



Joint Insolvency Conference

Crossing (Dutch) Borders in Insolvency



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Cross-border cooperation for Courts and Administrators

R. Han C. Jongeneel
Judge in the
District Court of Amsterdam



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THOU SHALT COOPERATE



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Reasons to cooperate

- obligations that rest on the Member States EU
- Outside the EU: most efficient way of liquidation (at least on the long run)



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What benefits?

- preventing costly disputes
- preventing unnecessary work



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Few court-to-court contacts

WHY?

1. Courts don't want to (?)
2. Courts are not used to it (?)
3. Courts don't feel the need
4. Practical problems



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Not every cross-border working company - when in insolvency - will produce cross-border insolvencies.



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Wessels, International Insolvency law
(nr. 10.586):

The Insolvency Regulation regards
every legal person as a single debtor.



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Parent-subsubsidiary schemes: a local subsidiary with its local COMI is dealt with under local law:

this reduces cross-border problems



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Preliminary draft for a new Insolvency law

Article 10.5.1 grants the power to the judges and courts to provide information, to communicate or to cooperate with a foreign judge or liquidator.



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Preliminary draft

Article 10.5.2 opens up the possibility for the judge to deviate from the Insolvency law, when an efficient international cooperation so requires.

Persons involved should always be heard.



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CoCo guidelines

(European Communication and Cooperation Guidelines for Cross-border Insolvency)

16.4. To the maximum extent permissible under national law, courts ... should cooperate



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CoCo guidelines

16.3. Courts are advised to consider (...) appointment of the liquidator in main proceedings or a nominated agent of such liquidator as a liquidator or a co-liquidator in secondary proceedings (...)



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CoCo guidelines

16.5. Courts should encourage liquidators to report periodically (...) on the way these Guidelines and/or agreed Protocols are applied (...)



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Preliminary draft for a new Insolvency law

Article 10.5.3 Liquidators are to inform foreign judges or liquidators (unless national rules require to withhold certain information) and they are obliged to cooperate with foreign judges or liquidators as much as reasonably possible.



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cooperation of judges is often a
matter of **coordination**



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What can judges do?

- inform about the contents of their law
- inform about decisions taken and their (possible) legal consequences
- inform about the schedule



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What can judges do?

Intervene when there are complaints about a liquidator (who is under his supervision)



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What judges cannot do ...

Cooperation cannot influence the decision the judge takes



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Two situations

1. a court is to resolve a dispute
2. a supervisory judge has to take a decision (not in a dispute between parties)



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The use of language

A judge or liquidator who uses his official language cannot be wrong, but he can be impractical.



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When a court writes to another court the use of a language that both courts understand is to be preferred.

When there is no language in which all persons who take part in a conversation are enough fluent, translation will be required.