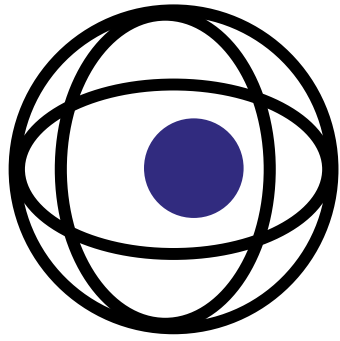

INSOL EUROPE

Judicial Wing

The Relevance of the UNCITRAL Model Law on Cross-Border Insolvency in the EU Member States, Albania, and England & Wales

November 2023

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Contact Information

If you have any questions relating to this project, please feel free to contact the project coordinators.

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Acronyms and Abbreviations, Glossary

COMI	Center of Main Interest
EIR	European Insolvency Regulation
MLCBI	Model Law on Cross Border Insolvency
UNCITRAL	United Nations Commission on International Trade Law
responders	Judges who have filled out the questionnaire
responder countries	countries from which filled out questionnaires have been submitted
MLCBI responder countries	responder countries which have adopted the MLCBI (Albania, England & Wales, Estonia, Greece, Poland, and Romania
non-MLCBI responder countries	responder countries which have not adopted the MLCBI (Bulgaria, Czech Republic, Denmark, Germany, Latvia, Spain)

Introduction and Purpose of the Project

Since its establishment in 2006, the Judicial Wing's work has been focused on the effects of the European Insolvency Regulation and the Recast of 2015.
The Eurofenix Summer 2021 edition (https://www.insol-europe.org/publications/eurofenix-past-issues) includes an article titled "The Judicial Wing at 15" in which the history of the Judicial Wing's activities is summarized.

The 25th anniversary of the UNCITRAL Model Law on Cross-Border Insolvency[1] (hereinafter referred to as MLCBI) in 2022 made some members of the Judicial Wing propose that we explore its impact on insolvency proceedings crossing borders between EU Member States in which the European Insolvency Regulation (hereinafter referred to as "EIR") applies, and non-EU Member States as well as Denmark, where the EIR does not apply.

So far, the United Nations Commission on International Trade Law has adopted the following instruments on insolvency law:

- Model Law on Cross-Border Insolvency (Link 1)
  Click here for additional information (Link 2)
- Model Law on Recognition and Enforcement of Insolvency-Related Judgments (Link 3)
  Click here for additional information (Link4)
- Model Law on Enterprise Group Insolvency (Link 5)
  Click here for additional information (Link 6)

The Legal Nature of the UNCITRAL Model Laws

The Model Laws are not laws of substantive insolvency; rather, they are designed to provide a procedural framework into which local substantive insolvency law is integrated. They are templates that countries are encouraged to incorporate into their domestic insolvency law, making changes to the Model Laws, and, where necessary, to accommodate the local laws. The Model Law on Cross-Border Insolvency has not been adopted by the EU as an organization, but several Member States[2] have individually done so. Concepts embodied in the EIR (for example: COMI) and legal opinions applying the EIR can be helpful to understand the application of the Model Laws.

We are not aware of any countries which have adopted the Model Law on

[1] Unless otherwise stated, Articles mentioned in this document are Articles of the MLCBI
[2] List of countries that have legislation based on the Model Law on Cross-Border Insolvency: https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status

Recognition and Enforcement of Insolvency-Related Judgments and the Model Law on Enterprise Group Insolvency.

The UK considers adopting them, however[3]

This project did not explore issues related to insolvencies of enterprise groups.

Topics and Methodology of the Project

The project is examining the following items:

- Basis of each country 's „International Insolvency Law"
- International Jurisdiction
- Recognition of Foreign Proceedings
- Enforcement of Insolvency-related Judgments
- Available Relief
- Judicial Assistance
- Practical Experience

The required information has been gathered by requesting the members of the Judicial Wing to fill out a questionnaire covering the above items.

[3] https://www.gov.uk/government/consultations/implementation-of-two-uncitral-model-laws-on-insolvency/implementation-of-two-uncitral-model-laws-on-insolvency-consultation

The Questionnaires

For practical reasons we did not include the full text of the questionnaires into this document.

