

3. International insolvency law Regulations

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Regional initiatives

- ▶ Latin America
 - Montevideo Treaties of 1889 and 1940
 - Havana Convention of 1928 (Bustamante Code)
- ▶ Scandinavian countries
 - Nordic Bankruptcy Convention of 1933
- ▶ French-speaking Africa
 - OHADA Uniform Bankruptcy Law of 10 April 1998

European international insolvency law initiatives

- ▶ Council of Europe

European Convention on Certain International Aspects of Bankruptcy, Istanbul, 5 June 1990 (Istanbul Convention) – not entered into force because of lack of ratifications

- ▶ EC/EU

Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (**old EIR**) → Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (**European Insolvency Regulation, EIR**)

European Insolvency Regulation – background

- „bankruptcies, compositions and analogous proceedings” excluded from the scope of the Brussels Convention of 1968, currently Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ('Brussels Ia') → need for a separate convention
- 1st draft Bankruptcy Convention – 1970
- the EU Convention on Insolvency Proceedings of 1995 – endorsed by the EU Council but blocked by non-signature by the UK


explanatory report to the Convention by Miguel Virgos and Etienne Schmit (Virgos-Schmit Report) – unofficial explanatory memorandum to the European Insolvency Regulation

- Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (the old EIR)

Reform of the European Insolvency Regulation

- ▶ 2012 – report on the application of the old EIR envisaged in Art. 46 old EIR
- ▶ 12.12.2012 – initial proposal by the Commission for an amendment of the old EIR (COM(2012) 744 final)
- ▶ 2015 – decision to adopt a recast regulation rather than to amend the old EIR
- ▶ **Result: Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (EIR)**
- ▶ application from 26 June 2017

UNCITRAL Model Law on Cross-Border Insolvency, 1997

- A global initiative – addressed to all countries of the world
 - Basic rule: limited universalism. Recognition of foreign insolvency proceedings only after a decision by local court.
 - Focus on procedural matters, no provisions on conflict-of-laws issues/applicable law.
 - Implemented with more or less accuracy by several countries worldwide, including U.S., U.K. and some EU Member States for cases related to countries from outside the EU (Poland, Slovenia, Romania, Greece).
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Subsequent model laws / legislative guides by UNCITRAL

- UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018)
- UNCITRAL Model Law on Enterprise Group Insolvency (2019)
- UNCITRAL Legislative Guide on Insolvency Law (from 2004 onwards)
- guides to enactment, explanatory texts and other resources available on <https://uncitral.un.org/en/texts/insolvency>

Polish regulation applicable in non-EU cases

- ▶ Art. 378–417 of the Law of 28 Feb 2003 on Bankruptcy (*Prawo upadłościowe*) and Art. 338–348 of the Law of 15 May 2015 – Restructuring Law (*Prawo restrukturyzacyjne*)
- ▶ overridden by EU law → apply only outside the scope of application of the EIR → mostly in non-EU cases
- ▶ example → recognition and effects of U.S. bankruptcy proceedings in Poland

Regulations applicable in EU–U.S. cross-border cases

- ▶ Chapter 15 of the U.S. Bankruptcy Code – for recognition and effectiveness of European insolvency proceedings in the U.S.
- ▶ national regulations of international insolvency of the EU member states – for recognition and effectiveness of the U.S. proceedings
- ▶ the European Insolvency Regulation does not address the recognition and effects of proceedings opened outside the EU

Additional reading

G. Moss, I. Fletcher, S. Isaacs, *The EU Regulation on Insolvency Proceedings: A Commentary and Annotated Guide*, 3rd ed., Oxford University Press 2016, Chapter 1 – Historical Overview: The Drafting of the Regulation and its Precursors

R. Bork, K. van Zwieten, *Commentary on the European Insolvency Regulation*, 2nd ed., Oxford University Press, 2022, Introduction (pp. 1–50)