **Gianluca**

Grasso from Studio Corno Avvocati in Milan explain that Italy uses since 2009 the so called

PCT (electronic civil trial). It operates through a state-owned platform whereby both courts and private practitioners can manage their procedures fully remotely. Italian practitioners benefit as well from a variety of e-tools designed to liaise interactions among creditors and judicial receivers, as well as to simplify and ensure publicity, efficiency and reach an unprecedented degree of transparency.

Therefore, in Italy, court activities have not been affected by the COVID-19-related measures from a technical perspective. However, as court clerks' presence at court has been reduced given the restraints related to the COVID-19 pandemic, the Italian government suspended the main procedural terms from 9 March to 11 May and thus justice has functioned in a far slower mode than usual.

With regard to pending insolvency proceedings, local courts are authorised to hold hearings online through MS Teams and Skype (previously tested by the Ministry of Justice). However, the great majority of Italian insolvency courts have preferred to assign terms to the

parties to file their defences, using MS Teams only for discussions aimed at issuing the requested judgment.



Spain
Carlos Cuesta

from Carles Cuesta

Abogados in Madrid explains that the situation is similar to that of Italy, although the telematic relationship with the court uses different platforms depending on the regions and does not include direct communication between insolvency practitioners and the parties involved (i.e. Madrid uses **LexNet** and it requires a previously activated electronic signature). Even though the country is perfectly prepared to deal with any formalities in writing, procedural terms were suspended from 14 March until 4 June because the administration of justice was not prepared for remote work. Therefore, the activity of commercial courts (including hearings, also suspended so far) has been paralyzed almost completely. In this regard, **Her Honor Amanda Cohen**, advisor to the State Secretary of Justice in Spain, states that Andalusian Courts have been testing a system

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called **Circuit** to be able to hold trials through videoconference, although there is a concern on the recording of the trials (essential with regard to any further appeal).



France

Emmanuelle Inacio explains

that the ordinance n° 2020-304 of 25 March 2020¹ was adopted to lighten the functioning of courts by allowing the information of the parties and the organisation of contradictory procedures by any appropriate means. The provisions of the ordinance apply from 12 March to 24 June 2020. Proceedings without hearings are allowed where the representation is mandatory or where the parties are assisted or represented by a lawyer. The ordinance provides for digital hearings using audio-visual telecommunication means in order to ensure the identity of the parties, the quality of transmission and the confidential communication between the parties and their lawyers. Besides, since 10 April, debtors can file for formal pre-insolvency and insolvency proceedings before the commercial courts on the website www.tribunaldigital.fr.

The French Government also adopted the ordinance n° 2020-341 of 27 March 2020² which provides provisional amendments to the insolvency law in order to mainly promote the access to preventive proceedings and extend statutory time limits of insolvency proceedings. This ordinance also provides special rules regarding communication between the courts and the insolvency practitioners. The hearing ordinarily planned two months after the opening of a reorganisation procedure and the ruling on the continuation of the observation period have been postponed for up to one month after the cessation of the state of health emergency, i.e. 24 June 2020. Further, the acts allowing the referral to the court by the debtor shall be provided to the court administration service by any appropriate means up to one month after the cessation of the state of health emergency.

Communication between the court and the parties shall be achieved by any appropriate means up to one month after the cessation of the state of health emergency.



Denmark

Bo Christensen

from Horten

points out that bankruptcy courts have used phone meetings (as opposed to physical meetings) during the lockdown. In addition, court hearings and decisions have been completed, when possible, on a written basis, which is a possibility under the Danish Administration of Justice Act. Courts are slowly reopening and summoning physical meetings, but no specific or new technologies are applied.



Finland

Robert Peldán

from Borenius

reports that the Bankruptcy Ombudsman's Office upholds a digital portal called **Kosti**. Kosti provides a base for the estate administrator, the Bankruptcy Ombudsman's Office, the debtor and the creditors to communicate and share information relating to the on-going bankruptcy and restructuring proceedings. Not only does the digital portal enhance insolvency proceedings by improving communication and distribution of documents between parties, but it also provides valuable information and statistics for the monitoring insolvency proceedings in the Finnish economy on a larger scale.



