

CONFERENCE ON EUROPEAN RESTRUCTURING AND INSOLVENCY LAW



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The Netherlands

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To: All CERIL Conferees
From: CERIL Executive
Date: 31 May 2022
Re: **Annual Report CERIL 2021**

Dear Conferee,

With great pleasure we hereby present to you the 2021 Annual Report CERIL.

The Annual Report provides an overview of our joint activities that took place in 2021. This concerns, in particular, the Statements and Reports that were adopted by CERIL over the course of the year.

Due to COVID-19, all meetings of the Executive, General Assembly, and Working Parties were organised online. Still, CERIL has remained productive. In April 2021, CERIL published Statement and Report 2021-1, touching upon which annex actions fall within the scope Article 6(1) of the European Insolvency Regulation 2015 (EIR 2015). In June 2021, Statement 2021-2 was published, dealing with the EU Group Coordination Proceedings in the EIR 2015. It received attention for the European Commission.

We are pleased to present all Conferees this detailed overview of activities.

The CERIL Executive

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1. Introduction

The Conference on European Restructuring and Insolvency Law (CERIL) is an independent non-profit, non-partisan, self-supporting organisation of approximately 85 lawyers and other restructuring and insolvency practitioners, law professors and (insolvency) judges committed to the improvement of restructuring and insolvency laws and practices in Europe, the European Union and in its Member States. CERIL was founded on a handshake in 2015 in Brussels by a group which founded the Executive, before being incorporated as an association (*vereniging*) under Dutch law in 2020. From 2017 onward, CERIL has been presenting Statements and Reports. This year, 2022, we hope to celebrate our first lustrum.

CERIL's primary purpose is to advise, at its own motion or at request, on technical and policy issues relating to restructuring and insolvency laws, regulation and practice and any related laws, both to European Union institutions as well as Member States and other interested institutions.

Joining CERIL as a member (Conferee) is by invitation only. To secure that its Conferees are leading scholars, judges and practitioners in the field, CERIL started with inviting the independent experts on restructuring and insolvency (who had been appointed by the European Commission to assist in drafting its harmonisation initiatives) and a selection of persons appointed by the European Law Institute (ELI) to its project 'Rescue of Business in Insolvency Law', to become founding Conferees.

Initially, CERIL was formed as an informal group in 2016 by founding members Prof. em. Bob Wessels, the late Prof. em. Ian Fletcher, Prof. Stephan Madaus, Prof. Ignacio Tirado, Prof. Reinout Vriesendorp, Prof. Tuula Linna, and Mr. Giorgio Corno.

As per 31 December 2021, CERIL has 85 Conferees, representing experts from nearly all EU Member States and some other European countries. The members of the Executive are:

1. Prof. em. Bob Wessels (Chair)
2. Prof. Ignacio Tirado (Vice Chair)
3. Prof. Reinout Vriesendorp (Secretary/Treasurer)
4. Ms. Mylène Boché-Robinet
5. Mr. Giorgio Corno
6. Prof. Tuula Linna
7. Prof. Stephan Madaus
8. Prof. Elina Moustaira
9. Justice Nicoleta Mirela Năstasie
10. Dr. Paul Omar
11. Prof. The Hon. Lady Sarah Wolffe

In its work, the Executive is supported by Gert-Jan Boon (Adjunct Secretary) and Defne Taşman (assistant to the secretariat).

To and including 2021, CERIL has published the following Statements (and Reports):

- CERIL Statement (and Report) 2017-1 Clash of Principles: Equal Treatment of Creditors vs. Protection of Trust in European Transactions Avoidance Laws
(Reporter: Prof. Reinhard Bork)

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committed to the improvement of restructuring and insolvency laws and practices
in Europe, the European Union and its Member States

