Informing foreign creditors of the opening of insolvency proceedings

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Abstract:

The paper analyses the rules of the European Insolvency Regulation and the UNCITRAL Model Law on Cross-Border Insolvency relating to the informing of foreign creditors of the opening of insolvency proceedings, and addresses the question of whether the rules of the European Insolvency Regulation should be improved in respect of situations in which insolvency proceedings are opened in the territory of a Member State of the European Union while the foreign creditor, whether a natural or legal person, has its habitual residence, domicile, or registered office in a third country.

Keywords: European Insolvency Regulation, UNCITRAL Model Law on Cross-Border Insolvency, informing foreign creditors of the opening of insolvency proceedings, *lex fori concursus*.

A. Introduction

Every State's national legislation includes provisions governing the notification of creditors of a debtor in respect of whom insolvency proceedings have been opened. These provisions are of great importance, because a creditor's ability to timely lodge (file) their claim in insolvency proceedings, participate in them, and influence through voting the decisions that will be adopted in those proceedings - decisions that will ultimately determine the satisfaction of their claim against the debtor - depends on obtaining timely knowledge of the opening of the insolvency proceedings. Certain categories of creditors, such as secured creditors, in some legal systems are not even required to lodge their claims. However, national insolvency law may nevertheless prescribe specific rules for such creditors that, to some extent, limit their rights or the manner in which those rights may be exercised once insolvency proceedings have been opened. It is therefore

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important for them as well to obtain timely knowledge that insolvency proceedings have been opened.

It is customary for national legislators to provide that the decision opening insolvency proceedings be published in the official gazette and/or posted on the court's notice board, and, in modern times, also published on the court's electronic notice board. National legislators may also provide for individual notification of creditors by means of traditional or electronic service of a notice on the opening of insolvency proceedings. However, by its very nature, such notification is limited to those creditors who are known to the court that opened the insolvency proceedings or to the insolvency practitioner appointed in those proceedings, and in that respect such notification is not sufficient. Additionally, the national legislators typically provide for the entry of the decision opening insolvency proceedings into the public register in which the debtor is registered as a business entity carrying out business activities, or into the public registers in which the debtor is recorded as the holder of a particular right (for example, the land register, the ship register, the aircraft register, intellectual property registers, etc.)

As a rule, national legislations prescribe the duty to notify creditors of the opening of insolvency proceedings in a neutral manner, most often without explicit rules on notifying foreign creditors of the debtor.

There is no doubt that foreign creditors of an insolvent debtor must also be notified of the opening of insolvency proceedings, so that they may lodge their claims and participate in the proceedings. If only domestic, and not foreign, creditors were notified of the opening of insolvency proceedings against the debtor, this would violate one of the fundamental principles of insolvency law – the equal treatment of all of the debtor's creditors (*par conditio creditorum*).

It must be borne in mind that foreign creditors are, as a rule, in a significantly less favourable position with respect to their ability to obtain valid and timely knowledge of the opening of insolvency proceedings against the debtor. Foreign creditors will, as a rule, become aware of the opening of insolvency proceedings at a later stage due to their geographical distance; moreover, they typically do not know the language in which the proceed-

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ings are conducted and are insufficiently familiar with the substantive and procedural law governing those proceedings.[1]

The European Insolvency Regulation (hereinafter: EIR)[2], as one of the most comprehensively regulated instruments of international insolvency law, contains specific provisions governing the notification of foreign creditors of the opening of insolvency proceedings. The Regulation applies among the Member States of the European Union, with the exception of Denmark.[3]

The UNCITRAL Model Law on Cross-Border Insolvency (hereinafter: MLCBI)[4], which sets out the rules on the recognition of foreign insolvency proceedings and encourages States worldwide to align their domestic international insolvency regimes with its framework, likewise devotes specific provisions to the issue of notifying foreign creditors.

