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EU Regulation on Insolvency Proceedings: the first year and the outlook from Greece

by

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OUTLINE

A. Introduction

1. After almost thirty years of deliberations and preparatory work, as of May 31, 2002, Europeans have been at liberty to boast a single European insolvency area, coextensive with the Single Market, a Treaty objective to which an immeasurable amount of effort and legislation has been devoted to date. However, just over a year after entry into force of the new Regulation on Insolvency Proceedings[1], the reality in most of the Member States, and in a pronounced way in Greece, appears somewhat different: although enacted in the form of a Regulation, a directly effective and binding form of Community legislation, the new European insolvency regime appears not to have outgrown its childhood deceases. While directly applicable, the Regulation does require "enabling" national legislation, to facilitate the application of the new rules and allow the system to operate as envisaged. In addition, considerable uncertainty still surrounds some of the central concepts of the new law, while its application to real circumstances (e.g. in anticipation of financial difficulties) is beginning to reveal potential substantive weaknesses in the new framework.

2. It is probably accurate to say that in Greece the Regulation's first year went largely unnoticed. With the exception of a small number of articles setting forth the fundamentals of the new European system of cross border insolvency neither the administration nor the courts appear significantly alert to the reality of the new law. As of the end of May, no judgement applying the Regulation has been handed down in any of the three major court districts[2]. More alertingly, in sharp contrast to other member states, such as the United Kingdom, no adaptive measures have been enacted to date, or are in the stage of preparation, but not because reform is no needed. Indeed, the enactment of the framework on cross-border insolvency makes the need for reform of domestic insolvency law all the more evident. This proposition may be highlighted by reference to three basic considerations. The enactment of *adaptive measures* is necessary in order to enable the provisions of the Regulation to develop their intended effect. Reform is desirable in order to align *substantive insolvency law* with the realities of modern cross-border insolvency. And the enactment of a more clear and transparent framework is directly related with the problem of

[1] Council Regulation (EC) No 1346/2002, OJ L160/30.6.2000, p. 1

[2] Athens, Piraeus and Thessaloniki

"exporting" solutions, rather than complication, under Greek law as the law governing proceedings subject to automatic EU-wide recognition. The Greek Minister of Development has only recently indicated the intention to propose new legislation focusing on the acceleration of insolvency and re-organisation procedures, an indispensable step towards a more efficient and effective regime.

3. There is, accordingly, very little to report, and a lot to anticipate with uncertainty from the application of the Regulation. However, the law knows no vacuum, and problems demand practical answers in whatever state the law may presently be. The new regime poses such problems in several core areas, including:

(1) *Jurisdictional issues*, in particular concerning the operation in practice of the jurisdictional bases adopted in Art. 3,
(2) *scope of application*, including cross-border insolvencies involving third countries,
(3) *inadmissibility* of proceedings against certain debtors on account of their capacity,
(4) applicable law issues and the operation in practice of the exceptions to the rule of Art. 4,
(5) actions and liability of the liquidator, and
(6) the default rules applicable to certain procedural issues in the absence of adaptive measures.

Some aspects of the above are discussed below.

B. Jurisdictional issues

4. The jurisdictional basis adopted for the opening of main proceedings under Art. 3§1, the debtor's *centre of main interests*, is a concept very familiar in civil law jurisdictions. It seems that the concept basically corresponds to the variations of the actual seat theories of civil law jurisdictions – cf. *Sitztheorie* (Germany), *sièze reel/siège social* (France), *sede dell' administarzione centrale* (Italy) - but is broader in that it applies also to natural persons and non-commercial activity[3]. The age old problem of dealing with an "actual" seat different from the registered office or place of incorporation is revived in the presumption of their coincidence (Art. 3§1 second sentence).

[3] *Cf.* Virgos-Schmit Report, §75

5. For Greek jurists the problem is a very familiar one, and has occupied a central place in academic righting and jurisprudence on corporate conflict of laws for roughly a century, mainly in respect of *pseudo-foreign* legal entities, *i.e.* incorporated abroad (and especially in tax haven jurisdictions[4]), but *actually seated* in Greece. Since under the relevant conflict rule of article 10 of the Greek Civil Code (CC) the capacity of a legal entity is governed by the law of its *actual seat*[5], such entities are routinely denied the benefits of incorporation under Greek law[6], and treated as constructive *de facto* general partnerships between their purported shareholders and board members; provided they engage by profession in commercial activity, they are deemed to be merchants and the constructive partners incur unlimited personal liability and *automatically join the partnership in bankruptcy*[7].

6. This jurisprudence may have been brought to an abrupt end, at least *vis-à-vis* EU-incorporated entities, by the recent *Überseering* judgement of the European Court of Justice[8]. In *Überseering* the ECJ pronounced the application of the actual seat doctrine to EU-incorporated entities as *contrary* to the free movement of persons and non-discrimination on the basis of nationality, fundamental community freedoms of Treaty stature (Arts. 43 and 48 of the EU Treaty). Other things aside, the impetus towards European integration appears to have

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[4] On the misuse of offshore entities in commercial transactions see the study by the Organisation for Economic Co-operation and Development "*Lifting the Corporate Veil*", OECD (2001).

[5] See *inter al. Stephan Rammello*, Corporations In Private International Law, A European Perspective, Oxford University Press, Oxford – New York, 2001; for a US and comparative analysis see *Drury, R.R.*, "The Regulation and Recognition of Foreign Corporations: Responses to the 'Delaware Syndrome'", Cambridge LJ 57(1998), p. 165 *et seq.*

[6] However, the rule of Article 10 CC is displaced under bilateral treaties prescribing the reciprocal application of the *registered seat* doctrine, such as the US – Greek "Treaty of friendship, commerce and navigation, signed in Athens Aug. 3, 1951, entered into force Oct. 13, 1954 (5 UST 1829; TIAS 3057; 224 UNTS 279) and the UK – Greek "Convention between the United Kingdom and Greece regarding Legal Proceedings in Civil and Commercial Matters", done in London, 27 February 1936. Similar bilateral treaties exist with Cyprus and Norway.

[7] On the jurisprudence of the Greek Supreme Court, in particular its effort to elaborate on tractable criteria for determining the real seat of corporate entities, see *George Bazinas*, "Cross Border Insolvency: International Jurisdiction, Extraterritorial Effects, and the Tangled Web from a Bankruptcy Repealed", paper presented at the Second Annual International Insolvency Conference of the International Insolvency Institute, New York June 10-11, 2002.