- CERIL Statement (and Report) 2018-1 The Realisation of the EU Insolvency Regulation 2015 (EIR 2015) in the EU Member States
(Reporters: Prof. Bob Wessels and Prof. Stephan Madaus)
- CERIL Statement (and Report) 2018-2 Cross-Border Restructuring and Insolvency Post-Brexit
(Reporters: Prof. Francisco Garcimartín and Prof. Michael Veder; Research Associate: Prof. Ángel Espiniella)
- CERIL Statement (and Report) 2019-1 on the CERIL-ELI REPORT on UNCITRAL's Draft model law on enterprise group insolvency
(Reporters: Nora Wouters and Prof. Stephan Madaus; Research Associate: Ilya Kokorin)
- CERIL Statement (and Report) 2019-2 Reversal of Value Extraction Schemes
(Reporters: Prof. Reinhard Bork and Prof. Catarina Serra)
- CERIL Statement 2019-3: A Reply to UNCITRAL's Model Law on Enterprise Group Insolvency
(Reporters: Nora Wouters and Prof. Stephan Madaus; Research Associate: Ilya Kokorin)
- CERIL Executive Statement 2020-1 on COVID-19 and insolvency legislation
(Reporters: Prof. Stephan Madaus and Prof. Em. Bob Wessels; Research Associate: Gert-Jan Boon)
- CERIL Statement (and Report) 2021-1 on identifying annex actions under Article 6(1) of the European Insolvency Regulation 2015
(Reporters: Prof. Stephan Madaus and Prof. Em. Bob Wessels; Research Associate: Dr. Chiara Lunetti)
- CERIL Statement 2021-2 (and Annex) on EU Group Coordination Proceedings
(Reporters: Prof. Andreas Geroldinger, Dr. Myriam Maily, Prof. Stephan Madaus and Nora Wouters)

2. CERIL Organisation

On 7 February 2020, CERIL was incorporated as a Dutch law governed association (*vereniging*). As such, it has full legal personality, which means that – when duly represented – it can operate in society as a legal entity in its own right.

The maximum number of members (Conferees) is fixed by the Articles of Association at 100 (one hundred) persons. CERIL consists of three types of Conferees: Academic Conferee, Judicial Conferee and Ordinary Conferee.

- An Academic Conferee is an individual who holds at least for 70% of its working time a position with an academic institution or otherwise mostly pursues academic activities.
- A Judicial Conferee is an individual who holds at least for 70% of its working time a position with a judicial institute, such as a court or a comparable judicial or administrative institution.
- An Ordinary Conferee is an individual, not being an Academic Conferee or Judicial Conferee, who otherwise takes an active interest in issues regarding restructuring and insolvency law.

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Generally, the conferees composition is over 40 academics, just over 30 insolvency practitioners and 10 judges. CERIL's gender balance is around 60% male and 40% female.

The Executive may appoint Research Associates (other than Conferees) for the duration of a specific project initiated by CERIL, or for assistance in one or more Working Parties.

The governance of CERIL is based on its Articles of Association (*statuten*) which are in Dutch but an unofficial translation can be found on the [website](#). As specified in the Articles of Association, CERIL consists of the following bodies:

- General Assembly
- Executive, entrusted with daily management
- Optionally: an Advisory Board and committees.

2.1 General Assembly

The General Assembly consists of all CERIL Conferees, it decides in particular on (a) appointment, suspension and dismissal of members of the Executive, (b) approval of CERIL's budget, annual accounts and annual report, (c) the appointment and dismissal of an external auditor, (d) amendment of the articles of association, and (e) dissolution of CERIL. For an overview of the Conferees, see below (10).

2.2 Executive

The Executive of CERIL is responsible for the day-to-day management. It is composed of 11 (eleven) Conferees at the end of 2021. The members of the Executive retire according to a roster drawn up by the Executive. In general, an appointment lasts three years with possibility for reappointment for a period of a maximum of three years. For an overview of the Executive, see above (1).

2.3 Advisory Board

In addition to the General Assembly and the Executive, the Executive may decide to set up and cancel an Advisory Board consisting of three or more members. The main Advisory Board's task is to provide solicited and unsolicited advice to the Executive on all matters concerning the association. In 2020 as well as in 2021 it has not been found necessary to establish an Advisory Board.

2.4 Committees

The Articles of Association provide for the institution of other committees by the General Meeting:

1. Standing Dispute Committee

Disputes between CERIL and a Conferee or between a Conferee and one of the CERIL bodies concerning whether an act or omission is in accordance with the Articles of Association, or the regulations are settled by the Executive. If this does not lead to a satisfactory outcome, the dispute will be settled by a *Standing Dispute Committee*.

This Committee consists of Prof. Stefania Bariatti, Prof. Rodrigo Rodriguez, and Ms. Nora Wouters, with alternate members: Prof. Christoph Paulus and Mr. Stathis Potamitis. All (alternate) members of this committee were appointed at the first General Meeting of CERIL on 18 November 2020. In the same meeting the Rules of Procedure ex Article 23 (Dispute Settlement) have been approved. In 2021 no complaints have been brought to the Committee's attention.

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2. *Audit Committee*

In accordance with Article 15 of the Articles of incorporation, at the first General Meeting on 18 November 2020 an *Audit-Committee* was appointed, consisting of: Dr. Juan Ferré, Prof. Paula Moffatt and Judge Piet Neijt.