You can access the questionnaires by using the links provided below:

Albania (Judge Fatri Islamaj)

Bulgaria (Judge Atanas Atansov)

Czech Republic (Judge Rostislav Krhut)

Denmark (Judge Jeannette Melchior)

England & Wales (Judge Catherine Burton)

Estonia (Judge Karin Sonntak)

Germany (Judge [retired] Eberhard Nietzer

Greece (Judge Vasilis Portokallis)

Latvia (Judge Inese Belicka)

Poland (Judge Anna Hrycaj)

Romania (Judge [retired] Nicoleta Mirela Nastasie

Spain(Judge Barbara Cordoba)

The uploaded questionnaires begin with section B.

The questionnaires originally included a section A with the responding judges' personal contact information.

We deleted the contact information before uploading the documents because it has only been collected for internal purposes of the Judicial Wing.

The Approach of the MLCBI

Main difference between the approaches of the EIR and the MLCBI:

Pursuant to the provisions of the EIR, the recognition of a foreign proceeding means that the effects of the foreign insolvency proceeding are extended to the territory of the recognizing state.

Recognition pursuant to the provisions of the MLCBI is only a requirement for being granted legal support by the state in which recognition is sought.

Recognition of proceedings as main insolvency proceedings

Under the approach of the MLCBI, the operation of recognizing insolvency proceedings as main foreign proceedings is linked to the concept of COMI.

Pursuant to Article 2 b), a foreign proceeding is a main proceeding if it takes place in the country where the debtor has its COMI. In the absence of evidence to the contrary, the debtor's registered office is presumed to be its COMI (Article 16 (3)).

The party claiming that the debtor's COMI is somewhere else than where its registered office is located, has the burden of proving the allegations.

The presumption can only be rebutted by facts that are both objective and readily ascertainable by third parties.

These facts include public information, excluding data that could only be established at the time of investigation, i.e., forensic verification.

Example: Under which conditions can proceedings opened in Albania, Estonia, Greece, Poland, and Romania be recognized as main insolvency proceedings and which case law is applicable?

Pursuant to the principles of the MLCBI and international case law on the recognition of foreign proceedings, it would be necessary to verify, in concrete terms, a number of factors:

- the place of management of the company,
- where the meetings of the board of directors are held,
- where the central administration is located and
- whether these aspects have been verifiable by creditors.

The rationale for the COMI concept is to enable those interacting with the company to realize what system of law would govern the insolvency of the debtors.

To satisfy this rationale when determining COMI, consideration should at least be

given to the operating history of the company and to the place where the day-to-day management decisions are taken.

The law applicable to the company's principal loans is also relevant. The location of principal assets needs to be analyzed.

To determine the COMI, it is necessary to identify the administrative center which has an element of permanence based on the known facts.

It is true that a sudden relocation under the threat of insolvency may be regarded as evidence of illegitimate forum shopping, enabling the court before which the application for recognition is made, to deny recognition.

Although any business entity is free to relocate its COMI, the suspicion of bad faith manipulation of the COMI requires careful consideration of any factor likely to show that the COMI of the corporation has been illegitimately changed.

Recognition of proceedings as non-main insolvency proceedings

For recognition as a non-main insolvency proceeding, the existence of an establishment must be proved in accordance with the approach proposed by the MLCBI as adopted in each of the local laws.

Establishment is defined as any place of business where the debtor carries on a non-transitory business activity with human resources and goods or services.

Whether an economic activity is non-transitory depends on its duration, frequency, and nature.

Making payments through accounts opened in a particular country can be considered as non-transitory if it has the character of a constant business-type activity.

The economic activity carried out should correspond to the nature and type of activity.

While the requirement in the UNCITRAL definition may involve consideration of the nature of the relevant economic activity, the place from which that activity is carried out must be more than a place of merely occasional operations.

This means carrying out business operations in the local market of that country.

Interaction with third parties is required to demonstrate the existence of an establishment.

This interaction must have a discernible effect on the local market. The management of the company's accounts must be more than a matter of internal administration, akin to paying rent or business rates.