[8] Case C-208/00, ECR 2002, p. 0000, on referral by the German Federal Supreme Court (*Beschluß vom 30. März 2000,* VII ZR 370/98, discussed in *Rammelloo, loc. cit.*, p. 81 *et seq.*). On the precursors to that judgement, mainly the *Daily Mail* (Case C-81/1987, ECR 1988, p. ?-5483) and *Centros* (Case C-212/97, ECR 1999, p. ? -1459) judgements, see *Rammelloo, supra* note 5, p. 45 *et seq.*

forced the prevention of a "Delaware Syndrome" off the priority list of the European Court of Justice[9]. The full consequences of *Überseering* for the treatment of non-EU incorporated entities remain to be worked out[10].

7. It appears, therefore, that although EU-incorporated entities are now subject to the insolvency jurisdiction of the courts of their centre of main interests, they may not be denied the benefit of incorporation by application of the actual seat doctrine. Therefore, the insolvency of such entities may no longer be directly linked with the insolvency and unlimited personal liability of individuals or other entities behind them.

8. In a milestone judgement delivered on January 21, 2003[11], the Greek Supreme Court (*Areios Pagos)* in Plenary resisted the extension of the above to the bankruptcy of *non-EU entities*, by holding that nothing in EU legislation prevents the application of the real seat doctrine to such entities. The 22 Judges sitting in the Plenary Session unanimously held that private *voluntas*, as embodied in the incorporation doctrine, is not a legitimate connecting element to apply to the question of the capacity of a (non-EU) legal entity. The Court did not decline to address arguments to the contrary based on the fundamental Community freedom of establishment; on the contrary, in addressing them it drew a stark distinction between EU and non-EU incorporated entities, and denied the benefits deriving from Arts. 43 and 48 of the EU Convention to the latter.

9. It is submitted that, although the Regulation was not actually applied (it

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[9] The timing of *Überseering* might be considered unfortunate for several reasons. While I do believe that there are (more) efficient market substitutes for repressive regulation and supervision of legal entities in international trade, *Überseering* does not imply a policy change from the latter to the former, but is based on the principle of *mutual trust* between member states as to the diligent exercise of repressive policies. Because it has preceded the completion of efficient frameworks for court to court communications and EU-wide corporate publicity and accountability mechanisms, while weakening local accountability (of course, also lowering regulatory compliance costs) of resident, but foreign-incorporated, entities, in the short and medium term it might well *increase* transaction costs in dealing with such entities. Put differently, higher litigation costs for collection of small to medium-size debt (the relevant range for *pro forma* foreign entities) may eliminate some (otherwise efficient) cross-border debt collection, whose value would be factored into the price system of intra-EU cross-border trade.

[10] On one hand, reasons of systematic integrity and uniformity of corporate conflict of laws rules dictate the extension of the *dicta* of that judgement to non-EU incorporated entities; on the other, the "compensating factor" of previous harmonisation of EC-member states company laws by a decades-long and laborious process, which has served as a pragmatic justification of the decision in *Überseering*, is absent in the case of non-EU entities.

[11] Supreme Court in Plenary Session, Judgement no 2/2003.

was irrelevant to the particular set of facts), the elevation of the concept of *centre of main interests* to principal basis of jurisdiction for the opening of main insolvency proceedings may have served to turn the 3-2 majority in Chambers[12], to a unanimous judgement of 22-0 in the Plenary Session of the Supreme Court.

10. In the development of national and ECJ jurisprudence on the construction of the concept of centre of main interests it would appear that recourse to the precepts of the actual seat theory would seem eventually inevitable. This would be the case, for instance, in the (presently rare) case of "decentralised" management of business sectors without local incorporation: then local administration centres will be observable and normally coincide with local establishments; however, an "overall" centre of administration might be neither "ascertainable by third parties", nor an "establishment", and the strict application for the purposes of Art. 3§1 of "[a] test in which the attributes of transparency and ascertainability are dominant factors"[13] might operate to reduce the additional options available for selecting among equally observable locations. Such further options are available in the actual seat theory and jurisprudence (e.g. non-ascertainable head office, or locale where the results or benefits of economic activity are concentrated etc.), although not in the Regulation itself.

11. The question has been raised whether a legal entity may have *more than one* centre of main interests. The issue appears to have been considered in *Geveran Trading Co Limited*[14], and rejected, which is in line with conventional continental jurisprudence, according to which no legal entity may have more than one actual seat. Greek courts would readily subscribe to this pronouncement.

12. Greek courts would also readily subscribe to the criteria for establishing a debtor's centre of main interests applied in *Brac Rent-a-Car International Inc.* It will probably become standard jurisprudence that *incorporation* outside the EU does not prevent the application of Art. 3§1 of the Regulation (*cf.* paras. 24-26 of the Judgement). Of the

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[12] Supreme Court, First Chambers, Judgement 335/2000.

[13] *Gabriel Moss, Ian Fletcher, Stuart Isaacs* (eds.), The EC Regulation on Insolvency Proceedings, Oxford University Press, Dec. 2002, §3.10

[14] *Geveran Trading Co Limited and Skjevensland Registrar Jacques*, from a summary with comments by *Gabriel Moss* and *Sandy Shandro*, in "The EU Regulation on Insolvency Proceedings One Year On", paper presented at the R3 conference in Malaga, May 2003 (cited with permission).

criteria employed in *Brac* only the law governing the various contracts to which the debtor was party would strike a Greek jurist as precarious, in the light of the fundamental principle of party autonomy on choice of law, as laid down in Art. 25 of the Greek Civil Code, but also Art. 3 of the Rome Convention on the law applicable to contractual obligations.

13. On the other hand, the refusal in *Telia v. Hilcourt* (Park J, 16.10.2002) of an English court to consider the establishment of a subsidiary in the UK to constitute also an establishment of its Swedish parent, while fairly straightforward, raises the question of how member state courts would respond to the same set of facts had the application of some variant of the *lifting-the-veil* doctrine been requested or warranted. Here the risk of jurisdictional conflicts is apparent, and the rule of temporal priority (jurisdiction vests with the courts of the member state which open proceedings first[15]) might lead to results that are neither just nor optimal. It would probably not be a task for the Insolvency Regulation to set forth substantive rules for insolvency of groups of companies[16], but the absence of national rules to that effect (such as the US doctrine of *substantive consolidation*) makes this one of the most current and topical problems of insolvency law.

