

# European Insolvency Regulation

## 9. Publicity of insolvency proceedings. Insolvency registers

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## [History]: *publicity of insolvency proceedings under the old EIR*

- ▶ *no EU-wide register for insolvencies*
- ▶ *right to request the publication of the notice on foreign insolvency proceedings and on the appointment of the liquidator according to national publication procedures (Art. 21(1) old EIR)*
- ▶ *possibility to provide for mandatory publication (Art. 21(2) old EIR)*
- ▶ *right to request & possible mandatory registration in public registers (Art. 22 old EIR)*

*Significance: good faith according to provisions on effectiveness of legal acts related to the debtor following the opening of proceedings, e.g. payment of a debt to the debtor instead of the liquidator (see Art. 24 old EIR), disposal of real estate (see Art. 14 old EIR)*

# Basic question for EU-wide publicity of insolvency proceedings

- ▶ Is there a need for a European insolvency register?

Two options for the recast EIR:

- ▶ creation of a new Europe-wide insolvency register for cases with international elements, to function in parallel to national registers
- ▶ harmonization of national insolvency registers, interconnection, providing access via a common access point

# Interconnection of insolvency registers under the recast EIR

- ▶ minimum requirements for Member States' insolvency registers (Art. 24 EIR):
  - contents of the mandatory information
  - exclusion for consumer insolvency proceedings (Art. 24(4) EIR)
  - minimum technical features specified in the Commission Implementing Regulation (EU) 2019/917 of 4 June 2019 (issued under Art. 25(2) EIR) so that interconnection is possible → national insolvency registers should be internet-based and searchable

# Interconnection of insolvency registers under the EIR

- ▶ a decentralised system of interconnected registers established by the Commission, with the European e-Justice Portal as central public access point (Art. 25 EIR):
  - internet access
  - searchability
- ▶ access to mandatory information in national insolvency registers free of charge (Art. 27(1) EIR)
- ▶ further limitations possible in case of access to information on consumer insolvency proceedings (Art. 27(3) and (4) EIR)

# Interconnection of registers – timing

- ▶ requirement to establish national insolvency registers – until 26 June 2018 (Art. 92 in conjunction with Art. 24(1) EIR)
- ▶ detailed implementation – until 26 June 2019 (Art. 92 in conjunction with Art. 25(2) EIR)
- ▶ 19 Member States are participating so far (as of April 2024): see [https://e-justice.europa.eu/246/EN/bankruptcy\\_amp\\_insolvency\\_registers\\_\\_search\\_for\\_insolvent\\_debtors\\_in\\_the\\_eu](https://e-justice.europa.eu/246/EN/bankruptcy_amp_insolvency_registers__search_for_insolvent_debtors_in_the_eu)
- ▶ [Poland: an online insolvency register, *Krajowy Rejestr Zadłużonych* (National Register of Indebted Persons and Entities), has been launched on 1 Dec 2021 and interconnected with other EU registers in early 2023]

# Remaining provisions on publicity in the EIR

- mandatory publication of the notice on foreign insolvency proceedings and on the appointment of the insolvency practitioner according to national publication procedures – in Member States where an establishment of the debtor is located
- duty of the insolvency practitioner (or debtor in possession) to request such publication (Art. 28(1) EIR)
- right to request publication in other Member States (Art. 28 (2) EIR)

# Remaining provisions on publicity in the EIR

- mandatory registration in public registers (e.g. land register, company register) in Member States where
  - a) an establishment of the debtor is located, or
  - b) immovable property belonging to the debtor is located,if disclosure of insolvency proceedings is required by local law (Art. 29(1) EIR). Duty of the insolvency practitioner or the debtor in possession to ensure such a registration.
  
- right to request registration in other Member States (Art. 29 (2) EIR)



# Background reading

- ▶ Commission press release of 7.7.2014 on the interconnection of insolvency registers (giving rationale for the interconnection):

[http://europa.eu/rapid/press-release\\_IP-14-774\\_en.htm](http://europa.eu/rapid/press-release_IP-14-774_en.htm)

- ▶ Information on national insolvency registers of EU Member States: [https://e-justice.europa.eu/246/EN/bankruptcy\\_amp\\_insolvency\\_registers\\_\\_search\\_for\\_insolvent\\_debtors\\_in\\_the\\_eu?EUROPEAN\\_UNION&action=maximize&idSubpage=2&member=1%E2%80%9D](https://e-justice.europa.eu/246/EN/bankruptcy_amp_insolvency_registers__search_for_insolvent_debtors_in_the_eu?EUROPEAN_UNION&action=maximize&idSubpage=2&member=1%E2%80%9D)