

What to expect in restructuring and insolvency areas in 2025?

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



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The EU Directive on Restructuring and Insolvency (2019/1023)

Final stage for its implementation in all EU member states

2025 should be the year in which the Restructuring Directive is adopted in all EU Member States. As at time of writing, **Poland** remains the latest country to consider implementing the EU Directive on Restructuring and Insolvency. However, given the fact that it is now Poland's turn to hold the presidency of the Council of the European Union (from 1 January to 30 June 2025), it is legitimately expected that the Polish legislative process will move faster.

As a reminder, 27 individual reports (26 EU Member States + the UK) as well as the consolidated table are currently available at: www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023

Please note that the results of this research are only available to members of INSOL Europe (you must log in to access the individual articles as well as the consolidated table).

National reforms undertaken by EU Member States

Following the implementation of the European Directive on Restructuring and Insolvency in EU Member States, new sets of information have been made available under the 'Updated Insolvency Laws' section of our

website at: www.insol-europe.org/technical-content/updated-insolvency-laws

Latest updated links include **Italy** and **Belgium**.

Impact on Annexes of the European Insolvency Regulation (2015/848)

As new or amended national insolvency laws transposing the Directive 2019/1023 on restructuring and insolvency may be covered by the scope of Regulation (EU) 2015/848 (EIR 2015), the European Commission has therefore examined whether some of them comply with the requirements of the Regulation vis-à-vis national insolvency proceedings and should be included in Annex A of the Regulation.

Indeed, Annexes A and B are decisive in defining the scope of application of the EIR 2015, as they exhaustively list those insolvency proceedings or insolvency practitioners, respectively, of the Member States' laws, to which the Regulation applies. It is, therefore, important that these Annexes are regularly updated in order to reflect the current legal situation in the Member States.

In July 2022, **Slovakia** notified the Commission of recent changes in its domestic insolvency law introducing a new preventive restructuring procedure as well as a new type of insolvency practitioner. This was followed by notifications from **Estonia**, **Spain**, **Malta** and **Italy** in September 2022, from **Belgium** in July 2023 and from **Luxembourg** in January 2024.

According to the European Commission, as those new types

of insolvency proceedings and insolvency practitioners comply with the requirements set out in the EIR 2015, it is therefore necessary to amend its Annexes A and B. In this context, *the European Commission published on 12 February 2025 a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2015/848 on insolvency proceedings to replace its annexes A and B* (COM(2025) 40 final).

The proposal was on the agenda of the Council of the European Union of 14 February 2025, then the European Parliament will examine it in compliance with the ordinary legislative procedure. Once adopted, the Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Insolvency III Legislative Proposal (COM/2022/702 final)

2025 should also be the year in which the Harmonisation Directive could be partially adopted by the EU Institutions (Proposal for a Directive harmonising certain aspects of insolvency law - COM/2022/702 final).

After the *partial* general approach adopted by the **Council of the European Union** (under the Hungarian Presidency) on 13 December 2024 on key elements of the proposed directive, so as to preserve the insolvency estate (avoidance actions and asset tracing), the duties of directors in the event of insolvency (duty to file for

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Annexes A and B of the EIR exhaustively list those insolvency proceedings or insolvency practitioners to which the Regulation applies

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insolvency proceedings) and transparency obligations (factsheets with practical information on the main features of domestic laws on insolvency proceedings) – (read further in the Winter 24-25 edition of Eurofenix), Member State experts within the Council will continue discussions on the remaining provisions (prepacks, simplified liquidation proceedings for micro-enterprises and creditors' committees) during the Polish presidency.

On the part of the **European Parliament**, the report of the ECON Committee (Economic and Monetary Affairs) issued last November 2023 remains valid and it is now the turn of the JURI Committee (Legal Affairs) to make its own choices before the plenary session planned for June 2025!