Recognition of foreign proceedings in the light of general principles of private international law

In countries where the MLCBI has not been adopted, local laws on insolvency proceedings have included provisions for identifying the law applicable to private international law relationships in insolvency, procedural rules in cross-border insolvency disputes, and rules governing the conditions for requesting or providing assistance in insolvency proceedings.
In general, we can note that procedural fairness and notice are fundamental principles of the constitutional and legal system of all jurisdictions evaluated.
Recognition can be denied because of a violation of procedural fairness or insufficient notice in all but one of the responder countries.

As a procedural exception, public policy may be invoked in the recognition proceeding of a foreign court judgment or other decision, where effects are sought under foreign procedural acts.
Except for Greece and Poland, the other local statutory or case laws specify minimum standards of procedural fairness or the service of notice.
In all responder countries, the decision whether recognition of a foreign proceeding would lead to a result which is the obviously incompatible with essential principles of that country's law, must be made by the court in which the petition for recognition is pending.

Public policy is a flexible concept, the legal basis of which is not limited to explicit statutory regulations, and it can be adapted to present and future social needs.
The determination whether a statutory provision or principle of case law is sufficiently essential to be treated as a principle of public policy is up to the courts of the respective country.
The imperative nature of the legal rule defining public policy and its role in protecting the fundamental values of a country complement the other characteristics of the concept.
Firstly, public policy is interpreted in accordance with the local law of the territory in which the court is located.
Secondly, public policy, the set of fundamental principles of a country's laws, is constantly being reconsidered and developed to protect the cohesion of national

society. The concrete content is, in principle, identified by the court in which the petition for recognition is pending.

Invoking the public policy exception can be used as a means to avoid the recognition and, thus, the taking effect of a foreign court decision in the country where recognition is sought.

Under both, the EIR and the MLCBI, public policy is the exception to the rule. Therefore, this concept should be interpreted narrowly to apply only to instances where principles equivalent to constitutional rights are adversely affected.

Effects of recognition of insolvency proceedings

The approach of the MLCBI is focused on the effects of the recognition of a foreign proceeding.

First, provisional relief may include the stay of local enforcement proceedings, the possibility for the foreign representative to administer or value the debtor's local assets for the protection or preservation of the value of the assets, the suspension of the debtor's right to transfer assets.

The automatic and immediate stay of individual actions, proceedings, executions, transfers, or acts of disposition relating to the debtor's assets, is an effect resulting from the recognition of a foreign proceeding as a main proceeding (Article 20).

A limited suspension applies to assets that would have to be administered in non-recognized foreign proceedings under local regulations.

The foreign representative also has the right to participate in any proceedings in which the debtor participates in the country where recognition is sought, subject to its local law.

Pursuant to Article 20 (3), suspension does not automatically affect the rights of creditors.

The court has the power (pursuant to Article 20(6)) to modify or terminate the enforcement or suspension (either in full or for a limited time only) on such terms as it considers appropriate.

This does not mean that local law applies to foreign insolvency proceedings, however.

Recognition as a main proceeding automatically creates a moratorium and makes the remedies that would be available to an insolvency practitioner in the local jurisdiction available to the representative in the foreign insolvency proceedings.

Article 21 gives the local court discretion to grant appropriate relief if necessary to protect the debtor's assets or the interests of creditors.
Besides a stay, this appropriate relief includes any relief that may be available to an insolvent company under local national law.
The discretionary nature of the measures referred to in Article 21 (1) (a), (b), (c), and (g), according to which the court may grant additional exemptions or suspensions, ensures that the provision does not operate unfairly by creating undue advantages.
In this respect, the rights for which an exemption/suspension may be granted under Article 21 (1) (g) are determined by reference to the date of the opening of the foreign proceedings, not the date of its recognition in the local proceedings.
Regarding the effects of the recognition of foreign proceedings, some other elements of the legislations of the responder countries should be highlighted.
An issue analyzed is the limits to recognition by safeguarding provisions for local creditors.
The effects on the foreign debtor's assets in the country, where recognition is sought, provided by the laws of the MLCBI responder countries are identical with the effects of the laws of the foreign country in which the insolvency proceedings have been opened. This does not apply to the laws of England & Wales, however.

Summary of the Questions and Responses

This section includes the questions of the questionnaire and a summarized description of the answers by the 12 responding judges.
9 of them sit in countries where the European Insolvency Regulation applies, three of them (Albania, Denmark, England & Wales) sit outside the Regulation's scope of application.
Six of the responding judges sit in countries which have adopted the MLCBI (hereinafter referred to as the "MCLBI countries")[4], the other six sit in countries which have not adopted the MLCBI (hereinafter referred to as the "non-MCLBI countries").