14. Finally, the exception from the ambit of the Regulation of liquidation measures, which are not based on a finding of *insolvency*, but on reasons of public interest, as appears to have been the case in *Marann Brooks CSV Ltd.* (Patten J, 4.12.2002), is in line with Greek jurisprudence on recognition of foreign insolvency judgements, which retains its relevance today in respect of third countries: national law processes, such as expropriation or nationalisation, and other public interest procedures for the dissolution of solvent debtors, do not qualify for recognition under the relevant Art. 780 of the Greek Code of Civil Procedure, even if cloaked as insolvency or re-organisation procedures.

C. Manipulation of jurisdiction rules: forum shopping revisited

15. A question of evident theoretical and practical significance concerns the extent to which the new regime permits, or indeed invites, forum shopping. It may be that the practice is earnestly disavowed in the

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[15] See the *Virgos-Schmit* Report, §79

[16] *Cf.* the Virgos-Schmit Report, §76, deferring the matter to future Community legislation.

Preamble of the Regulation no less than in the Virgos-Schmit Report. Still, a number of considerations could cast shadow over the propensity of the new rules to discourage it.

16. It is of great importance to remember that under the Regulation the establishment of jurisdiction automatically results in the selection of the applicable *lex concursus*; it is therefore directly related to the ability to create or defeat preferred claims or make assets subject to territorial proceedings. Therefore, although the subjection of insolvency proceedings to a favourable substantive insolvency law has traditionally formed the principal rationale behind forum shopping, automatic EU-wide recognition of the substantive consequences from the application of the *lex concursus* may now *not* be kept in check by *ordre public* reservations in other member states.

17. In this connection, the construction of the rule of Art. 26 represents of of the fundamental challenges to national and the European court, but it appears clear that refusal of recognition on grounds of public policy is not possible in respect of issues addressed by specific rules under the Regulation.

18. Furthermore, the absence of an EU-wide *lis pendens* from the *making* of an application to open insolvency proceedings[17], entails that there will normally be sufficient time to devise and implement strategies designed to take advantage of favourable national laws. It is worth recalling that the idea of requiring a *minimum period of time* for the application of the principal basis of jurisdiction of Art. 3§1 (centre of main interests) was considered and rejected. It remains, therefore, theoretically possible to relocate a debtor's centre of main interests as a preparatory act of bankruptcy. The situation is pronounced by the fact that, as it is pointed out[18], under the Regulation it is sufficient for jurisdiction to exist at the time of *opening* of proceedings, thereby availing debtors of the time between the making of an application and the handing down of the opening judgement.

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[17] Similar to the provision of Art. 27 of the Brussels I Regulation; see also *infra* §40.

[18] Comments to *Landgericht Wuppertal Beschluß* vom 14.8.2002, by *Gabriel Moss, Sandy Shandro, loc. cit.* It is also the Greek rule that jurisdiction must exist at the time of *making* of an application, rather than the time of opening of proceedings.

D. Scope

19. The scope of the Regulation's application is defined in Art. 1[19]. The Regulation does not contain a definition or test of insolvency, which remains a matter for national law[20].

20. It has been suggested that, in view of the detailed lists of national proceedings, to which the Regulation applies (Annexes A and B) the definition of scope in Art. 1§1 is merely a statement of principle, intended to be binding at a future stage of introduction of additional proceedings under member state laws[21]. Although it is clear that the Regulation is inapplicable to proceedings *not* listed in the Annexes, less clear is the reverse, namely whether Art. 1§1 could serve as an autonomous interpretative principle for excluding proceedings which, *although* listed in the Annexes and *potentially* collective (others *may* participate), nonetheless involve only one creditor in a specific case (e.g. no other claims are entered or accepted). The commentary in the *Virgos-Schmit* Report (§8) referring to insolvency as a *collective action* problem, could provide a theoretical basis for this reading, although a number of problems would then have to be addressed[22]. In addition, national law doctrines in the nature of an estoppel, such as the "abuse of rights" doctrine of Art. 281 GrCC, could provide additional means of opposing *pseudo*-insolvencies, orchestrated by agreement between a debtor and a creditor to take undue advantage of the EU-wide effects of the Regulation.

21. Notwithstanding diverging taxonomical approaches, the Regulation could be said to adopt a type of "modified universalism"[23] consisting in a three-tier approach to the diffusion of the effects of the *lex concursus* throughout the EU (i) main proceedings have universal (intra-EU)

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[19] To be read in combination with the definitions of terms in Art. 2 and the lists of national proceedings in Annexes A and B.

[20] This evidently creates a risk of having several territorial proceedings based on a different criteria of insolvency, if e.g. on account of the debtor's capacity (*cf.* Art. 16§1) main proceedings cannot be opened at the state where such debtor's centre of main interests is located.

[21] Under the simplified procedure of Art. 45.

[22] For instance, the number of creditors is often not know at the opening of proceedings, but only subsequently at the stage of lodging or acceptance of claims. This could potentially introduce an element of conditionality into the EU-wide effects of proceedings, which eventually involve only one (confirmed?) creditor.

[23] For a overview of principles see *Westbrook, J.L.*, "Choice of Avoidance Law in Global Insolvencies", 17 Brook J Int'l L 499 (1991), p. 5 *et seq.*

effects, unless (ii) *secondary* proceedings are opened, but then (iii) "universal cross-filing" rights[24] serve to diminish the consequences of territorial "fragmentation". A similar "dialectic" between the universal and the territorial operates under the conflict rules of Arts. 4-15.

22. The jurisdictional bases of Art. 3 exclude debtors whose centre of main interests is outside the EU. This has been criticised, since it deprives of EU wide effects potentially substantial proceedings involving multinationals with assets and operations across Europe[25].

23. It is suggested that the universal effect of main proceedings under Art. 3§1 does *not* extend to assets located outside member state territory[26]. One thing to note here is that, if included in main proceedings by operation of national law, there is no indication that such assets could be treated differently than assets located within the EU. They should, for instance, be subject to the hotch-pot rule of Art. 20. The position is less clear in relation to secondary proceedings, the effects of which under the Regulation are intended to be *limited* to assets situated within the state of opening. However, after assets originally located in third countries have been subjected to secondary proceedings, it is hard to see how they might be exempted e.g. from the rule of Art. 35 concerning transfer of assets to the liquidator of main proceedings.

24. Universality in respect of third countries is directly related to the issue of conflicting bankruptcies opened in different Member States: it is possible that both the office holder in such proceedings and the office

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[24] The term has been proposed by *Westbrook*, *loc. cit.*, p. 35.