Iceland

Páll Eiríksson

from Borgarlog-

menn highlights that the only court that has adapted electronic communications is the District Court of Reykjavik (that hears more than half of all court cases). For filing of documents, the District Court of Reykjavik uses **Signet**, a cloud solution for individuals and companies to digitally sign all kinds of documents with a certified time and certification that the signer is who he claims to be. Other district

courts are about to follow but neither the Court of Appeal nor the Supreme Court are planning a similar approach.



Belgium

Bart Heynicks

from Altius

explains that since 2018, both bankruptcy filings and requests to open judicial reorganisation proceedings must be done electronically through the online platform **Regsol**. When filing for bankruptcy, Regsol provides a nine-step plan to follow. After filing the bankruptcy request, the court will still have to issue a judgment, which will also be communicated through Regsol. Regsol also provides a form for debt declaration for creditors.



Poland

Michał Barłowski

from Wardynski

and Partners explains that an electronic Information Portal of Common Courts has been introduced to the legal system back in 2007 and since then courts around Poland have introduced such an access. This is an innovative solution for lawyers representing clients and participants of legal proceedings who can gain direct access to information contained in court files in an electronic form, can check the status of the case, dates of hearings, actions performed by the court and dates of their performance, the content of documents in the case, and hear electronic protocols. The system automatically generates email notifications about the status and changes made in each individual case.

The anti-coronavirus emergency laws have affected the operation of courts, *inter alia* suspended hearings (except for urgent cases), but courts sittings in insolvency (bankruptcy) and restructuring cases are in general processed, though, at a slower pace. The Information Portal is functioning.



Lithuania

Frank Heemann

states that the



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court system has functioned electronically for some years already, with **e.teismas**. Interaction with the court (inbound, outbound) works electronically, including decisions which are uploaded to and sent through the system, so there was no need to change anything because of the coronavirus crisis in this respect.

With regard to hearings, there is a formal recommendation to avoid oral hearings with presence of individuals, except for certain urgent matters. The use of remote and video call solutions is recommended. The general tendency is to postpone oral hearings, where possible, but some judges have decided to have oral hearings using **Zoom** or similar platforms. This is rather new and you might question whether using this platform is meeting all criteria of proper proceedings (including guaranteeing access of the general public as in normal civil proceedings, which is a right often enshrined in Constitutions).



Slovakia

David Orsula

notes that courts are working despite of the coronavirus crisis, although they decide only in mostly urgent cases and cases without physical presence of parties. Online dispute resolutions proceedings

(electronic payment orders), are conducted without the participation of the parties in an electronic, semi-automated procedure.

Lawyers, courts, and other parties involved in court proceedings may file documents in electronic form. Communication between attorneys and the court must be electronic only. For the last several years Slovak legislation allows to conduct court hearings by electronic means. The tool is certified by the Ministry of Justice and requires the use of a Slovak eID. However, this option is seldom used, despite the fact that courts have been technically equipped. Commercial solutions (MS Teams, Skype, etc.) are not certified and thus not permissible for official use.



Bulgaria

Stela Ivanova

from bnt attorneys

in CEE explains that there are electronic databases related to insolvency but that they have a common problem: they are only useful for persons who can speak Bulgarian and can write with Cyrillic letters.



Ukraine

Anton Molchanov

from Arzinger

points out that the Ukrainian

courts operate in accordance with the COVID-19-related insolvency measures by holding court sessions via token-authorised videoconferences and using the e-court system (limited to a few courts in pilot mode) providing electronic submission of all procedural documents, all case materials in the personal e-cabinet (again limited to a few courts, in pilot mode) and a unified state register of all court decisions (introduced 12 years ago and still working well).



Russia

Ilya Kokorin

from Leiden Law

School explains that the courts have been closed due to the coronavirus crisis and only a limited number of matters are still being decided (mostly urgent cases and cases which do not require the physical presence of parties). The Russian Parliament is considering a bill that will regulate online justice and the Russian Supreme Court has tested the first online hearings with the use of a Russian software called **Vinteo**.

Despite Russian courts being usually very conservative, some regional courts have taken the initiative and are using other ways to hold online hearings. For example, a judge of the Nevyansk city court of the Sverdlovsk region examined on 30 March the case of an administrative offence using a video call through **WhatsApp Messenger**. Another court in the Komi Republic held a hearing on 1 April using Skype software. Unprecedented times require unprecedented solutions.