The purpose of this article is to present and analyse the aforementioned rules on the notification of foreign creditors contained in these two most relevant and widely recognised international legal instruments governing cross-border insolvency. In this context, particular attention will be devoted to situations in which insolvency proceedings are opened in the territory of a Member State of the European Union, while the foreign creditor, whether a natural or a legal person, has their habitual residence, domicile, or registered office in a State that is not a Member State of the European Union. We will examine whether, in such circumstances, there is a need to enhance or further refine the EIR's rules.

Section II will first present and examine the existing rules on the notification of foreign creditors contained in the EIR, followed by Section III, which will examine the corresponding rules found in the MLCBI. Finally, Section IV will set out the conclusions and recommendations.

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1 Similarly, also Brinkmann/Dahl/Kortleben Art. 54 mn. 1; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 1.

2 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2016 on insolvency proceedings (recast), Official Journal of the European Union (hereinafter: OJEU) 2015, L 141, pp. 19-59; last amendment: OJEU 2025, L 2073, pp. 1-15. That Regulation was preceded by the Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings, Official Journal of the European Communities, 2000, L 160, pp. 1-18.

3 Recital no. 88 EIR.

4 The text of the Model Law on Cross-Border Insolvency is available at: www.unicitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency (last accessed: 23 Mai 2026).

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B. European Insolvency Regulation

The EIR contains not only an explicit provision imposing the duty to notify foreign creditors of the opening of insolvency proceedings (Article 54(1) EIR), but also provisions governing their individual notification, the minimum content of such individual notice, as well as the language in which that notice must be provided (Article 54(2)-(3) EIR). Timely notification of foreign creditors of the opening of insolvency proceedings in a Member State is further facilitated by the provisions requiring the publication of the notice of the decision opening insolvency proceedings in other Member States (Article 28 EIR), as well as by the provisions mandating the entry of information on the insolvency proceedings into the public registers of other Member States (Article 29 EIR). The establishment of national insolvency registers and their interconnection within a unified EU-level system (Articles 24–27 EIR) likewise increases the likelihood that foreign creditors will be informed in a timely manner of the opening of insolvency proceedings against the debtor in any Member State of the European Union, excluding, of course, Denmark, to which the EIR does not apply.

I. An explicit provision imposing the duty to notify known foreign creditors of the opening of insolvency proceedings

Pursuant to Article 54(1) EIR, as soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction, or the insolvency practitioner appointed by that court, shall immediately inform the known foreign creditors. This provision is of considerable importance, since every foreign creditor may lodge claims in the insolvency proceedings (Article 53 EIR).

The aforementioned provision is important for yet another reason. Namely, the law applicable to the insolvency proceedings and their legal effects is the law of the Member State within the territory of which such proceedings are opened (the ‘State of the opening of proceedings’), i.e. *lex fori concursus*, unless the EIR provides otherwise (Article 7(1) EIR). In other words, this means that the *lex fori concursus* would, in principle, also govern the issue of notifying foreign creditors of the opening of insolvency proceedings. The difficulty, however, lies in the fact that a considerable number of Member States of the European Union do not contain any specific provisions on the notification of foreign creditors.

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In this respect, Article 54(1) EIR fills the gap that often exists in the national laws of the Member States. At the same time, this provision also prevails over national law that may offer weaker protection to foreign creditors with regard to notification of the opening of insolvency proceedings than the level of protection guaranteed by the EIR.[5] Of course, national law may also provide for a higher level of protection for foreign creditors than that laid down in the aforementioned provision of the EIR.

It follows from Article 54(1) EIR that the duty to notify known foreign creditors lies either with the court[6] or with the insolvency practitioner[7]. This provision is evidently designed to be flexible, as in some Member States the duty to notify foreign creditors is entrusted to the court, while in others it is assigned to the insolvency practitioner.[8]

It should be noted that the duty to notify known foreign creditors of the opening of domestic insolvency proceedings under Article 54(1) EIR arises not only when domestic main insolvency proceedings are opened (Article 3(1) EIR), but also when so-called non-main domestic insolvency proceedings are opened (Article 3(2) EIR), whether they take the form of independent domestic territorial insolvency proceedings (Article 3(4) EIR) or domestic secondary insolvency proceedings (Article 3(3) EIR).[9]

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5 In the same direction also Mankowski/Müller/Schmidt, Art. 54. mn.1; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 2.