The task of the *Audit Committee* is to investigate the draft financial statement drawn up by the treasure on behalf of the Executive for adoption in the General Meeting following the fiscal year and to report to the General Meeting when asked to approve the financial statement and to discharge the Executive.

Neither the members of the Executive nor the members of the Advisory Board or the additional committees have received in 2021 any compensation or reimbursement of expenses.

3. CERIL's policy objectives

In the spring of 2020, all existing Conferees were informed about the new legal structure of CERIL and were requested to confirm continuation of their membership (implying acknowledgment of the new formal structure of CERIL, including membership requirements as laid down in the Articles of Association).

In 2020, CERIL decided – in addition to its establishment as an association – to implement five policies, i.e.:

1. To increase the involvement of its members in furthering the goals of CERIL, including the organisation of periodical or annual Conferences (live or online) to ensure and widen in-depth discussion within Working Parties covering existing and new projects;
2. To broaden its Executive Board in order to increase the representation of Central and East European countries;
3. To promote gender balance at all levels of CERIL;
4. To involve younger talent as Research Associates, to allow them to participate in top of the bill discussions and considerations, to ensure coherence in their texts, and to enthuse them on the road to membership, and
5. To allow applications for joint studies with (and (co-) funding by) European research institutes and EU bodies (e.g. the Commission and the European Parliament) and international associations (e.g. International Insolvency Institute (III)), and for consultative status to other organisations (e.g. UNCITRAL).

These policy objectives have been guiding in inviting new Conferees to join CERIL, to involve research associates in ongoing projects, the extension of the members of the CERIL Executive, and establishing collaboration with other organisations. CERIL is proud to have received formal consultative status at meetings of UNCITRAL's Working Group V (Insolvency) in October 2021.

4. Expansion of Executive

In view of CERIL's adopted policy objectives, the Executive decided to expand itself with two additional members. At the General Meeting on 25 November 2021, Judge Nicoleta Mirela Nastasie and Ms. Mylène Boché-Robinet were appointed as members of the Executive. Following this extension, the Executive consists of 11 members.

5. CERIL Statement and Report 2021-1 on identifying annex actions under Article 6(1) of the European Insolvency Regulation 2015

In this Statement and Report, CERIL presents the results of a study on issues of international jurisdiction for individual legal cross-border actions that 'derive directly from public collective insolvency proceedings and are closely linked with them'. To resolve uncertainty on these actions, conveniently called 'annex actions', CERIL proposes a concise work of reference to classify and distinguish between annex actions and non-annex actions.

In summary, the study found three types of annex actions:

- a. clear annex actions,
- b. clear non-annex actions and
- c. actions with relevant uncertainty about their classification.

The Report sets out in detail the categorisation in (a) and (b). The last category, under (c), has been given ample thought. This includes (i) actions brought by the insolvency practitioner in relation to the assumption or the termination of executory contracts, (ii) actions brought by an unsecured creditor against the debtor, also referred to as ‘action seeking a declaratory relief’, (iii) actions brought by secured creditors, (iv) actions concerning the return of property held by the debtor, and (v) action brought by the reinstated debtor after the termination of insolvency proceedings.

As a consequence, to overcome the existing level of uncertainty with time-consuming and costly disputes in civil proceedings, especially with regard to the characterisation as ‘annex action’, CERIL encourages litigators and courts to use the concise reference work as set out in its Report.

This Statement and Report was prepared by Prof. Madaus and Prof. em. Bob Wessels assisted by Dr. Chiara Lunetti (Research Associate). The entire CERIL Statement and Report 2021-1 can be found here: <https://www.ceril.eu/news/ceril-statement-2021-1-on-identifying-annex-actions-under-articl>.

6. CERIL Statement 2021-2 on EU Group Coordination Proceedings

In the CERIL Statement 2021-2, CERIL identifies the fact that the EU ‘group coordination proceedings’ system is not used in practice, resulting in inefficient administration of insolvency proceedings relating to different companies forming part of a group of companies.

Since the end of 2020, CERIL Working Parties 9 (Code of conduct for the group coordinator) and 3 (Enterprise groups) conducted a preliminary impact study into the use in European insolvency and restructuring practice of ‘group coordination proceedings’, in the meaning of Chapter V (Articles 61-77) of the European Insolvency Regulation (Recast) (Regulation 2015/848).

The study comprised of two parts:

1. a review of relevant literature on the subject, and
2. interviews with relevant insolvency practitioners within the EU.

In addition to the Statement, the reporters present an annex comprising of an overview of the pros and cons of the current framework for EU group coordination proceedings.