United Kingdom

Frances Coulson

from Moon Beever

considers that the profession is managing well on **Zoom** and **Skype**. The High Court is working largely on Skype for business, as it also has electronic filing. On the other hand, county courts are largely paper-based and are working mostly by telephone (rather than video). The unavailability of administrative staff to enter orders is causing adjournments and delays.



A judge of the Nevyansk city court of the Sverdlovsk region examined on 30 March the case of an administrative offence using a video call through WhatsApp Messenger





Serbia

Djuro Djuric

reports that due to the state of emergency, the High Court Council issued a special Conclusion on 18 March with Instructions for hearings and sessions in urgent matters.

Regarding civil and insolvency matters, this Conclusion allows the insolvency procedure to take place only if a decision on interim measures has to be ordered, the delay extended or terminated. In all other cases main hearings are suspended as from 19 March 2020 until the state of emergency is lifted (6 May).

During the state of emergency, commercial courts dealing in insolvency matters communicated privately with each other and with their superiors via internet. Communication and delivering decisions in e-form are still not official in Serbia (although the National Parliament of the Republic of Serbia adopted the Act on Electronic Document,

Electronic Identification and Trust Services in Electronic Business on 17 October 2017, which came into force on 27 October 2017, and E-Governance has been working in Serbia for almost 2 years).



Turkey

Burak Baydar from Moroglu

Arseven explains that there is a recent legislative proposal awaiting, aiming to amend the conditions for lawyers to participate in civil court hearings through video calls.

The current regulation allows the participation of lawyers, expert witnesses and witnesses to hearings through video calls if both parties consent on it, which makes it almost inapplicable in practice. The amendment bill though suggests that the court can decide the participation of a party or an expert witness or a witness through video call upon a party's request, thus aiming to enhance these hearings.

Conclusion

It is clear that most European courts still need to adapt to the new technologies in order to allow justice to be delivered from anywhere and despite anything, like the current pandemic. The technology adopted will need to comply with the necessary legal requirements, equality in treatment, confidentiality and guarantees (i.e. a right to a public procedure through streaming solutions, data protection, due identification of participants, cyber threats, etc.).

Thus, IT and data protection experts will be crucial when designing new solutions and protocols. ■

Footnotes:

- 1 www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755577&dateTexte=20200406
- 2 www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041762344&categorieLien=id



IT and data protection experts will be crucial when designing new solutions and protocols



The seven commandments for virtual hearings

In the United States there are a number of major platforms that were already being used for remote calling to court hearings.

With COVID-19, the use of these platforms has been extended to trials and arguments. But as the technology already existed, American attorneys have easily got used to it.

Evan Zucker, Of Counsel from Blank Rome in New York, shares some very useful tips for INSOL Europe members to successfully appear (virtually) before European commercial courts.

1 Test the Technology:

Ensure that your internet /Wi-Fi is secured and stable. Determine in advance what device you will use to participate in the hearing. Make sure your device's camera and speakers are working properly. If possible, log in to the platform beforehand to test the technology and to practice.

2 Set Up Your Virtual Office:

Have a clean office and a wall in the back with no objects which could attract interlocutors from what you have to tell. Consider where you set up your camera and

what is behind you. To the extent possible use a solid background. Pay attention to lighting. For example, depending on the time of day, if you are sitting in front of the window, the glare of the sun can interfere with the video.

3 Minimise noises and distraction:

When you are not speaking, mute your microphone. Avoid using the mouse for opening or closing the microphone and learn the relevant shortcuts.

4 Speaking:

Look at the camera when you are speaking. Position the camera at about eye level if possible (you can use books and other objects to raise your laptop temporarily). Speak slowly and clearly. There may be an audio lag, so pause occasionally.

5 Flexibility:

Do not be hard on yourself – technical glitches will happen, embrace them, everyone understands and is going through similar issues.

6 Virtual Documents:

If your materials are all digital, consider combining all of them into a single PDF document with bookmarks and hyperlinks to make jumping to the relevant document seamless during oral arguments. A second monitor can also make a big difference to having the courtroom on one screen and your documents on the other.

7 Trial Team:

To the extent permitted by the local court, if you have multiple colleagues participating in the hearing, establish a protocol for communicating during the hearing (e.g., through WhatsApp or another messenger). Use different channel to discuss with different participants (For example: WhatsApp between lawyers and with the court and Signal app for discussing with your client) to avoid mistakes.