6 For the purpose of the EIR, the term 'court' in Article 54 means the judicial body or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings (Art. 2(6) (ii) EIR).

7 For the purpose of the EIR, the term 'insolvency practitioner' means any person or body whose function, including on an interim basis, is to: (i) verify and admit claims submitted in insolvency proceedings; (ii) represent the collective interest of the creditors; (iii) administer, either in full or in part, assets of which the debtor has been divested; (iv) liquidate the assets referred to in point (iii); or (v) supervise the administration of the debtor's affairs (Art. 2(5) (i)-(v) EIR. The persons and bodies referred to in Art. 2(5) (i)-(v) EIR are listed in Annex B of the EIR (Art. 2(2) EIR).

8 Garašić ZPFRi 2016, 1039 (1046); Bork/van Zwieten/Lenzing Art. 54 mn. 54.07; Nummer-Krautgasser/Garber/Jaufer/Kantner p. 147 (153); Brinkmann/Dahl/Kortleben Art. 54 mn. 6-7; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 10-11.

9 Likewise, long ago Virgós/Schmit Report on the Convention on Insolvency Proceedings, mn. 264; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 4 and 7. Compare Mankowski/Müller/Schmidt Art. 54 mn. 6, that the duty to inform foreign creditors on the opening of insolvency proceedings especially connects with main and territorial insolvency proceedings. Compare also Brinkamann/Dahl/Kortleben Art. 53 mn. 4 in the conjunction with Art. 54 mn. 4. that this duty in particular connect with main and ancillary insolvency proceedings.

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Indeed, in all of these proceedings foreign creditors are entitled to lodge their claims. In the case of parallel proceedings, cooperation and communication between the insolvency practitioners appointed in those proceedings (Article 41(1)-(3) EIR), including the exchange of information concerning foreign creditors, will be of particular importance.

The duty to notify known foreign creditors under Article 54(1) EIR applies to those foreign creditors who are known to the court or to the insolvency practitioner. These are, in the first place, creditors whom the court or the insolvency practitioner can identify from the debtor's financial records, from the debtor's business books more generally, from business documentation, or from the debtor's correspondence with creditors prior to the opening of the insolvency proceedings.[10] However, it should be considered that the duty to notify foreign creditors also extends to those creditors whose existence has become known to the court or the insolvency practitioner on the basis of information orally provided by the insolvency debtor, by members of the governing bodies of a corporate debtor, or by the debtor's employees, who under national insolvency law are required to cooperate with the bodies conducting the insolvency proceedings.

Known foreign creditors must be notified of the opening of the insolvency proceedings immediately. This is most commonly interpreted as meaning without delay[11]. Namely, there are time limits in national insolvency law within which creditors may lodge their claims in the insolvency proceedings, and these time limits are not the same across all Member States. Notifying creditors without delay is particularly important in those Member States whose national insolvency law does not allow late filing of claims, nor provides any procedural remedy such as reinstatement to the previous procedural position (relief from missed deadlines).[12] Foreign creditors must be able to lodge their claims and participate in the insolvency proceedings on the same footing as the debtor's domestic creditors.

A specific feature of the EIR is that, under the term '*foreign creditor*', it understands only a creditor which has its habitual residence, domicile or registered office in a Member State other than the State of the opening of

10 Mankowski/Müller/Schmidt Art. 54 mn. 12; Bork/van Zwieten/Lenzing Art. 54 mn. 54.06; Nunner-Krautgasser/Garber/Jaufer/ Kantner p. 147 (154); Brinkmann/Dahl/ Kortleben Art. 54. mn. 5; Bork/Mangano mn. 6.68.

11 Garašić ZPFRi 2016, 1039 (1046); Bork/van Zwieten/Lenzing Art. 54 mn. 54.11; Mankowski/Müller/Schmidt Art. 54 mn. 13-14; Brinkmann/Dahl/Kortleben Art. 54 mn. 8; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 9.

