

Technical Update Spring 2021:

Latest EU developments on prevention, restructuring and insolvency matters

Myriam Maily writes about the latest information made available to INSOL Europe members on the INSOL Europe website



EU public consultation on 'Insolvency laws: increasing convergence of national laws to encourage cross-border investment'

In the previous technical column, INSOL Europe members were informed about the wish of the European Commission to begin consultations on a new EU initiative to be adopted for the second quarter of 2022 and aiming at improving convergence between national frameworks for corporate insolvencies.

Following the first phase of consultation in November 2020, in which feedback on an Inception Assessment was sought by DG Justice about the desirability of the initiative (INSOL Europe contributions still available at: www.insol-europe.org/eu-study-group-news), a second phase in the consultation process has now been opened.

Indeed, the European Commission has published a Survey in order to consult until 26 March 2021 all stakeholders with an interest in insolvency law: creditors of all kinds (including employees), debtors, insolvency practitioners or judges and also legal professionals, public authorities, the representatives of the judiciary, research and academia (other related information remain available at: www.insol-europe.org/eu-study-group-links).

In addition to INSOL Europe's members being invited to participate to the survey on an individual basis through our membership newsletter, we would like to inform you that INSOL Europe has also decided to contribute on behalf of its members (the INSOL Europe contribution will be available in due course at: www.insol-europe.org/eu-study-group-news) as the consultation targets important issues that were not

addressed in the EU Directive on Restructuring and Insolvency (n°2019/1023), including the liability and duties of directors of companies on the brink of insolvency, the status and duties of insolvency practitioners, the ranking of claims, the avoidance actions and the identification and preservation of assets belonging to the insolvency estate, as well as core procedural notions.

New tracker on the Implementation of the EU Directive on Restructuring and Insolvency

A tracker on the implementation of the EU Directive on Restructuring and Insolvency is now available on the INSOL Europe website at: www.insol-europe.org/tracker-eu-directive-on-restructuring-and-insolvency

The tracker aims to identify the different steps in the process of the implementation of the

“

The tracker aims to identify the different steps in the process of the implementation of the Restructuring and Insolvency Directive in all EU Member States

”

Directive in all EU Member States, for example the work in progress (if any) of different groups, the official drafts publicly available, the use (or not) of the extension option by national policy makers and the final texts adopted by the national legislators with relevant links when available.

The tracker will be regularly updated in the months to come (until July 2022 which will be the ultimate deadline for Member States having used the extension option provided for by Article 34(2) of the Directive) and will include the publication of the list of the vast majority of Member States which have finally made use of the extension option provided for by Article 34(2) of the Directive.

In the meantime, relevant information regarding the EU Directive on Restructuring and Insolvency of 20 June 2019 remains available from:

www.insol-europe.org/technical-content/eu-directive-on-restructuring-and-insolvency

Lexis®PSL

Launch of the INSOL Europe/Lexis®PSL Joint Project on 'How EU Member States recognise insolvency and restructuring proceedings of a third country'

I am pleased to share the LexisPSL R&F's latest collaboration with INSOL Europe in which the INSOL Europe's country coordinators have provided answers to three key questions on recognition by EU Member States of insolvency or restructuring proceedings commenced in a third country, such as the UK (post Brexit).

The first question considers whether the UNCITRAL Model law on Insolvency has been adopted in that particular country and, if not, whether there are any plans to consider its adoption. Application of the UNCITRAL

Model law by a country will greatly improve visibility on the process and likelihood of the third country gaining recognition of its relevant insolvency/restructuring proceedings.

The second question considers how each country will recognise insolvency/restructuring proceedings commenced in a third country (ie a country which is not an EU Member State, such as the UK (post-Brexit), the US, Japan, Australia or Canada), which may be through the Lugano Convention, the Hague Convention, Rome I or other private international law rules.

The third question looks at how this approach would apply specifically to the example of seeking recognition of proceedings commenced in a third country (the UK) in respect of an English Part 26 scheme of arrangement or Part 26A restructuring plan.

A consolidated table including the replies from INSOL Europe and the articles accredited to INSOL Europe are available on the INSOL Europe website at: www.insol-europe.org/technical-content/recognition-in-third-states

Recognition and enforcement of cross-border insolvencies in EU Member States from 1 January 2021

As the legal framework provided by the EU Insolvency Regulation (EU 2015/848) no longer applies to main insolvency proceedings opened in the UK after 31 December 2020, the UK Insolvency Service has published a *Guide on the Recognition and Enforcement of Cross-border Insolvencies in EU Member States*, which is available on our website at: www.insol-europe.org/eu-study-group-links

Relevant information published by the European Commission on the EU-UK Trade and Cooperation Agreement (31 December 2020) also remains available on our website. ■

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

Other Useful Links



Coffee Breaks Series 2021

> www.insol-europe.org/publications/web-series

Updated Insolvency Laws

> www.insol-europe.org/technical-content/updated-insolvency-laws

National Insolvency Statistics

> www.insol-europe.org/technical-content/national-insolvency-statistics

EIR Case Register

> <http://tinyurl.com/y7tf2zc4>

European Insolvency Regulation

> www.insol-europe.org/technical-content/useful-links-to-be-aware-of-before-applying-the-recast-insolvency-regulation-2015848

> www.insol-europe.org/technical-content/outcomes-of-national-insolvency-proceedings-within-the-scope-of-the-eir-recast

> LinkedIn

www.linkedin.com/company/insol-europe/

> www.insol-europe.org/technical-content/state-of-play-of-national-insolvency-data-by-outcomes-currently-available

> www.insol-europe.org/national-texts-dealing-with-the-eir-2015

EU Directive on Restructuring and Insolvency (2019)

> www.insol-europe.org/technical-content/eu-draft-directive

> www.insol-europe.org/technical-content/eu-directive-on-restructuring-and-insolvency

Brexit Publications

> www.insol-europe.org/technical-content/brexit-publications

USBC Chapter 15 Database

> www.insol-europe.org/technical-content/introduction

Academic Forum Publications

> www.insol-europe.org/academic-forum-documents

> www.insol-europe.org/academic-forum-news

Academic Forum Sponsors:

EdwinCoe LLP

50 Years of Corporate Rescue and Insolvency Expertise

For further information, please contact:

Ali Zaldi
Head of Restructuring & Insolvency
e: ali.zaldi@edwincoe.com

Simeon Gilchrist
Partner
e: simeon.gilchrist@edwincoe.com



EdwinCoe LLP | 2 Stone Buildings | Lincoln's Inn | London | WC2A 3TH
t: +44 (0)20 7691 4000 | e: info@edwincoe.com | edwincoe.com