[25] In this respect, one of the most interesting current proposals (*cf. Wessels, R.*, "European Union Regulation on Insolvency Proceedings", Am Bankr Inst J, Nov. 2001, p. 24; *id.*, "European Union Insolvency Regulation. An Overview with transatlantic Elaborations", Norton Annual Survey of Bankruptcy Law 2003 (publication pending); *Westbrook, J.L.*, "Multinational Enterprises in General Default: Chapter 15, The Ali Principles, and The EU Insolvency Regulation", 76 Am. Bankr. L.J. 1, pp. 38-40) envisages the "block" adoption of the Model Law in the form of a regulation by the European Union, to operate in parallel with the Insolvency Regulation, applicable (mainly?) to cross-border insolvencies involving non-EU jurisdictions. It would be fortunate if, in the present climate of almost universal concern with the establishment of efficient insolvency regimes, that final part of European law on cross-border insolvency were to become the subject of uniform legislation on the model already adopted or contemplated by many of Europe's major trading partners. This would provide real and practical solutions in the case of debtors, whose centre of main interests is outside the EU, provide a firm basis for the use of instruments such as Protocols, which are presently not covered by the Regulation (and the laws of most European states), as well as add to the drive towards adoption of the Model law as a world wide standard.

[26] *Moss, Fletcher, Isaacs*, *loc. cit.*, §8.33 *in. f.*, §8.36.

holder in main proceedings, which are also *universal* according to the applicable *lex concursus*, may lay conflicting claims on assets located in third countries and pursue the recognition of respective proceedings according to the national law of such countries. It is, therefore, likely that the courts of third countries will be called upon to decide the question of precedence for purposes of recognition between main and secondary EU proceedings, which is to say the question of *universality* versus *territoriality* of proceedings outside the EU under the Regulation.

E. Territorial proceedings

25. Particular problems for Greek insolvency law arise today in respect of territorial proceedings. These stem from the fact that universal and unitary proceedings are in fact the *only* kind of proceedings known until now under domestic law[27]. Accordingly, jurisdiction under Article 3§2 of the Regulation does *not*, according to the better view, exist under domestic law.

26. It is correctly suggested that the nature of the Regulation as subordinate Community legislation of direct application combined with the wording of Art 3, containing *direct jurisdictional rules* (rather than conflict rules) entail that "[T]he jurisdictional rules in Article 3 […] operate in an exclusive manner, and do not merely generate an additional basis of jurisdiction to operate in parallel with national rules"[28]. Yet this reading of Article 3§2 might be seen as "overreaching" in a direction opposite to the universalist principles enshrined in the Regulation: jurisdiction to open territorial proceedings is "forced" on national courts, which they would otherwise not have under domestic law, but would be compelled to give the fullest effect to the universal effects of main proceedings. The contrary view, namely that Art. 3 deals solely with "the allocation

[27] It has been argued (*Perakis, E.*, Insolvency of foreign traders and the recognition of foreign insolvencies in Greece, Athens 1990 *[Gr.]*) that domestic law does not preclude domestic proceedings parallel to foreign (therefore, necessarily territorial), for which jurisdiction could theoretically be based (effectively by purposive *extra legem* interpretation) on the existence of assets in the territory. Although this view has not received significant support, the attendant theory on parallel insolvencies might be an indispensable starting point for the assimilation of the main/territorial proceedings structure introduced by the Insolvency Regulation.

[28] *Moss, Fletcher, Isaacs* (eds.), *loc. cit.*, §3.08, but *cf.* §8.141 noting that the conditions (presumably then only substantive) of opening of *secondary* proceedings are a matter of local law.

of *international* jurisdiction as between Member States of the EU", therefore presupposing the *existence* of such jurisdiction according to national law, has also been convincingly voiced [29].

27. The absence of a time limit for the opening of *secondary* proceedings may prove an impediment to the effective conduct of main proceedings, and especially their closure by settlement or restructuring measures. Also, the rule of Art. 27 (secondary proceedings must be winding up proceedings) is viewed as a questionable requirement to liquidate a potentially viable business. This could create incentives to file for secondary before filing for main proceedings, although Art. 3§4(b) prevents recourse to "predatory" tactics by (EU and non-EU) creditors without sufficient local link. Still, an additional and strong incentive to file for territorial proceedings is provided by Art. 36, essentially making the application of Arts. 31-35 to independent territorial proceedings after the opening of main proceedings subject to procedural "convenience"[30].

28. Interesting issues may arise in relation to the rule of the second sentence of Art. 16§1, mandating the recognition of insolvency proceedings in member states, where such proceedings would be impossible to bring against the debtor *on account of such debtor's capacity*. The principal ambit of this rule would be individuals who are not *merchants* as required by the laws of several member states. The recognition of *main* proceedings in another member state against such persons would remove the protection to local interests afforded by the possibility of opening secondary proceedings, while at the same time extending the stay of action under the *lex concursus* to assets within that member state. By placing local creditors at a disadvantage, this rule may eventually bring about the approximation of member state laws towards a broad formulation of the criteria of eligibility for bankruptcy.

29. Conversely, the recognition of territorial proceedings would allow a liquidator to remove assets from a member state, where insolvency cannot be opened against such debtor under Art. 18§2, although such assets may already have become subject to individual action or

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[29] *Gabriel Moss, Sandy Shandro, loc. cit.*

[30] *Moss, Fletcher, Isaacs , loc. cit.*, §8.72-8.74. It is a matter of national law and jurisprudence to determine the *exact stage* or *procedural act* of insolvency proceedings, after which conversion would as a rule be rejected.

enforcement measures in that member state. It is less clear that a stay under the *lex concursus* of secondary proceedings would be recognised in other member states in this case, and therefore it is only the superiority of the Regulation over national law, which could support the setting aside of such measures.

30. A matter of particular significance for Greek insolvency law concerns the consequences of *retroactive changes* in the circumstances of a particular bankruptcy. For instance, the disposal of particular assets (e.g. a factory) may at first lead to non-application of Arts. 31-35, but the disposal may be subsequently reversed for a number of reasons.

F. National (enabling) measures

31. Art. 19§2 provides that a translation in the official language may be required by the Member State in which the liquidator intends to act. This appears to have been the case in *The Cenargo Limited*[31] of the of the liquidator's appointment document. No specific rule presently exists, and therefore the default rule (Art. 454 Code of Civil Procedure) that documents produced before Greek courts *must* be produced in original with transcript, will presumably apply. This should probably be deemed to apply also in respect of the lodgement of claims by foreign creditors under Art. 42§2.