[4] Albania, England & Wales, Estonia, Greece, Poland, Romania

Question 1 (Legal Basis for Dealing with Cross-Border cases)

Is the domestic "international insolvency law" in your country based on the MLCBI?

Yes: Albania, England and Wales[5], Estonia, Greece, Poland, Romania

No: Bulgaria, Czech Republic, Denmark, Germany, Latvia, Spain

Question 1 a)

How did your country adopt the MLCBI (by statute, by regulation, or by court practice)?

All responder countries whose international insolvency law is based on the Model Law adopted it by statute.

Question 1 b)

If yes, is it a verbatim adoption of the MLCBI (or have adjustments been made)?

None of the adoptions were made verbatim.

Question 1 c)

If no, what is the legal basis in your country for dealing with cross-border cases not covered by the EIR?

All responder countries whose answer to question 1 is "no" have provisions on cross-border insolvencies in their domestic laws. Denmark, Germany, and Spain have included these provisions directly into their respective insolvency codes. Bulgaria chose to include them into its commerce act, the Czech provisions can be found in the Czech act governing private international law, Latvia's provisions are included in the Latvian law of civil procedure.

Although Spain has not formally adopted the MLCBI, the provisions of its domestic law dealing with cross-border cases have obviously been based on both, the EIR and the MCBI as well.

Please refer to the individual questionnaires for details.

[5] The answers in the questionnaire are relevant only to England & Wales, not the entire UK

Question 2 (Requirements of Recognition)

Question 2 a)

Does recognition of a foreign proceeding require an order by a court to that effect?

Yes: Albania, Bulgaria, England & Wales, Greece, Latvia, Poland, Romania, Spain
No: Czech Republic, Denmark, Estonia, Germany.

Question 2 b)

Which are the requirements and other conditions to be met for obtaining recognition of foreign insolvency proceedings in your country?

The requirements and conditions described in the responses vary to a great degree. Please refer to the individual questionnaires for details.

Question 2 c)

According to your domestic "international insolvency law", the courts of which country have international jurisdiction to open insolvency proceedings in cases not covered by the European Insolvency Regulation?

The responses show that most countries do not have a provision on international jurisdiction which is as extensive and clear as Article 3 of the European Insolvency Regulation.
Please refer to the individual questionnaires for details.

Question 2 d)

Is COMI relevant for determining international jurisdiction?

Yes: Albania, Czech Republic, Denmark, England & Wales, Estonia, Germany, Greece, Latvia, Poland, Romania, Spain
No: Bulgaria

Question 2 e)

Does a presumption similar to Article 3 of the European Insolvency Regulation or to Article 16 (3) of the Model Law on Cross-Border Insolvency apply in the domestic law of your home country?

Yes: Albania, England & Wales, Estonia, Greece, Poland, Romania, Spain
No: Czech Republic, Denmark, Germany, Latvia

Question 2 f)

Please cite the provision of your local law in which this presumption is mentioned.

Please refer to the individual questionnaires of those countries, whose answer to question 2 e) is yes, for details.

Question 2 g)

If the local law of your home country applies such assumptions, is the purpose of the presumption similar to the purpose of the presumption in Article 3 of the European Insolvency Regulation or similar to the purpose of the presumption in Model Law on Cross-Border Insolvency?

The differences between the purposes of the presumptions are explained in # 141 of the Part Two of the Model Law (Guide to Enactment and Interpretation):
Although the presumption contained in article 16, paragraph 3 corresponds to the presumption in the EC Regulation, it serves a different purpose.
In the Model Law, the presumption is designed to facilitate the recognition of foreign insolvency proceedings and the provision of assistance to those proceedings.
Under the EC Regulation, the presumption relates to the proper place for commencement of insolvency proceedings, thus determining the applicable law, and to the automatic recognition of those proceedings by other European Union member States.