12 In the same direction also Bělohlávek, Art. 54 mn. 54.08.

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proceedings, including the tax authorities and social security authorities of Member States (Article 2(12) EIR). This means that Article 54 EIR does not apply to a foreign creditor whose habitual residence, domicile or registered office is in a third country, that is, in a country which is not an EU Member State. From Article 7(1) EIR, read in conjunction with Article 54 EIR, it follows that the insolvency law of the Member State in which the insolvency proceedings are opened, as the *lex fori concursus*, will be applicable to the notification of a foreign creditor whose habitual residence, domicile or registered office is in a State that is not an EU Member State.[13] The problem lies in the fact that the Member States, as already noted, often do not have specific provisions in their national law concerning the notification of foreign creditors, whether those within the European Union or those outside the European Union.

II. Individual notification of known foreign creditors

Known foreign creditors within the meaning of Article 2(12) EIR are to be notified of the opening of the insolvency proceedings by means of individual notice (Article 54(2), first sentence, EIR).

Domestic creditors of the debtor, for whom the law of the Member State of the opening of insolvency proceedings is applicable with regard to notification of the opening of the proceedings (Article 7(1) EIR), are generally not notified individually of the opening of the insolvency proceedings, but rather through publication of that notice in the national official gazette, on the court's electronic notice board, or on the court's physical (traditional) notice board. Nevertheless, it is considered that the individual notification of foreign creditors under the EIR, as opposed to the generally collective notification of the debtor's domestic creditors under national law, does not amount to discrimination contrary to EU law, taking into account the fact that foreign creditors face, as a rule, far greater difficulties in learning in a timely manner that insolvency proceedings have been opened over their debtor's assets in another State.[14]

13 Virgós-Schmit Report, para. 271; Garašić, p. 460; Mankowski/Müller/Schmidt Art. 54 mn. 10; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 6; Bork/van Zwieten/Lenzing Art. 54 mn. 54.05.

14 Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 6.; Bork/van Zwieten/Lenzing Art. 54 mn. 54.03. Bork/Mangano, mn. 6.76., mention in this context a

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For the individual notice to foreign creditors, the standard notice form is used (Article 54(3), first sentence, EIR). It is available under the heading '*Notice of insolvency proceedings*' on the European e-Justice Portal (Article 54(3), second sentence, EIR). The use of this form is, as a rule, mandatory.[15] Only in insolvency proceedings relating to an individual not exercising a business or professional activity is the use of this standard form not mandatory, provided that creditors are not required to lodge their claims in order for them to be taken into account in the proceedings (Article 54(4) EIR).

In practice, it has been disputed whether, when serving individual notice on a foreign creditor, the EU Regulation on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents) must be applied.[16] Recital 64 of the EIR expressly emphasises that the Service Regulation should not be applied, in order to ensure the swift transmission of information to creditors. Indeed, the EIR does not require that service must necessarily be effected by postal means.[17] In fact, the law of the Member State in which the insolvency proceedings are opened, as the *lex fori concursus*, determines the method of sending the notice in question. This means that, if the law of the Member State opening the insolvency proceedings permits, for example, electronic service, the individual notification of creditors may also be effected in that manner.

III. Minimum content of the individual notice

The standard notice form has a prescribed minimum content. The information shall in particular include the time limits, the penalties laid down with

possible 'phenomenon of reverse discrimination' against creditors resident in the state of the opening of insolvency proceedings, who might not have the same treatment according to their own national law.

15 Mankowski/Müller/Schmidt Art. 54 mn. 24; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 2.

16 Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, OJEC, 2007, L 324, pp. 79-120; last amendment: OJEU, 2013, L 158, pp. 1-71.

17 Compare Mankowski/Müller/Schmidt Art. 54 mn. 23 and Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 12. Compare, for German law, Bork/van Zwieten/Lenzing, Art. 54 mn. 54.08.

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regard to those time limits, the body or authority empowered to accept the lodgement of claims, and any other measures laid down, as well as an indication whether creditors whose claims are preferential or secured *in rem* need to lodge their claims (Article 54(2), sentences 1–2, EIR).

