



Justice

Justitie
Spravedlnost
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Ceartas
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'European Insolvency Regulation' (EIR):

Council Regulation (EC) No 1346/2000 on Insolvency Proceedings

Unit A1: Civil Justice Policy



European Commission
Justice



Objectives of the EIR

- To avoid forum shopping (Recital 4)
- Ensuring efficient effective cross-border insolvency proceedings (Recital 8)
- By setting up common schemes for the interaction of different insolvency regimes in the EU





Scope of the EIR

- (+) The EIR deals with "PIL" rules on
- International jurisdiction in respect of insolvency proceedings
 - Applicable law
 - Recognition of insolvency proceedings opened in another Member State
 - Co-ordination of main and secondary proceedings
- (-) The Regulation is not about harmonization of substantive insolvency law, it is coordination





Territorial Scope

- All EU Member States except Denmark
- Applies only if the debtor's centre of main interests (COMI) is situated in the EU (Recital 14)
- COMI of a company is the place of its registered office (rebuttable presumption); COMI of a natural person is his domicile





Debtors

- Debtor may be a natural or legal person, depending on the national law
- No particular rules governing groups' insolvency.
- Excluded: insurance undertakings, credit institutions and investment undertakings





Types of proceedings

- Main proceedings of Art. 3(1); criterion: COMI; winding-up or re-organisation; having universal effects
- Secondary local proceedings of Art. 3(2); criterion: Establishment; only winding-up; having local effects





Definition of insolvency proceedings

Art. 1(1) and 2:

- Collective insolvency proceedings, which entail
- total or partial divestment of the debtor, and
- the appointment of a liquidator
- EIR is applicable only to proceedings listed in Annexes A and B





Applicable law

- Art. 4: Law of the insolvency proceedings (*lex fori concursus*)
- Art. 5 to 15: Exceptions (*lex situs*)
- Art. 18(3): Liquidator shall comply with local procedural law





Recognition and enforcement (1)

- Art. 17(1): Opening main proceedings has same consequences in other MS
- Art. 18(1): Liquidator in main proceedings may exercise all powers
- Art. 18(3): but liquidation must comply with local law (e.g. for realisation of assets)





Recognition and enforcement (2)

- Art. 25: Other decisions concerning course and closure of insolvency proceedings and compositions are automatically recognised
- Enforcement needs '*exequatur*'