Albania, England & Wales, stated that the purpose of the presumption in their local laws is similar to the Model Law on Cross-Border Insolvency.
Estonia, Greece, Poland, Romania, and Spain stated that the purpose of the presumption in their local laws is similar to the European Insolvency Regulation.
No country stated that the purpose of the presumption in its local law is neither similar to the European Insolvency Regulation nor to the Model Law on Cross-Border Insolvency.

Question 2 h)

Are reorganization proceedings (e.g., proceedings under Chapter 11 of the United States Bankruptcy Code) recognized as foreign insolvency proceedings in your home jurisdiction?

Yes: Czech Republic, England & Wales, Estonia, Germany, Greece,
No: Albania, Bulgaria, Denmark, Latvia, Poland, Romania, Spain

Question 2 i)

Does your local law include a provision requiring proof of reciprocity?

Yes: Bulgaria, Czech Republic, Estonia, Romania
No: Albania, Denmark, England & Wales, Germany, Greece, Latvia, Poland, Spain

Question 3 (Denial of Recognition)

Question 3 a)

Public policy exemption: Can recognition be denied because it would violate your country`s public policy (ordre public)?

The answer was yes in all questionnaires that were filled out.

Question 3 b)

How is public policy (ordre public) defined and interpreted in the domestic legislation and legal practice of your country)?

The answers in all questionnaires show that public policy is generally considered a flexible concept which can be adapted to changes of the society's views on basic legal and moral principles.
The standard for applying the public policy exemption was mostly described as recognition leading to a result which is obviously incompatible with fundamental values of the respective country's society.
All countries which have submitted filled out questionnaires leave the determination of the boundaries of public policy to the courts.

Question 3 c)

Procedural Fairness and Notice: Can recognition be denied because of a violation of procedural fairness or insufficient notice?

No: Greece

Yes: all other respondents.

Question 3 d)

Does your local statutory or case law specify minimum standards of procedural fairness or the service of notice?

No: Greece and Poland

Yes: all other respondents

Question 4 (Limits to recognition by safeguarding provisions for local creditors)

Question 4 a)

If a foreign proceeding is recognized, does this mean that it has the same effects regarding the foreign debtor's assets located in your country which it has under the law of the country in which it has been opened?

No: England & Wales

Yes: all other respondents.

Question 4 b)

Does the statutory or case law in your country provide for exceptions for preferential or non-preferential claims of local creditors in your country?

Yes: Bulgaria (distribution order of receivables), Czech Republic (transfer of assets into other countries), Poland (categories of claims)

No: Denmark, England & Wales (view questionnaire for details), Estonia, Germany, Greece, Latvia, Romania, Spain

Question 5 (Enforcement of foreign insolvency-related judgments)

Question 5 a)

Which judgments are considered insolvency-related by your local law (e.g., judgments avoiding transactions by the debtor)?

None of the responses mentioned an explicit definition of "insolvency related judgment" by statute.

Two responders mentioned judgments in avoidance actions (Estonia, Poland), one responder stated that all judgments based on substantive insolvency law are considered insolvency-related (Greece).

The responder for England & Wales stated that judgments given in insolvency proceedings do not form a separate category of judgment outside the common law rules.

Question 5 b)

Which are the requirements for the recognition of insolvency-related judgments under your local law?

None of the countries having submitted responses has adopted the UNCITRAL Model Law on Recognition and Enforcement of Insolvency Related Judgments. This means that the requirements for recognition are the same as for judgments which are not insolvency-related (unless the case is governed by the provisions of the European Insolvency Regulation).

Question 5 c)

Which are the effects of the recognition of such a judgment?

Some responders left the space provided for answers blank.
Others have described the effects of recognition of a judgment opening insolvency proceedings.
In the Czech Republic and in England and Wales, the effects of a recognized insolvency-related judgment are identical with the effects of a domestic judgment.
In England and Wales this applies only to monetary judgments.
In Germany, Greece, and Spain, the effects are the same as in the country in which the foreign court whose judgment is recognized is located.

Question 5 d)

Under which conditions can recognition and/or enforcement of such judgments be denied?

Most responses mentioned the public policy exception.
The answers are mostly identical to those given under question 2 b).

Question 6 (Available relief)

Question 6 a)

Can a court in your country grant relief sought by a foreign insolvency representative on the basis of the local substantive or procedural law applicable in your country (such as exercising its case management powers by making orders in proceedings pending before it, e.g., by granting an automatic stay)?