32. More complicated questions arise in relation to the exercise by a foreign liquidator of the right under Art. 21§1 to request the publication of the insolvency judgement *in accordance with national law and procedure*. The complication derives from the fact that there exists no central insolvencies register, but separate registers kept at each bankruptcy court, in which the bankruptcy judgements of debtors with their real seat within the court's district are published. Accordingly, while practically impossible to request publication in *all* bankruptcy courts, there are no rules prescribing publication in any specific court, whether such publication should include the original judgement, or whether publication is mandatory within the meaning of Art. 21§2. In the light of this statutory gap, some form of analogy would have to be employed: it could be argued that, if a local establishment exists, publication would have to be made in the court with local competence

[31] *Gabriel Moss, Sandy Shandro, loc. cit.*

for such establishment. If no local establishment exists, the most reasonable course would be to make the publication in the courts of the country's capital, although no rule presently lends direct support to this proposition. In both cases, the analogy would probably have to be drawn from Art. 40 of the Code of Civil Procedure, which creates jurisdiction for the courts of the place where a debtor's assets are located. It is, however, noteworthy that Art. 40 falls within the so-called *excessive bases of international jurisdiction*, and its application as between EU member states is expressly excluded under the Brussels I Regulation (as formerly under the Brussels (Judgements) Convention of 1968).

33. Under Art. 22§1 a foreign liquidator may request publication in the land, trade or other public register. To begin with, domestic bankruptcies are *not* registered in the land register, and a number of provisions governing the acquisition of real property may function to protect the interest of the acquirer of such property after the opening of main proceedings in another member state. In addition, the absence EU-wide effects from the *making* of a request to open proceedings (such as the possibility of registering such request with the competent land registries, e.g. at the initiative of any interested party), therefore, practically entails that it would in principle be possible to transfer or encumber real assets in anticipation of the opening of main proceedings in another member state, which Art. 5§1 would eventually shield from the effects of such proceedings. In such event, it appears that an *actio Pauliana* either "in bankruptcy" (Arts. 537-538 Commercial Code), or under Arts. 939 *et seq.* of the Civil Code, would be the sole remedy available for redressing the problem. The absence of clear rules governing publication also obstructs the operation of the presumption of knowledge of Art. 24§2, affecting the protection of *bona fide* payments under the rule of Art. 24§§1-2.

G. Co-operation between liquidators

34. Another area that is entirely new to Greek insolvency law is that of *co-operation* between liquidators, now prescribed as an unqualified obligation under Art. 31. This is an area where there exist neither rules nor precedent, since "universal" liquidators have neither need nor authority to co-operate (instead, their duty is to pursue the recognition of domestic proceedings abroad). In the statutory framework governing liquidators' duties there is no "general clause" awarding liquidators

general competence to take all measures necessary for the orderly administration of the bankruptcy. However, there exists extensive precedent recognising liquidators' broad ranging duties to take measures for the preservation of the insolvency estate. This jurisprudence, in combination with the so-called "organic theory", according to which the liquidator represents the interests of the bankruptcy (without representing any specific party to the proceedings), could form the basis for an *ad hoc* devising and implementation of methods of co-operation fulfilling the requirements laid down in the Regulation.

35. One important issue here concerns the consequences from the failure of one liquidator to co-operate and share information with liquidators in other, main or secondary proceedings. Again, various questions may be asked: would it be possible for such failure to impact the course of any of the insolvency proceedings opened? Would it be possible to *enforce* compliance with that obligation, and by what means? What would be the particular nature of such liquidator's liability? To a great extent such questions remain a matter of national law (under Greek law a liquidator is liable in tort), which must nonetheless be reshaped to reflect the position adopted under the Regulation.

H. Invitation of known creditors

36. Significant practical consequences may arise from the construction of Art. 40 concerning the obligation of a court or liquidator (presumably a matter of national law) to inform known creditors in other member states[32] of the opening of main or secondary proceedings. The invitation of known creditors under Greek law is among the liquidator's duties (more specifically, the liquidator is responsible for the *publication* of such invitation, while the court secretary is responsible for *individual invitations* by mail), and therefore questions related to a liquidator's failure to do so are of central importance.

37. Personal liability aside, more important are the rights and remedies available to such creditors: will they be entitled e.g. to the *belated*

[32] The rationale for the restriction of this obligation to creditors having their habitual residence, domicile or registered office, *in member states* is not clear, and therefore seems to place *known* third country creditors at an unjustifiable disadvantage.

announcement of their claims? Should the failure to invite such creditors rank among the statutory bases for an appeal against the provisional ranking creditors performed at the early stages of bankruptcy?

38. In general, the tasks and actions to be performed on the opening of insolvency proceedings under Greek law are expressly laid out in the opening judgement. It would therefore appear that of matters urgently in need of legislative attention is the amendment of the minimum *necessary* content of that judgement to include the actions prescribed by Art. 40.

I. Co-ordination of proceedings

39. Art. 32 will probably give rise to several questions of interpretation. It has been suggested that Art. 32§2 creates a *duty* of universal cross-filing for liquidators in both main and secondary proceedings[33]. Although liquidators will in any event be under such an obligation, it is not clear that its basis should be sought in the Regulation, rather than the *lex concursus*, applicable under Art. 4§2c, which will typically contain a full set of rules governing the liquidator's status, obligations and liability. On the other hand, a teleological reading of Art. 32§2 might yield the conclusion that a direct cross-filing *obligation* under the Regulation is principally a procedural element of "mandatory universalism" (rather than a creditor remedy), subject only to the limitation of serving the interests of creditors. A further notable question is whether cross-filing of claims by a liquidator under Art. 32§2 applies to claims *lodged* or only to claims *accepted* in proceedings, in which such liquidator is appointed. On one hand, it is clearly problematic to accept a cross-filing right (or duty) for claims *rejected* in one set of proceedings; on the other, the answer relies to a great extent on the position regarding the binding force of the acceptance or rejection of claims, whether by court judgement or by act of the liquidator.

40. One of the most notable deficiencies identified concerns the absence of

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[33] See *Lücke, W.*, "The New Law European Law on International Insolvencies: A German Perspective", 17 Bank. Dev. J. 369 (2001), p. 399; other authors appear to accept the view that Art. 32§2 creates a right, but no obligation – see e.g. *Moss, Fletcher, Isaacs, loc. cit.*, §8.235-8.243.

a European register for insolvencies. Combined with the absence of a rule obliging national courts to state whether judgements are intended to open main or territorial proceedings, and, importantly, with the absence of an EU-wide *lis pendens* from the request to open main proceedings in a member state, this seriously raises the possibility of conflicting judgements[34]; it is not clear that the rule of temporal priority (*cf.* Recital 22) could adequately address such conflicts, and it seems *ex post* bizarre that no specific provisions similar to those of Arts. 27-30 of the Brussels I Regulation[35] were inserted in the Insolvency Regulation.