By prescribing the minimum content that every individual notice of the opening of insolvency proceedings addressed to a foreign creditor in the European Union must contain, it has been ensured that a foreign creditor in the Union genuinely receives the essential information necessary for the exercise of their rights once insolvency proceedings are opened over the assets of their debtor.[18] The national legislator could certainly include in the notice form on the opening of insolvency proceedings additional information that may be useful to the foreign creditor[19], such as the currency in which the claim must be lodged, the treatment of interest, the position of claims belonging to lower ranking classes, the rules on representation, and similar matters. It should be noted that, according to the explicit provision of the EIR, representation by a lawyer or another legal professional is not mandatory for the sole purpose of lodging a claim (Art. 53, second sentence, EIR). With regard to other aspects of representation, the *lex fori concursus* applies.

It should be emphasised that the individual notice shall also include a copy of the standard form for the lodging of claims referred to in Article 55 EIR, or information on where that form is available (Art. 54(2), third sentence, EIR), which is likewise very useful for foreign creditors.

IV. Language of the individual notice

The individual notice shall bear the heading „*Notice of insolvency proceedings*' in all the official languages of the institutions of the European Union (Art. 54(3), second sentence, EIR).

As a rule, the individual notice shall be transmitted in the official language of the State of the opening of proceedings. However, if there are several official languages in that Member State, it shall be transmitted in the official language or one of the official languages of the place where insolvency proceedings have been opened. In any case, the individual no-

18 Mankowski/Müller/Schmidt Art. 54 mn. 4.
19 Mankowski/Müller/Schmidt Art. 54 mn. 19; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 13-14.

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tice form may also be transmitted in another language which that State has indicated it can accept (Article 55(5) EIR), if it can be assumed that that language is easier to understand for the foreign creditors (Art. 54(3), sentences 2-3 EIR).[20]

If the foreign creditor does not understand the official language of the State of the opening of proceedings, they will have to translate the individual notice at their own expense. However, if the *lex fori concursus* allows such costs to be lodged in the insolvency proceedings, the creditor may lodge a claim for these costs in addition to their other claims.[21]

V. Unknown foreign creditors and publication of the notice of the decision opening insolvency proceedings in other Member States

One possible way of informing unknown foreign creditors about the opening of insolvency proceedings is the publication of a notice of the decision opening domestic insolvency proceedings in other Member States.

Namely, the insolvency practitioner or the debtor in possession has not only the authority but also the duty to request that notice of the decision opening insolvency proceedings, and, where appropriate, the decision appointing the insolvency practitioner, be published in any other Member State where an establishment of the debtor is located. Of course, all of this can be done only in accordance with the publication procedures provided for in that Member State (Art. 28(1) EIR). Such publication shall specify, where appropriate, whether an insolvency practitioner has been appointed and whether the insolvency proceedings are main insolvency proceedings opened on the basis of Article 3(1) EIR, or whether they are territorial or secondary insolvency proceedings opened on the basis of Article 3(2) EIR (Art. 28(1), second sentence, EIR).

Moreover, the insolvency practitioner or the debtor in possession has the authority to request that such information be published in any other Member State where the insolvency practitioner or the debtor in possession considers it necessary, in accordance with the publication procedures provided for in that Member State (Art. 28(1) EIR)

Recital 75 emphasises that such publication is not a prior condition for the recognition of foreign proceedings. Recognition of a decision opening

20 Moss/Fletcher/Isaacs, p. 495, mn. 8.738-8.740.
21 Garašić ZPFRi 2016, 1039 (1047).

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insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 EIR shall be granted in all other Member States (except Denmark) from the moment it becomes effective in the State of the opening of proceedings (Art. 19(1) EIR), which means that recognition is automatic and does not require a formal recognition procedure.

The EIR does not mention the possibility of publishing a notice of the decision opening insolvency proceedings in States that are not Member States of the European Union. However, there is no doubt that each Member State could, in its national insolvency law, authorise or even oblige the domestic insolvency practitioner or the debtor in possession to request the publication of domestic insolvency proceedings also in other States that are not Member States of the European Union. Whether the insolvency practitioner or the debtor in possession will be able to exercise that authority or fulfil that duty in those other States will, naturally, depend on whether the national law of the non-EU State concerned also permits it.