Yes: Albania, England & Wales, Germany, Greece, Romania
No: Bulgaria, Denmark, Estonia, Latvia, Poland, Spain

Question 6 b)

Can the foreign insolvency representative commence plenary local insolvency proceedings in your country?

Yes: Albania, Bulgaria, Denmark, England & Wales, Greece, Latvia, Spain
No: Estonia, Germany, Poland, Romania

Question 6 c)

Does your local law permit the foreign insolvency representative to remove assets of the debtor from the territory of your country?

Yes: Albania, Bulgaria, Czech Republic, Denmark, England & Wales, Germany, Latvia, Spain
No: Estonia, Greece, Poland, Romania

Question 7 (Judicial Assistance)

Does your local law include provisions on judicial assistance and cross-border cooperation with foreign courts and/or other authorities?

Yes: Albania, Denmark, England & Wales, Germany, Greece, Poland, Romania
No: Bulgaria, Czech Republic, Estonia, Latvia, Spain

Question 8 (Practical Experience)

The answers to questions 8 a) through 8 f) mirror the personal experience of the responding judges.
They cannot be treated as reflecting the overall practical experience of all the judges of the respective countries.

Question 8 a)

Have you ever recognized a foreign proceeding and/or insolvency-related judgment?

Yes: Denmark, England & Wales, Germany, Greece, Poland,

No: Estonia, Latvia, Romania

Question 8 b)

Have you ever granted judicial assistance in a cross-border proceeding?

Yes: England & Wales, Estonia, Greece

No: Albania, Bulgaria, Czech Republic, Denmark, Germany, Latvia, Poland, Romania

Question 8 c)

Have you ever granted relief from the effects of a judgment or court order in cross-border proceeding?

Yes: England & Wales, Greece,

No: Albania, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Latvia, Poland, Romania

Question 8 d)

Has an insolvency practitioner appointed by you ever filed a petition with a foreign court for recognition of the proceeding in your jurisdiction?

Yes: Denmark, England & Wales, Romania

No: Albania, Bulgaria, Czech Republic, Estonia, Germany, Greece, Latvia, Poland

Question 8 e)

Have you ever been involved in a cross-border case involving judicial cooperation?

Yes: Denmark, Estonia, Greece, Romania

No: Albania, Bulgaria, Czech Republic, England & Wales, Germany, Latvia, Poland

Question 8 f)

Can you provide some examples of decisions in your jurisdiction granting/denying recognition of a foreign proceeding/decision, judicial assistance, or relief from the effects of a foreign proceeding or judgment/court order?

Yes: England & Wales, Estonia, Spain

No: Albania, Bulgaria, Czech Republic, Denmark, Germany, Greece, Latvia, Poland, Romania

Question 9 (Availability of local law on the internet) Is any local statutory or case law of your home country available in English?

The responders from Bulgaria, the Czech Republic, England & Wales, Germany, Greece, Latvia provided information on internet resources about their local law in English.

Observations and Conclusions

The answers in the filled-out questionnaires show that the laws of all responder countries include provisions governing the matters mentioned in the questions. Their approaches vary, however.

This applies even internally within each of the two groups:

- Recognition of a foreign insolvency proceeding must explicitly be granted by a court order to that effect in five of the six MLCBI responder countries.
  The six non-MLCBI responder countries were evenly divided: three of them require a court order, and three of them do not.
- Reciprocity is required by two MLCBI responder countries and also by two non- MLCBI responder countries.

On the other hand, the answers under questions 3 a) – d) were quite homogenous across both, the MLCBI responder countries and the non-MLCBI responder countries.

The answers to questions 4 a) and b) show that exceptions for preferential or non-preferential claims are based on legal categories (e.g., secured claims, administrative claims), not on the creditors' place of business or residence.

The EIR Recast does not explicitly define the concept of "insolvency-related", but recital 35 and articles 6.1 and 32.1 (subparagraph 2) describes it as actions that derive directly from the insolvency proceedings and are closely linked with them, as avoidance actions, actions concerning obligations that arise during the insolvency proceedings, such as advance payment for costs of the proceedings.