In summary, the outcome of the study could not have been clearer – and more disappointing. In practical terms: some four years after the European Insolvency Regulation (Recast) became binding, not a single significant case of a cross-border group insolvency has been handled under the rules on group coordination proceedings. This CERIL Statement aims to timely identify the considerations and reflections in the appreciation and use of group coordination proceedings throughout the EU.

CERIL feels that the time is ripe to undertake specific steps to develop proposals for the modification of the current rules in order to enable group coordination proceedings to use their full potential. On 20 March 2020, CERIL issued the CERIL Executive Statement 2020-1. It presents the results of a brief study by the Executive concerning the effects of the sudden appearance of the COVID-19 pandemic on the insolvency systems in Europe. It recommends two steps to be taken immediately by European national

legislators: i) suspension of the duty to file for insolvency proceedings based on over-indebtedness and ii) response to the illiquidity of businesses.

This Statement was prepared by Prof. Andreas Geroldinger, Dr. Myriam Mailly, Prof. Stephan Madaus and Ms. Nora Wouters. The entire CERIL Statement 2021-1 and accompanying Annex can be found here: <https://www.ceril.eu/news/ceril-statement-2021-2-on-eu-group-coordination-proceedings>.

7. Overview of events/meetings

Due to COVID-19 and the subsequent bans on travel and conferences, no physical meetings were held in 2020. Instead, all communication among the Executive, the Conferees in the General Meeting and the Annual Conference and also among the Working Parties occurred virtually/digitally. These include, among others:

- Executive meetings: 26 January 2021, 23 February 2021, 30 March 2021, 28 April 2021, 31 August 2021, 28 September 2021, 26 October 2021, 30 November 2021, 21 December 2021 (virtual meetings).
- General Assembly: 25 November 2021 (virtual meeting)
- Annual Conference: 25 November 2021 (virtual meeting)

8. Financial statement 2021 (summary)

At the end of 2021 (and by definition at the start of 2022), the financial situation of CERIL was as follows according to the draft financial statement 2021:

Profit and Loss account 2021 amounts in EUR (€)	
Income	€ 4.800,00
Expenditures	€ 1.247,70
Total profit	€3.552,30

Balance sheet year-end 2021 amounts in EUR (€)			
Assets		Liabilities	
Cash	€7.006,77	Equity	€ 7.136,77
Outstanding membership dues	€ 130,00		
Total	€ 7.136,77		€ 7.136,77

In accordance with Article 15(3)-(5) of CERIL's Articles of Association, the financial statement 2021 will be reviewed by the *Audit Committee*, which will produce a report for the next General Meeting. Based on the report, the General Meeting will discuss and decide on approval of the financial statement.

9. Overview of the activities of the Working Parties

CERIL is an independent non-profit, non-partisan, self-supporting organisation of persons committed to the improvement of restructuring and insolvency laws and practices in Europe, the European Union and its Member States

Many Conferees are participating in more than one Working Party, which enriches a multi-jurisdictional view on the matters discussed. See for the Conferees participating in each Working Party: www.ceril.eu/working-parties. In 2021, CERIL had 15 Working Parties (WPs):

WP 1: Director's liability

- Co-chaired by Michal Barlowski and Joeri Vananroye
- Executive: Reinout Vriesendorp

WP 2: Avoidance actions

- Co-chaired by Reinhard Bork and Catarina Serra
- Executive: Tuula Linna

WP 3: Enterprise Groups

- Co-chaired by Stephan Madaus and Nora Wouters
- Executive: Bob Wessels

WP 4: Consumer rights

- Co-chaired by Catarina Frade and Annina Persson
- Executive: Tuula Linna

WP 5: Post-Brexit Cross-Border Instruments

- Co-chaired by Francisco Garcimartín and Michael Veder
- Executive: Bob Wessels

WP 6: Rights in rem

- Co-chaired by Sarah Wolffe and Giorgio Corno

WP 7: Debt-for-equity swap

- Co-chaired by Stathis Potamitis and Roel Fransis
- Executive: Stephan Madaus

WP 8: Drafting a second edition of the CoCo Guidelines (2007)

- Co-chaired by Paul Omar and Tomas Richter
- Executive: Reinout Vriesendorp

WP 9: Code of Conduct for the Group coordinator

- Co-chaired by Andreas Geroldinger and Myriam Mailly
- Executive: Bob Wessels

WP 10: Quality and effectiveness of insolvency systems

- Chaired by Ignacio Tirado

WP 11: Matters regarding the European Insolvency Regulation 2015 (EIR 2015)

- Co-chaired by Bob Wessels and Stephan Madaus

WP 12: Mediation in insolvency

- Chaired by Reinout Vriesendorp

WP 13: Banking confidentiality, secrecy, and privilege

- Co-chaired by Bob Wessels and Ignacio Tirado

WP 14: COVID-19 and insolvency legislation

- Chaired by the Executive

WP 15: Sovereign Debts

- Co-chaired by Christoph Paulus and Stathis Potamitis

In 2021, several Research Associates were involved in projects of the Working Parties. Dr. Chiara Lunetti was involved in the work of WP 11 on Annex Actions, and Dr. Shuai Guo was involved in the work of WP 13 on Confidentiality, secrecy and privilege.