The publication of a notice of the decision opening insolvency proceedings in other Member States is important not only as one of the means by which foreign creditors from those other Member States may learn of the opening of the proceedings, but also for existing debtors of the insolvent debtor and the manner in which they must discharge their obligations after the opening of the proceedings[22], as well as for those natural and legal persons that intended to enter into a business relationship with the insolvent debtor concerned.[23]

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22 Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the insolvency practitioner in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of the proceedings (Art. 31(1) EIR). Where such an obligation is honoured before the publication provided for in Article 28 EIR has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings (Art. 31(2), first sentence, EIR). Where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings (Art. 31(2), second sentence, EIR).

23 After the opening of insolvency proceedings, the right to manage and dispose of the debtor's assets generally passes to the insolvency practitioner. Even where a decision has been made in the opened insolvency proceedings to allow the insolvent debtor to remain in personal management (debtor in possession), the debtor will nevertheless

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Let us note that the costs of the publication provided for in Article 28 EIR shall be regarded as costs and expenses incurred in the proceedings (Art. 30 EIR).

VI. Unknown foreign creditors and the entry of a notice of the decision opening insolvency proceedings in public registers of other Member States

One of the additional ways in which foreign creditors who are not known to the court that opened the insolvency proceedings, or to the insolvency practitioner appointed in those proceedings, may learn of the opening of the insolvency proceedings is indirectly through the entry of a notice of the decision opening the proceedings in the public registers of other Member States. The EIR expressly regulates this matter in Article 29(1)-(2) EIR.

Namely, where the law of a Member State in which an establishment of the debtor is located and this establishment has been entered in a public register of that Member State, or the law of a Member State in which immovable property belonging to the debtor is located, requires information on the opening of the insolvency proceedings referred to in Article 28 to be published in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all necessary measures to ensure such registration (Art. 29(1) EIR). These are the so-called mandatory cases of registration.[24]

There are also the so-called discretionary cases of registration. Namely, the insolvency practitioner or the debtor in possession may request such registration in any other Member State, provided that the law of the Member State in which the register is kept allows such registration (Art. 29(2) EIR).

The EIR does not mention the possibility of entering (registering) a notice of the decision opening insolvency proceedings in public registers in States that are not Member States of the European Union. There is no doubt, however, that any Member State could, in its national insolvency law, authorise or even oblige the domestic insolvency practitioner or the debtor in possession to request the entry of a notice of the decision opening domestic insolvency proceedings also in public registers in States that are not Member States of the European Union. Whether they will be able to

be subject to certain restrictions on the management and disposal of his assets and will be placed under the supervision of the trustee.

24 See Brinkmann/Szirányi Art. 29 mn. 3-4.

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exercise that authorisation or fulfil that obligation in those other States will, naturally, depend on whether the national law of the non-EU State concerned also permits it.

Although such entries (registration) primarily serve to protect the insolvency estate and contribute to legal certainty, it is clear that they may indirectly also have a notification function for unknown foreign creditors regarding the opened insolvency proceedings. In any event, such entries in public registers, whether of Member States of the European Union or of third country, should be made as soon as possible after the opening of the insolvency proceedings.

Let us also note that the costs of the entries (registration) provided for in Article 29 EIR shall be regarded as costs and expenses incurred in the proceedings (Art. 30 EIR)

VII. Unknown foreign creditors – national insolvency registers and their interconnection at the EU level

The possibility for foreign creditors to learn in a timely manner of the opening of insolvency proceedings over the assets of their debtor in one of the Member States of the European Union has been significantly enhanced by the establishment of national insolvency registers in the Member States and their interconnection into a single decentralised system at the EU level.

