

Regulation (EU) 2015/848 on insolvency proceedings (recast)

4. General structure

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1. Aims of the Regulation

- ▶ coordination of the measures regarding insolvency – in the context of more cross-border activities in the Community
- ▶ filling a gap left by the Brussels Convention, currently Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ('Brussels Ia')
- ▶ avoiding incentives for 'forum shopping'
- ▶ NOT AIMED – unification of substantive insolvency laws

2. Scope of application

(a) insolvency proceedings (Art. 1(1) EIR, Art. 2(1) and (4) EIR + Annex A to EIR)

(b) centre of main interests (COMI) of a debtor located in the EU, except Denmark (recital 25 in connection with Art. 3 EIR)

3. Centre of a debtor's main interests (COMI)

The place where the debtor conducts the administration of his interests on a regular basis (Art. 3 (1) EIR)

(a) ascertainable by third parties (in particular by creditors)

(b) presumptions:

- for companies and legal persons – presumption of COMI being in the place of its registered office, Art. 3(1) EIR
- for natural persons – habitual residence for non-professionals or professional domicile/ principal place of business for professionals (Art. 3(1) EIR)

4. Jurisdiction to open insolvency proceedings

(a) main proceedings – courts of the Member State within the territory of which the debtor's **COMI** is situated, Art. 3(1) EIR

(b) territorial proceedings (secondary or independent territorial proceedings) – courts of the Member State within the territory of which the debtor possesses an **establishment**, Art. 3(2) EIR

4a. Definition of an establishment

Art. 2(10) EIR

place of carrying out an economic activity

(a) of non-transitory character

(b) with human means and assets



5. Main and territorial proceedings

Main proceedings, Art. 3(1) EIR

- opened in the state, where the debtor's **COMI** is situated
- subject to automatic recognition and immediately effective in other Member States

Territorial proceedings, Art. 3(2)-(4) EIR, Art. 34 to 52 EIR

- opened in the state, where the debtor's **establishment** is situated
- their effects are generally limited to the Member State where they are opened
- if running in parallel to main proceedings – **secondary proceedings**

6. Recognition and effectiveness of insolvency proceedings in other Member States

- opening of insolvency proceedings by a court of a Member State which has jurisdiction pursuant to Art. 3 is **automatically recognized** in other Member States (Art. 19 EIR)
- main proceedings are **automatically effective** in other Member States (Art. 20(1) EIR)
- decisions issued in course of the insolvency proceedings are subject to automatic recognition and enforcement according to the Regulation No 1215/2012 (Brussels Ia) (Art. 32 EIR)

7. Exception from automatic recognition and effectiveness

ordre public clause (Art. 33 EIR)



8. Law applicable

- rule: **law of the State of the opening of proceedings** (*lex fori concursus*, Art. 7 EIR)
- exceptions (for protection of local interests): i.a. third parties' rights in rem (Art. 8), immovable property (Art. 11), contracts of employment (Art. 13) – various grades of taking into account the law of another Member State with a link to the particular situation

Further reading

Compulsory:

- ▶ Recitals to the EIR and to the old EIR
- ▶ Virgos–Schmit Report, paragraphs 6–47

Additional (facultative) reading to presentations 2–4:

R. Bork, R. Mangano, *European Cross–Border Insolvency Law*, Oxford University Press 2016, pp. 16–30 (paras. 1.34 – 1.68)

Additional reading in Polish (to presentations 3–4)

- ▶ M. Armatowska, *Uznanie zagranicznych postępowań upadłościowych*, Wolters Kluwer 2011, rozdz. 1 – Uwagi ogólne o rozporządzeniu Rady (WE) nr 1346/2000 w sprawie postępowania upadłościowego