The MLCBI does not include specific provisions for insolvency-related judgments. We established, in relation to judgments considered insolvency-related by the local laws evaluated in this project, that none of the responses mentioned an explicit definition

of "*insolvency related judgment*" by statute, two responders mentioned judgments in avoidance actions, one responder stated that all judgments based on substantive insolvency law are considered insolvency-related.
Notwithstanding Article 6 of the EIR and Article 2 of the UNCITRAL Model Law on Recognition and Enforcement of the Insolvency-Related judgments, none of the responder countries has so far seen any need to define the term "insolvency related judgment" in its domestic law or to make special provisions for the enforcement of such judgments.
This implies that none of the responder countries think that adopting the UNCITRAL Model Law on Recognition and Enforcement of the Insolvency-Related judgments or creating special rules for such judgments will considerably improve the current situation.

The answers to questions 6 a) and b) show that foreign insolvency representatives are treated very differently by the local laws of the responder countries.
Among both groups, the MLCBI responder countries and the non-MLCBI responder countries, there are permissive and restrictive approaches to be found.
The permissive approach of Articles 19 and 21 of the MLCBI is not reflected in the answers of all of the MLCBI responder countries.
For example, permitting the foreign representative to remove assets from the territory of the court an application for relief is submitted to, is an element of the discretionary relief available pursuant to Article 21 of the MLCBI.
Four of the six MLCBI responder countries do not allow the foreign representative to remove assets from their territory, however.
When we look at the answers to question 7 (judicial assistance), we do not see a uniform approach in the responder countries.
Five of the responder countries have no provisions on judicial assistance and cross-border cooperation in their local laws at all, among them two MLCBI responder countries.
Among the seven responder countries which have such provisions are five MLCBI responders and two non-MLCBI responders.
The courts in the five MLCBI responder countries have an obligation to cooperate with foreign courts, whereas the courts in the two non-MLCBI responder countries

may, but do not have to, cooperate with foreign courts.
Like their template, Article 26, the provisions of the MLCBI responder countries include non-exhaustive lists of permitted forms of cooperation.
Because of that template, those lists look much alike although they are not identical.

It would be helpful if the understanding of the term “cooperation in cross-border proceedings” could become more homogenous.

Generally, the discussion on cooperation in cross-border insolvency cases is characterized by an increased interest in promoting the harmonization of the relevant legislation.
The supporters of a harmonization see the main benefit in a higher degree of predictability of the outcome of cross-border insolvency proceedings.[6]
When we look at the current status of developments in national insolvency laws around the globe, we can identify the emergence of some convergence on their objectives.
These developments have been furthered by the existence of the EIR and “soft laws” such as the MLCBI.
A true harmonization is still far away, however.
Yet the various initiatives have led to a growing global awareness of the benefits of an increased harmonization of different insolvency regimes.
This result shows why legislative intervention, and the work of international institutions and associations is so important for that goal.

The MLCBI reflects essentially the need for cooperation in insolvency proceedings, including communication, and cooperation between courts and between designated representatives in proceedings opened in different jurisdictions.

The work of the legislature must also be accompanied by a constant effort by national judges in this regard. Interpretation by analogy, in relation to the general principles of private law in the judicial activity makes it possible to reduce discrepancies between

[6] Proposal for a directive of the European Parliament and of the Council harmonizing certain aspects of insolvency law

national and European legislation, for example, as well as to establish common standards for insolvency law.

In this context, the role of the judiciary can be decisive.

The absence of detailed procedural rules in national laws addressing the multiple issues that may arise in disputes with cross-border elements does not justify the denial of legal proceedings called for in such cases.

This paper analyzes the types of procedures that exist in the legislative structures and practices of insolvency courts in different EU Member and non-member States, and the challenges they face regarding significant topics, such as recognition of foreign proceedings, enforcement of insolvency-related judgments, available relief, and judicial assistance in cross-border insolvency cases.

As of August 2023, more than 25 years after the formal adoption of the MLCBI by UNCITRAL, its international importance has grown considerably.

Legislation based on or influenced by the Model Law has been adopted in 58 States in a total of 61 jurisdictions.