Namely, the 2015 EIR obliged the Member States to establish on their territory, by no later than 26 June 2018, and thereafter maintain, at least one publicly accessible electronic register in which information relating to insolvency proceedings shall be published (Art. 24(1), first sentence, EIR in conjunction with Art. 92(2)(b) EIR). It is prescribed that such information must be published as soon as possible after the opening of the insolvency proceedings (Art. 24(1), second sentence, EIR). The EIR also lays down which information is mandatory, that is, which information relating to insolvency proceedings must be entered in such national insolvency registers.[25] A departure from the publication of mandatory information is permitted only exceptionally in insolvency proceedings concerning individ-

25 According to Article 24(2)(a)-(j) of the EIR, the mandatory information are: a) the date of the opening of insolvency proceedings; b) the court opening insolvency proceedings and the case reference number, if any; (c) the type of insolvency proceedings referred to in Annex A that were opened and, where applicable, any relevant subtype of such proceedings opened in accordance with national law; d) whether

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uals who do not exercise an independent business or professional activity, but only under the additional condition that known foreign creditors are informed, in accordance with Article 54 of the EIR, of the court before which and, where applicable, of the time limit within which a challenge to the decision opening insolvency proceedings is to be lodged under Article 5 of the EIR, or of the criteria for calculating that time limit (Art. 24(2)(j) and Art. 24(4)(1) EIR). Where a Member State makes use of that possible derogation from the publication of mandatory information, such insolvency proceedings shall not affect the claims of foreign creditors who have not received the information referred to in Article 24(2)(j) EIR (Art. 24(4)(2) EIR). Member States may include documents or additional information in their national insolvency registers, such as directors' disqualifications related to insolvency (Art 24(3) EIR).

The publication of the opening of insolvency proceedings in the insolvency register of the State of the opening of proceedings is very important for a foreign creditor. The basic rule is that the claims shall be lodged within the period stipulated by the law of the State of the opening of proceedings (Art. 55(6), first sentence, EIR). However, in the case of a foreign creditor, that period shall not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the State of the opening of proceedings (Art. 55(6), second sentence, EIR). Where a Member State relies on Article 24(4) EIR, that period shall not be less than 30 days following a creditor having been informed pursuant to Article 54 EIR (Art. 55(6), third sentence, EIR). It has to be stressed out, that the publication of information in the registers under the EIR does not have any legal effects other than those set out in national law and in the described Article 55(6) EIR (Art. 24(5) EIR).

jurisdiction for opening proceedings is based on Article 3(1), 3(2) or 3(4); e) if the debtor is a company or a legal person, the debtors name, registration number, registered office or, if different, postal address; f) if the debtor is an individual whether or not exercising an independent business or professional activity, the debtors name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth; g) the name, postal address or e-mail address of the insolvency practitioner, if any, appointed in the proceedings; h) the time limit for lodging claims, if any, or a reference to the criteria for calculating that time limit; i) the date of closing main insolvency proceedings, if any; j) the court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with article 5, or a reference to the criteria for calculating that time limit.

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The 2015 EIR also obliged the European Commission to establish a decentralised system for the interconnection of insolvency registers no later than 26 June 2019. The European e-Justice Portal serves as the central public electronic access point to the information contained in the system composed of the national insolvency registers. The system provides a search service in all the official languages of the institutions of the European Union in order to make available the mandatory information, as well as any other documents or information included in the insolvency registers that the Member States choose to make available through the European e-Justice Portal (Art. 25(1), sentences (1)-(3), EIR). It must be emphasized that Member States are obliged to ensure that the mandatory information listed in Article 24(2)(a)–(j) EIR is made available free of charge via the system for the interconnection of insolvency registers (Art. 27(1) EIR). Unfortunately, for the time being, this service is available only in those Member States whose insolvency registers have completed the interface set-up: Austria, Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Romania, Slovakia, Spain and Sweden.[26] So, it is still necessary to complete the interconnection with the national insolvency registers of the six remaining Member States.

National insolvency registers and their interconnection through the European e-Justice Portal are important not only for creditors, as they enable them to learn in a timely manner about insolvency proceedings opened in any EU Member State, but also because they help to avoid the unnecessary opening of parallel insolvency proceedings against the same debtor within the EU.[27]

It must be emphasized that foreign creditors, insolvency practitioners, judges, legal persons, and individuals, even those outside the European Union, may freely search and obtain information from the interconnected insolvency registers of the EU Member States. The search interface itself is available in all official EU languages, but the information retrieved from a national register is, as a rule, displayed in the original language of the Member State to which that register belongs.

