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The EU Insolvency Regulation

DG Justice and Consumers
Unit A1 – Civil Justice
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Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

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The Insolvency Regulation:

- **„EIR":**
  - Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings
  - in force as of: 31 May 2002

- **„REIR":**
  - Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
  - applies from: 26 June 2017
    interconnection of insolvency registers: 26 June 2019

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The Insolvency Regulation (cont'd)

- Does not harmonize substantive rules of domestic inslvency laws
- Private international law instrument:
  - Uniform rules of conflict of laws and jurisdcitions
  - Recignition and enforcement of decisions taken in insolvency proceedings
  - Cooperation between various actors in cross-border insolvency proceedings

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The Insolvency Regulation (cont'd)

Normative model: mitigated universality

Universal character	Mitigation
Jurisdiction	There is a (limited) opportunity to open territorial/secondary proceedings
Law applicable	Exceptions to the application of the *lex concursus*
Recognition and enforcement	Mandatory system only within EU Member States

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Main elements of the Regulation:

- Scope
- Jurisdiction
- Secondary insolvency proceedings
- Publicity of proceedings
- Groups of companies

Scope I
main elements of "insolvency proceedings" under the old Regulation (EIR):

- (i) proceedings based on the debtor's insolvency
- (ii) collective character of the proceedings
- (iii) entails the partial or total divestment of the debtor
- (iv) appointment of a liquidator

+1: these proceedings are listed in Annex A

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Scope II
amendments introduced by the recast (REIR):

- re (i): Extension of scope to pre-insolvency proceedings
- re (ii): clarification of "collectivity" in recitals (12)-(14)

  "includes all or a significant part of the creditors to whom the debtor owes all or a substantial proportion of his outstanding debts, provided that the claims of those creditors who are not involved in such proceedings remain unaffected"
- re (iii)-(iv): extension of scope to debtor-in-possession proceedings (DIP)

Scope III
amendments introduced by the recast (REIR):

- re +1: clarification that list of national proceedings in annex A is exhaustive and definitive – see recital (9):
  - Those insolvency proceedings are listed ***exhaustively*** in Annex A.
  - Non rebuttable ***presumption in favor*** of the compliance of the proceedings listed in Annex A with the requirements set by the Regulation.
  - If not listed in Annex A, a procedure should not be covered by the scope

- But: heavy system of amending annexes retained

Jurisdiction for main insolvency proceedings I
situation under the existing Reg. (EIR)

- Centre of main interest (COMI)

  "COMI shall be the place where the debtor conducts the administration of his interests on a regular basis and which is ascertainable to third parties" (Recital 13)
- Presumption for companies: registered office
- Presumption rebuttable but comprehensive assessment of relevant factors needed
- ECJ: Eurofood, Interedil

Jurisdiction for main insolvency proceedings II
amendments by the recast (REIR)

- Concept of COMI maintained and clarified
- Procedural framework for examining COMI reinforced
  - Examination ex officio
  - Right to judicial review
- Reducing forum-shopping/insolvency tourism
  - Presumptions only kick in after certain period of time (3/6 months)

Secondary insolvency proceedings I. now

- Possibility to open secondaries in MS of establishment
- Secondaries must be winding-up proceedings
- Duty to cooperate between liquidators
- Powers of main liquidator in secondaries (e.g. request of stay)

Secondary insolvency proceedings II
in the future:

- Limitation to winding-up abolished
- Cooperation duties extended to courts
- Possibility of *synthetic secondary proceedings*
  - If main insolvency practitioner gives undertaking to local creditors
- Possibility of stay of secondary proceedings
  - If temporary stay of individual enforcement proceedings granted in main proceedings

Publicity of proceedings I
state of play today

Publication or registration in other MS:

- Voluntary in principle but may be mandatory in MS of establishment or MS of registers

Publicity of proceedings II
Reform: system of interconnected insolvency registers

- Composed of national insolvency registers
- E-justice Portal as central public electronic access point to national DB
- Accessible free of charge (mandatory information)
- Opportunity of a MS to restrict access to information is strongly limited and only in terms of individual persons as debtors (consumers or self-employed)

Insolvency of members of a group of companies

- Present regulation: Entity-by-entity approach
- Practical solutions: "procedural consolidation"
- Reform: Legal framework for group insolvency
  - Cooperation and communication between courts and IPs
  - Powers of the IP in proceedings concerning the other members of the group
  - *Group coordination proceedings*

Lodging of claims

- Duty to inform foreign creditors of opening
- Right of foreign creditors to lodge claim
- Reform introduces:
  - Standard forms for lodging claims
  - minimum deadline for lodging claims