J. "Exporting" Greek insolvency law

41. As a final note, it is worth observing that "exporting" the substantive rules of Greek insolvency law by virtue of Art. 4 of the Regulation may prove a formidable task by reason of its sheer age and complexity. The main corpus of Greek insolvency law is among the oldest bodies of rules currently in force. In it survives for the most part the chapter on bankruptcy of the Napoleonic Code de Commerce of the year 1807 (itself based on the French Ordonnance de Commerce of 1673). The sheer age of the law in practice entails a continuous and cumbersome effort towards realignment with contemporary economic reality. Largely biased in favour of "correctness of outcome" by means of extensive remedies, parallel court proceedings and retroactive operation of judgements delivered on appeal, over efficiency of the process, Greek insolvency law might on occasion fall short of the goals of *swift* and *efficient* administration of significant cross border insolvencies.

K. Choice of law: the rule

42. Article 4 represents probably one of the most extensive incursions into a traditional preserve of national law. It transcends traditional conflict approaches, both *procedural* and *substantive*, and by rules of direct

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[34] Lücke , *loc. cit.*, p. 382; Moss, Fletcher, Isaacs, *loc. cit.*, §8.47.

[35] Council Regulation EC/44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, OJ L12/16.1.2001, p. 0001, which replaced the 1968 Brussels (Judgements) Convention, as amended by the subsequent Accession conventions.

application dictates the universal application of the law of the state of the opening of *main* proceedings to all matters related to the opening, conduct and closure of insolvency proceedings and their effects. The choice rules of Art. 4 embody the traditional tenet of private international law, that the *lex concursus* is the *lex fori concursus*, but largely transcends it *rationae materiae*: it seems that *non-insolvency* substantive main proceedings law also becomes universally applicable, displacing conventional member state conflict jurisprudence.

43. The all embracing statement of principle in Art. 4§1 is accompanied by a non-exclusive list of specific subject matter governed by such law. The application of the *lex concursus* to many of those issues would have been doubtful without their express inclusion; most of them might have formed the subject matter of public policy exceptions under Art. 26. One significant effect of Art. 4§2 is, therefore, to pre-empt the development of "centrifugal" tendencies in the jurisprudence of national courts; stated differently, to invest with EU-wide effect the policies enshrined in the law of the main forum (thus stated, the result seems a lot more objectionable[36]). The rule of Art. 4 is subject to a series of exceptions (Arts. 5-15). A largely common element of these exceptions is that, *despite* deference to national substantive law, the *lex concursus* remains applicable in respect of avoidance actions (Art. 4§2m). This legislative choice reflects considerations of efficiency and equity[37], but perhaps less of certainty and predictability. An ultimate "escape" from the rule of avoidance according to the *lex concursus* is provided in Art. 13, the construction of which, however, is again a matter of some complexity[38].

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[36] *Cf. Lücke, loc. cit.*, p. 376-377.

[37] The choice bears on one of the most interesting and complicated problems of cross-border insolvency conflicts law, on which see *Westbrook, J.L.*, "Choice of Avoidance Law in Global Insolvencies", 17 Brook J Int'l L 499 (1991). The Regulation (*cf.* Recital 8) may be said to go some way towards adopting on of the fundamental propositions expounded by the author, namely to subject insolvency to a single governing law, rather than rely on conventional conflict jurisprudence.

[38] Analysis of the avoidance regime under the Regulation requires separate treatment, which cannot be attempted here; however, two points may be noted. Firstly, as a matter of legal doctrine, whether an act is subject to this or that law is not a matter of *proof*, but of deductive reasoning applied *ex officio* by the court; therefore, the wording of the first indent of Art. 13 is unfortunate as a matter of continental doctrine, and necessitates particular analysis of what it is exactly that the creditor benefiting from the detrimental act must prove. Secondly, the wording of the second indent does not indicate whether the law applicable pursuant to the first indent must disallow challenges to the detrimental act *in abstracto*, or based on the specific facts at hand (and further, whether on the facts relevant for avoidance under the *lex concursus*, the law applicable according to the first indent, or both).

44. Thus, a four-tier "dialectic" between the universal and the territorial governs choice of law: (i) main proceedings law applies *universally*, but (ii) is displaced by territorial laws in specific cases of "vested" interests, (iii) unless respective transactions are avoided under the (universal) *lex concursus*[39], (iv) which may be (finally) displaced by a showing of specific ultimate reasons for national law to prevail.

45. The Regulation is silent on the question of *renvoi*. The *Virgos-Schmit* Report (§87) states that reference to the "law" of a member state is to the respective substantive law, excluding that state's private international law, but in itself that would be a weak limitation on the discretion of national courts to construe the respective rules of the Regulation. It would, therefore, seem that the uniform exclusion of *renvoi* by national courts applying the conflict rules of Arts. 4-15 would depend primarily on the consistent and persuasive doctrinal analysis of its incompatibility with the Regulation's system of uniform rules. Although arguments deriving from a purposive reading of the Regulation have been expressed[40], this is probably an area where the guidance of the European Court is highly desirable.

46. Another important attribute of most conflict rules of Art. 4-15 is that, with certain (*not* clearly delineated) exceptions, they contemplate the application of *member state laws*, but seem to defer to national conflict rules for the potential application of the laws of third countries. This has been termed "a recipe for instability and uncertainty"[41], and there is clear need for detailed study and jurisprudential input towards systematisation of the conflicts regime introduced by the Regulation; again, the ultimate burden must fall on the European Court, to provide guidance on principle.

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[39] It has been suggested (*Moss, Fletcher, Isaacs, loc. cit.*, §8.80-8.82) that the literal reading of Art. 4§2m in the English version of the Regulation ("[a]cts detrimental to all creditors") is untenable, and it should be interpreted as meaning "*creditors as a whole*", as would be the normal reading of the German and French versions. Exactly the same problem exists with the Greek version, and the same suggestion is appropriate.

[40] See *Moss, Fletcher, Isaacs, loc. cit.*, §4.04

[41] *loc. cit.*, §4.03

L. Choice of law: the exceptions

47. According to Art. 5§1 the opening of insolvency proceedings shall not affect rights *in rem* over assets of any kind situated in another member state at the time of opening of proceedings. Such rights are not directly *exempted* from the ambit of the *lex concursus*; the underlying assets may, for instance, be included in the estate and are subject to the powers of the main proceedings liquidator[42]. However, the application of the *lex concursus* may not prejudice holders of such rights, who must remain in the same substantive and procedural position (including, e.g. the right to foreclose on the collateral according to the *lex situs*) as they would have been without the opening of insolvency proceedings.