In Europe, the MLCBI has been adopted in Romania (2002), Poland (2003), Serbia (2004), Slovenia (2007), Greece (2010), Albania (2016), and Estonia (2022). The United Kingdom had also implemented the MLCBI into its domestic legislation when leaving the EU. The development of the adoption rates of the MLCBI may be an indication of the importance that EU Member States ascribe to a model law on cross-border insolvency.

Considering the manner and extent in which the MLCBI has been enacted and implemented, in none of the six jurisdictions evaluated in this project, whose international insolvency law is based on the Model Law adopted by statute, the adoptions were made verbatim.

However, only European case law will tell whether the changes and the amendments to the MLCBI made by them are consistent with its character and content.

For time being, it is too early for any prognosis.

Foreign insolvency orders and court appointed administrators are generally recognized in all responder countries, provided the foreign orders satisfy certain requirements. In some of them, foreign insolvency decisions are recognized only

based on reciprocity.
In most states, before any form of recognition can be accorded to a foreign bankruptcy order, it must be established that the recognizing state does not have exclusive jurisdiction in the matter and the foreign judgment is not against public policy.
Another relevant matter is the proof of reciprocity required in Bulgaria, the Czech Republic, Estonia, and Romania.
In these countries, foreign proceedings will be recognized only if their judgments are also recognized in the country where the foreign proceedings are held.
No such reciprocity provisions exist in Albania, Denmark, England & Wales, Germany, Greece, Latvia, Poland, and Spain, however.
Is reciprocity relevant for the protection of local interests against an opportunistic attitude of foreign representatives?
The low number of cross-border insolvency cases can possibly be explained by the reciprocity requirements in the countries mentioned above.
The large number of countries which do not have a reciprocity requirement for the recognition of foreign insolvency proceedings shows that reciprocity is not needed to protect the interests of local creditors against foreign insolvency representatives.

If the amount of practical experience described by the responders mirrors the overall practical experience of all judges in the responder countries, the number of cross-border insolvencies involving judicial assistance or cooperation, or relief from the effects of judgments or other court orders in cross-border proceedings must be low.

None of the non-MLCBI responding countries reported any practical experience worth mentioning.
Even among the six MLCBI responder countries, only four have reported any practical experience with judicial assistance or cooperation. Only one of them has ever granted relief from the effects of a judgment or court order.

As the extent of the research which could be performed during this project did not identify many examples of European case law based on provisions of the MLCBI, adopted into the domestic legislation of European countries, the adoption of the MLCBI does not seem to have had significant practical consequences.

Although the legislation in those countries is modern and in line with international standards, the insufficiency of relevant case law may be a reason for the reluctance of foreign business enterprises to enter into formal insolvency proceedings or avail themselves of the informal restructuring procedures available in some of the responder countries.

The research carried out during this project shows that there is no European uniform legal regime applicable to the recognition of foreign insolvency proceedings from countries in which the EIR does not apply.

The practice of some courts endeavors to develop mechanisms and to identify solutions for judicial assistance and cooperation.
However, even in consideration of this practice, we come to the conclusion that, in civil law jurisdictions, these processes are still in infancy stages in terms of practice and jurisprudence.

Research into international practice and jurisprudence for the purpose of obtaining a broader understanding of how national legal provisions in force are interpreted and applied, has considered the following aspects:

- the requirements on the formulation of the request for assistance to be submitted by the foreign representative appointed in the foreign proceeding.
- the requirements on the accompanying documents.
- procedural requirements for interim measures.
- judgments rendered in foreign proceedings.

We do not have enough information, to determine whether cross-border cases would run more smoothly if the six non-MLCBI responder countries adopted the MLCBI. Promoting a pragmatic perspective in addressing cross-border insolvency issues is likely to be helpful, however.

Given the insufficiency of existing relevant case law, looking at global and regional guidelines developed by different insolvency experts and associations is an alternative to developing new pragmatic approaches on a case-by-case basis.

The characteristics of some European economies, their cross-border trade, and the

structures of business enterprises operating within them, do not provide much opportunity for their insolvency courts and practitioners to deal with cross-border cases.

That means they can hardly gain any experience in applying the MLCBI provisions as possibly adopted by their local laws.

At the same time, business enterprises tend to operate across borders in multiple jurisdictions and need to adapt their structures, mechanisms, and operations accordingly.
This reality should be given sufficient attention by the experts and competent government agencies of those economies.