

CONFERENCE ON EUROPEAN RESTRUCTURING AND INSOLVENCY LAW



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Re: **CERIL STATEMENT 2018-1 on
Insolvency Regulation (Recast) and
National Procedural Rules**

CERIL highlights inconsistent EU Insolvency Regulation implementation across Europe and calls for better coordination

Initiated and chaired by em. Prof Bob Wessels, Leiden University, and Prof. Stephan Madaus, Martin Luther University, a CERIL working group¹ conducted a survey (between October 2017 and March 2018) investigating the way in which a number of Member States (Finland, France, Germany, the Netherlands and draft legislation of Italy) have responded (or partly, or not) to the need for compatibility between the Insolvency Regulation (Recast; EU 2015/848) and these Member States' domestic rules.

From the survey it follows that legislators in Member States are rather reserved when drafting legislation to realise the recast Insolvency Regulation. Six topics had been chosen for assessment mainly related to the provisions in the Insolvency Regulation (Recast) that are new or expanding certain legal norms and concepts in comparison to the former Insolvency Regulation (1346/2000). They cover (i) international jurisdiction of the court, (ii) publication and registration in insolvency registers of other Member States, (iii) the relation between main and secondary insolvency proceedings, (iv) provisions related to cooperation and communication between insolvency practitioners, between courts, and between courts and insolvency practitioners, (v) national provisions required in group coordination proceedings, and (vi) remedies in group coordination proceedings.

If Member States provide for domestic legislation, significant variations can be seen. Some legislators assess that the provisions under the Regulation are rather complete, leaving little to no room for supplemental national rules. Others, however, prefer to explain the decision-making processes and the venues of courts to hear and decide remedies found in the Regulation.

As a consequence, CERIL calls national legislators in EU Member States to review their assessment or to initiate assessment and to better coordinate efforts in order

¹ The CERIL Working Party discussing and contributing to the Report further consisted of: Giorgio Corno (Italy), Ian Fletcher (United Kingdom), Tuula Lina (Finland), Ignacio Tirado (Spain) and Paul Omar (United Kingdom).

to (i) prevent unnecessary confusing differences, (ii) save time, costs and precious time of courts (procedural battles in a court) and businesses (delay and costs of litigation) to find these out, and (iii) encourage/strengthen effective and efficient national (procedural and substantive) rules to realise the Insolvency Regulation (Recast).

The European Commission is invited to promote coordinated efforts in the realisation of the EU Insolvency Regulation in Member States, by taking appropriate initiatives, such as the creation of a body of knowledge to support Member States, the preparation of best practices in aligning these efforts as well as ensuring coherence and efficiency by professional and dedicated staff support.'

The full Report is available as Report 2018-1 on CERIL's website www.ceril.eu. This site also informs about the organisation of CERIL and its activities.

In the meantime, professor Reinout Vriesendorp, secretary of CERIL (info@ceril.eu), or the Reporters, em. professor Bob Wessels (bwessels@bobwessels.nl) and professor Stephan Madaus (stephan.madaus@jura.uni-halle.de), welcome the opportunity to further inform about CERIL or the contents of Report 2018-1.

On behalf of the CERIL Executive,

Bob Wessels
Chair