48. The formulation of the rule of Art. 5 gives rise to certain issues focal to the effects of the conflict rules of Arts. 4 and 5 to security rights. Art. 5 clearly applies to security rights *in rem*, but less clear is its effect on the *underlying (secured)* obligations. At first sight, such obligations would remain subject to their proper law, although the effects from the opening of insolvency proceedings would be a matter for the *lex concursus* according to the rule of Art. 4.

49. However, a most plausible reading of Art. 5 would be that the latter affords *unqualified protection*[43] from the effects of the opening of main proceedings to security rights over assets located in other member states. Therefore, a stay applicable to secured creditors according to the main proceedings *lex concursus* will not apply in respect of such assets. Moreover, there is no indication in the language of Art. 5 that the above effect might be limited to *local* creditors, e.g. creditors fulfilling the criteria of Art. 3§4. It appears, therefore, that a fundamental departure from the universal effect of main proceedings might be said to exist in respect of "extraterritorial" security rights, which could render the efficient conduct of main proceedings at least problematic. While the opening of secondary territorial proceedings would provide practical solutions in respect of assets located in member states where the debtor maintains and establishment, no alternative seems available in respect of assets located in member states where there is no such establishment. This is perhaps a point in which a restrictive interpretation of Art. 5 might be warranted, the feasibility and principles of which, however,

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[42] *E.g.* powers related to the taking of conservative measures under Art. 18§1.

[43] *Cf.* Moss, Fletcher, Isaacs, *loc. cit.*, §6.70

must form the subject matter of ad hoc analysis.

50. Furthermore, Art. 5 does not apply in respect of assets situated *outside* the territory of member states; accordingly, the fate of security rights over such assets remains a matter for the *lex concursus* according to the rule of Art. 4, which alone will determine the ability of secured creditors to enforce security rights over property located outside the state of opening of main proceedings. Such assets appear, moreover, to be excluded from the ambit of *secondary* proceedings due to the latter's territorial scope.

51. In sum, the clear-cut formulation of Art. 5 could be said to be only apparent, and substantial effort will need to be devoted for working out the consequences from its application.

52. An exception to the rules of both Art. 4§2 (b) and (e) operates in respect of rights based on reservation of title. Art. 7§1 largely preserves the effectiveness of repossession actions under member state laws in the event of the purchaser's insolvency, while Art. 7§2 protects the legitimate expectation of purchasers to obtain title subject to payment of the purchase price regardless of the seller's insolvency.

53. Art. 14 extends similar protection to *bona fide* third-party purchasers *for consideration* of immoveable assets, a ship or aircraft subject to registration, and dematerialised securities[44], by an act concluded *after* the opening of proceedings, by making the validity of such act subject to the law of the state where such assets are located or register kept. There is again no indication of whether this includes both non-insolvency and insolvency laws, or of whether it is limited to member state laws or may include the laws of third countries.

54. By contrast, Art. 8 contains an *exclusive* ("*solely*") choice of law rule in favour of the *lex situs* in relation to contracts conferring the right to acquire or make use of immovable property[45].

55. At the opposite side, the effect of proceedings on the *debtor's* rights over immovable property, ships or aircraft, which are subject to registration in a public register (and therefore typically have the status

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[44] see the *Virgos-Schmit* Report (§§140-141 and §69).

[45] One potential drawback of the rule regarding rights to make use of property might be to make the return of value to the insolvency estate subject to sometimes precarious national tenancy laws.

of a right *in rem*) is made subject to the law of the state where such register is kept (Art. 11); the *Virgos-Schmit* Report (§§129-132) suggests the latter is not to displace, but only to "filter" the consequences from the application of, the *lex concursus*, in order to avoid disrupting the reliance on national registration systems.

56. A significant exception to the rule of Art. 4§2(d) is introduced in Art. 6: although the *lex concursus* governs the conditions of setoff after the opening of proceedings, creditors shall, nonetheless, have the right to demand setoff if this is permitted by the law applicable to the debtor's counterclaim (so-called "passive" claim[46]).

57. Important questions arise in this connection. Does the law governing the passive claim have to be that of a member state? It is not clear that the laws of third countries should be excluded[47]. Does it refer to the entire system of law, or only to non-insolvency laws, of the respective state (in other words, does the applicable law need to permit setoff in general, or must it permit setoff during insolvency)? Does setoff need to be permissible *in abstracto*, or must it be available on the specific facts of each case[48]? Under Greek law opposite rules apply in each case. Equally unclear is the position in case the conditions of setoff are perfected *after* the opening of proceedings[49].

58. It has been correctly noted that Art. 6 creates incentives for lenders to insist that credit transactions are made subject to the law permitting setoff to the greatest extent[50]. This could reinforce selection pressures

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[46] See *Virgos-Schmit* Report, §§107-111. Note that Art. 6§1 refers only to the *passive* claim, taking account of the possibility of *depeçage* (subjection of separable parts of a single legal relationship to different laws).

[47] This seems to be the view tentatively adopted in *Moss, Fletcher, Isaacs*, *loc. cit.* (§8.100 and 8.129). The position, however, is not entirely clear: the *Virgos-Schmit* Report (§93) seems to exclude Arts. 6 and 14 from the observation that the exceptions to the rule of Art. 4 are made in favour of contracting [*viz*. member] states. There appears to be no compelling reason to exclude the laws of third countries, which may be validly selected under the Rome Convention (one might consider contracts governed by the laws of the major credit and paper markets outside the EU).

[48] It is conceivable that *different* factual or legal causes might preclude setoff under the governing law of the passive claim than those that are the subject matter of insolvency proceedings.

[49] It is noted that, under applicable law, setoff may be subject to additional conditions besides the mere existence of mutual claims. It is suggested (*Moss, Fletcher, Isaacs*, *loc. cit.*, §8.102-8.103) that Art. 6 only applies to setoff rights arising in respect of *claims incurred* prior to the opening of proceedings; for claims incurred thereafter Art. 4§2(d) remains applicable. The authors also seem to suggest a concept of *bona fide* setoff *after* the opening of proceedings, but before publication of notice, which would be similar to the discharge of a *bona fide* creditor under Art. 24§1.