10. Overview of Conferees

As per 31 December 2021

EXECUTIVE

Chair

Prof. em. Bob Wessels
The Netherlands

Vice Chair

Prof. Ignacio Tirado
Spain

Secretary

Prof. Reinout Vriesendorp
The Netherlands

Members

Mylène Boché-Robinet
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Giorgio Corno
Italy

Prof. Tuula Linna
Finland

Prof. Stephan Madaus
Germany

Prof. Elina Moustaira
Greece

Nicoleta Mirela Năstasie
Romania

Dr. Paul Omar
United Kingdom

Prof. The Hon Lady Sarah Wolfe
Scotland

OTHER CONFEREES

Prof. Stefania Bariatti
Italy

Michał Barłowski
Poland

Prof. Oleksandr Biryukov
Ukraine

Prof. Reinhard Bork
Germany

Pavel Boulatov
Russia

Kathlene Burke
United Kingdom

Barry Cahir
Ireland

Dr. Miodrag Dordevic
Slovenia

Anja Droege Gagnier
France

Dr. Đuro Đurić
Serbia

Zoltan Fabok
Hungary

Dr. Juan Ferré
Spain

Prof. Catarina Frade
Portugal

Dr. Roel Fransis
Belgium

Dr. Arthur Galea Salomone
Malta

Prof. Jasnica Garašić
Croatia

Prof. Francisco Garcimartin
Spain

Prof. Andreas Geroldinger
Austria

Bartosz Groele
Poland

Prof. Aurelio Gurrea-Martinez
Spain

Frank Heemann
Lithuania

Dr. Jana Julia Hübler
Germany

Prof. Tuomas Hupli
Finland

Dr. Ivan Ikrényi
Slovakia

Dr. Marjolaine Jakob
Switzerland

Prof. Marie Karlsson-Tuula
Sweden

Prof. Joanna Kruczalak-Jankowska
Poland

Dr. Line Langkjaer
Denmark

Prof. Antonio Leandro
Italy

Nathalie Leboucher
France

Prof. Irene Lynch Fannon
Ireland

Catarina Macchi
Italy

Dr. Myriam Mailly
France

Prof. Renato Mangano
Italy

Prof. Miguel Martínez Muñoz
Spain

Dr. Ángel Espiniella Menéndez
Spain

Prof. Irit Mevorach
United Kingdom

Prof. Göran Millqvist
Sweden

Grégory Minne
Luxembourg

Prof. Paula Moffatt
United Kingdom

Piet Neijt
The Netherlands

Prof. Rimvydas Norkus
Lithuania

Annemari Õunpuu
Estonia

Prof. Luciano Panzani
Italy

Dr. Gabriella Pataki
Hungary

Prof. em. Christoph Paulus
Germany

Prof. Annina Persson
Sweden

Stathis Potamitis
Greece

Prof. Juana Pulgar
Spain

Dr. Tomáš Richter
Czech Republic

Prof. Patrizia Riva
Italy

Prof. Rodrigo Rodriguez
Switzerland

Dr. Alexandros Rokas
Greece

Prof. Omar Salah
The Netherlands
Dr. Ignacio Sancho
Spain

Siv Sandvik
Norway

Prof. Jessica Schmidt
Germany

Prof. Catarina Serra
Portugal

Prof. Dominik Skauradszun
Germany

Stine Snertingdalen
Norway

Dr. Petr Sprinz
Czech Republic

Prof. Lorenzo Stanghellini
Italy

Kate Stephenson
United Kingdom

Emil Szczepanik
Poland

Adrian Thery Marti
Spain

Prof. Joeri Vananroye
Belgium

Prof. Melissa Vanmeenen
Belgium

Prof. Michael Veder
The Netherlands

Dr. Jiří Voda
Czech Republic

Prof. Rolef de Weijts
The Netherlands

Nora Wouters
Belgium

Prof. Oleg Zaitsev
Russia