Recent (2024) and forecast data (2025-26) on National Insolvency Statistics

Latest **Eurostat** quarterly statistics on declarations of bankruptcies (released on 24 February 2025) are now available as well as the Year 2024 for **France**. Further updates will focus on **Luxembourg** and **Poland**. So please do not hesitate to have a regular look at the dedicated technical section of our website at: www.insol-europe.org/technical-content/national-insolvency-statistics

In terms of projections for 2025, forecasts by Allianz-Trade indicate that insolvency rates in Europe will continue to climb, with 70% of countries worldwide projected to surpass pre-pandemic insolvency levels by the end of 2024. Overall, they expect a somewhat moderate increase in business insolvencies globally in 2025 (+2%) while first forecasts for 2026 would suggest a more widespread downside trend, which would translate into the first decrease of their headline indicator in four years, albeit a limited one (-1%). According to the authors, the rebalancing of global economy would only partially be addressing the upside factors keeping insolvencies at

high levels for several quarters...

See more on our website at:

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

European Insolvency Regulation Case Register

As a member of INSOL Europe, you have free access to the European Insolvency Regulation Case Register, which is a unique internet-based system for collecting and disseminating information on court decisions that consider a significant point relating to the Recast Regulation on Insolvency 848/2015 (or its predecessor, Regulation (EC) 1346/2000 on Insolvency Proceedings). It relies on a network of National Correspondents working closely with the Case Register's Management Board. All abstracts are published in English and are academically moderated by Professor Reinhard Bork (National cases) and Stefan Ramel (CJEU cases). For details of how to use and search the case register, see the **'How to Guide'** available at: www.insol-europe.org/technical-content/european-insolvency-regulation

As at February 2025, the case abstract service provides abstracts published in English of **903 judgments**, from the Court of Justice of the European Union and courts of the EU Member States, **including 84 abstracts applying the Recast Regulation on Insolvency 2015/848**: 1 from Austria, 6 from the CJEU, 11 from England & Wales, 7 from Estonia, 3 from France, 14 from Germany, 2 from Gibraltar, 5 from Italy, 20 from Lithuania, 2 from The Netherlands, 12 from Portugal and 1 from Scotland.

At the **European level**, the CJEU delivered three new cases in 2024. In April 2024, the CJEU provided useful clarifications on the respective scope of the main and secondary insolvency proceedings and in particular on the determination of the law applicable to assets subject to

Further Information

For updates on new technical content recently published on the INSOL Europe website, visit:
<https://www.insol-europe.org/technical-content/introduction>
 or contact Myriam Mailly by email:
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secondary insolvency proceedings subsequently opened and, lastly, the powers granted to practitioners of the main and secondary proceedings (**Air Berlin**, C-765/22 & C-772/22).

In September 2024, the CJEU ruled in essence that in the case of an individual exercising a liberal profession or any other self-employed activity, it is presumed, in the absence of proof to the contrary, that the centre of main interests is located at the place of main activity, even if this activity does not require any human resources or assets (**Finanzamt Wilmersdorf**, C-501/23).

In November 2024, the CJEU maintained its restrictive interpretation of the exception provided for in Article 1(2)(b) of the Brussels Ia Regulation concerning bankruptcies, arrangements with creditors and other similar proceedings and reminded that even if this Regulation is used to determine jurisdiction, the Insolvency Regulation remains the instrument that determines the law applicable in relation to actions for payment against a company for which insolvency

proceedings have been opened (**Oilchart International**, C-394/22).

For the Year 2025, other new decisions from the CJUE are expected and in particular in the **Auto1 European Cars B.V.** case (Case C-186/24) following the request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 8 March 2024. In this case, it will be discussed how Article 31(1) of the Insolvency Regulation (2015) is to be interpreted in circumstances where a contract of sale was concluded in the branch of a company incorporated under Netherlands law and established in the Netherlands with a debtor after that insolvency proceedings had been opened. The liquidator appointed into the Austrian insolvency proceedings sought the (re)payment at the benefit of the insolvency estate of the sum at stake by execution of the challenged contract while the contractor argued by contrast that it should benefit from Article 31(1) of the EIR 2015, that it could not be held liable as it had not known about the opening of insolvency proceedings. ■