[50] *Moss, Fletcher, Isaacs*, *loc. cit.*, §8.101

to make such choice of law clauses the rule, at least in significant credit transactions, thereby eroding and ultimately displacing member state policies in respect of the admissibility of setoff during insolvency.

59. An important exception to the rule of Art. 4 is contained in Art. 15: the effect of proceedings on "lawsuits pending" is to be governed exclusively by the law of the respective forum. According to the *Virgos-Schmit* Report, Article 15 does not displace the rule of Art. 4§2(f), but introduces a distinction between "individual enforcement proceedings" and "lawsuits pending" (presumably including all types of action, but excluding enforcement of judgements). Therefore, although enforcement will be stayed in accordance with the *lex concursus*, the effect on other types (or stages) of action will be determined by the *lex fori*[51].

60. By exception (mainly) to the rule of Art. 4§2(e) on current contracts, Art. 10 contains an exclusive choice of law rule, that the effects of proceedings on employment contracts and relationships is to be governed by the law of the member state applicable to the contract of employment. The practically most significant such effect presumably concerns the continuation or (automatic or conditional) termination of such contracts. A question relevant for cross border rescues would be the status of the liquidator's powers to procure the *continuation* of such contracts, if the applicable law under Art. 10 either contains no rules or provides for automatic termination upon the opening of proceedings (as in "*special liquidation*" proceedings under Greek law).

61. Exception to the rule of Art. 4 also apply in respect of payment systems and financial markets. The definition of a "payment system" may be derived from Art. 2 (a) of European Parliament and Council Directive 98/26[52], to which Recital 27 of the Regulation refers. There is no definition of a "financial market", and, outside the context of organised securities or commodities exchanges, this could affect the position in relation to OTC transactions.

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[51] It is observed (*Moss, Fletcher, Isaacs*, *loc. cit.*, §8.130) that the laws of *all* member states contain stay of action rules, although the particular extent and consequences of the stay vary significantly.

[52] OJ L166/11.6.1998, pp. 0045-0050.

M. Recognition and enforcement

62. Any judgement opening main or territorial insolvency proceedings is subject to automatic EU-wide recognition by member state courts, authorities and third parties, and produces with no further formality the same effects in all member states as in the state of origin under the respective *lex concursus*. Arts. 16§1 and 17§1 may be said to be the cornerstone of a single European insolvency area.

63. Recognition is pronounced effective "from the time [the opening judgement] *becomes effective*" in the state of opening. Although the language of Art. 16§1 does not explicitly give effect to national rules (such as the Greek "zero hour" rule) entailing the *retroactive* operation of the opening judgement, the *Virgos-Schmit* Report (§154) suggests that such national rules are not to be treated any differently.

64. Recognition of the opening judgement is significantly complemented in two directions: judgements arising from or related to insolvency proceedings are also subject to automatic recognition (but not enforcement, Art. 25), and the liquidator's powers (except coercive measures) may be exercised in any member state without recourse to further local procedures (Arts. 18 and 19). Whereas the technicalities related to the latter will probably be worked out in practice, the same cannot be said in respect of the former.

65. Indeed, the recognition of related judgements and proceedings might prove to be another "thorny" area. It appears that judgements handed down by the main insolvency court concerning the course and closure of insolvency proceedings, or court-approved compositions, are covered by the language of Art. 25. The position, however, is less clear in respect of related judgements (of which type several would typically arise from a Greek insolvency). Such judgements might otherwise be subject to recognition according to the criteria laid down by the Brussels I Regulation, or conceivably exempt from recognition altogether, and only general criteria for their subjection to the regime of Art. 25 are discernible in the language of that Article. It has been argued that the recognition and enforcement criteria under Art. 25 could conceivably entail the weakening of the defendant's side in comparison to the position under the Brussels I Regulation. The proposition, therefore, appears justified that a tacit requirement of functional indispensability of a particular related judgement for the

objectives of (main or territorial) insolvency proceedings should be read into Art. 25[53]. An additional issue not addressed under Art. 25 is the binding force and the possibility of challenge to *acceptance of claims*, which are not by way of a court approved composition, but e.g. by act of a liquidator.

66. A related issue concerns the possibility of *more favourable* treatment under national law than afforded under the Regulation to proceedings within its scope. On the other hand, the rationale behind *independent* territorial proceedings (*cf.* Art. 3§4) and the potential elevation of *assistance* to the main proceedings[54] as an autonomous principle of interpretation, will most likely provide any necessary support to the orthodox view seeing in Article 3§2 an autonomous and exclusive jurisdictional basis.

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[53] In other words, a judgement *prina facie* falling under Art. 25 should be recognised thereunder, but only under the Brussels I Regulation, it its recognition is necessary for insolvency proceedings opened, or if its delivery in the course of such proceedings is fortuitous and not a necessary consequence of such proceedings. See generally *Lücke*, *supra* note 54, p. 384-385.

[54] See Recital 19 in the preamble of the Regulation; also the *Virgos-Schmit Report*, §32-33; *Lücke, W.*, "The New Law European Law on International Insolvencies: A German Perspective", 17 Bank. Dev. J. 369 (2001), p. 374-375; See *Perakis, E.*, "International Insolvency Law between the EC and the UNCITRAL Models", paper presented at the Annual Meeting of the *Institute for Procedural Studies* & the *Wissenschaftliche Vereinigung für internationales Verfahrensrecht*, Athens, Sept. 2001, (not published), p. 17-18: affirming the application of the more favourable rules of national law would enhance the impact of respective proceedings, although perhaps to the detriment of uniformity of application across EU member states. On the status of the *Virgos-Schmit* Report in the interpretation of (effectively in lieu of an explanatory report to) the Regulation see *Ian Fletcher* in *Moss, Fletcher, Isaacs, loc. cit.*, p. 1 *et seq*.

N. Conclusions

If any useful conclusions may be drawn, that might be that, although Greek law is well-equipped (and jurists quite experienced) to apply the jurisdictional criteria of Art. 3, as well as the choice of law rules of Arts. 4-15, there exists virtually no experience at all with issues such as co-operation between liquidators. The absence to date of a statutory framework regulating such matters should be expected to accentuate the difficulties and uncertainty as to the precise scope of a liquidators duties and liability under the Regulation. In addition, the absence of enabling national measures in a number of areas, but most of all the fundamental departure from the concept of universal and unitary proceedings introduced under the new regime, are likely to give rise to a number of technical problems, to be redressed by application of general principles and *ad hoc* development of standards and principles. In any event, the liberal tradition of Greek international insolvency law is likely to aid substantially the transition to the new regime of European cross border insolvency.

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