26 See https://e-justice.europa.eu/topics/registers-business-insolvency-land/bankruptcy-insolvency-registers-search-insolvent-debtors-eu_en (last accessed: 23 Mai 2026).

27 See Recital no. 76 of the EIR.

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VIII. Breach of the duty to inform foreign creditors

The EIR does not contain specific rules for situations in which the duty to inform foreign creditors about the opening of insolvency proceedings is breached. It follows from this that, in accordance with Article 7(1) EIR, the law of the Member State in which the insolvency proceedings have been opened, the *lex fori concursus*, will govern this issue.[28]

Having in mind the divergent practice of national courts in resolving this issue across different Member States[29], it may be desirable to devote greater and more appropriate attention to this issue during the next revision of the EIR.

C. Model Law on Cross-Border Insolvency

The MLCBI also contains an explicit provision on the duty to inform known foreign creditors of the opening (commencement) of insolvency proceedings. Thus, Article 14(1), first sentence, provides that whenever, under the laws of the enacting State relating to insolvency, notification is to be given to creditors in that State, such notification shall also be given to the known creditors who do not have addresses in that State. The *Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency* (hereinafter: *Guide to Enactment*), adopted on 18 July 2013, emphasizes that, as a corollary to the principle of equal treatment established by Article 13 MLCBI, Article 14 requires that foreign creditors should be notified whenever notification is required for creditors in the enacting State.[30] It should be noted that Article 14(1), first sentence, of the MLCBI does not specify who exactly has the duty to inform known foreign creditors. This matter has evidently been left to the national law of the enacting State.

When it comes to informing unknown foreign creditors, the MLCBI provides that the court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known (Art. 14(1), second sentence).

28 Garašić ZPFRi 2016, 1039 (1048 seq.); Mankowski/Müller/Schmidt Art. 54 mn. 34-35; Brinkmann/Dahl/Kortleben Art. 54 mn. 12.; Bělohlávek, Art. 54. mn. 54.37; Stürner/Eidenmüller/Schoppmeyer/Reinhart Art. 54 mn. 20.

29 For a detailed presentation of this practice, see Bork/van Zwieten/Lenzing Art. 54 mn. 54.16-54.20; Bělohlávek Art. 54, mn. 54.38-54.40.

30 Guide to Enactment, para. 121, second sentence.

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In any case, such notification shall be made to foreign creditors individually, unless the court considers that, in the circumstances, some other form of notification would be more appropriate (Article 14(2), first sentence, MLCBI). Thus, as a rule, foreign creditors will be notified individually, but the court has the discretion to decide otherwise in a particular case. As an example of a situation in which the court may depart from individual notification, the *Guide to Enactment* refers to cases in which individual notice would entail excessive cost or would not seem feasible under the circumstances.[31] It appears that, in such cases, collective notification by publishing the decision opening the insolvency proceedings - for example in the official gazette or on the court notice board - would suffice.[32] To facilitate individual notification, the MLCBI expressly provides that no letters rogatory or other similar formality are required (Art. 14(2), second sentence). Namely, States may, with regard to the form of individual notification, rely on special procedures for serving notices in a foreign jurisdiction, the use of which would typically not provide foreign creditors with timely notice of the insolvency proceedings.[33] However, the requirements of the international treaty or other form of agreement that regulate this matter and to which the enacting State is a party with one or more other States shall prevail (Article 3 MLCBI), i.e. they have to be respected.[34]

The MLCBI also prescribes the minimum content of the notice of the opening of insolvency proceedings that must be provided to foreign creditors. Such notification shall: a) indicate a reasonable time period for filing claims and specify the place for their filing; b) indicate whether secured creditors need to file their secured claims; and c) contain any other information required to be included in such a notification to creditors pursuant to the law of the enacting State and the orders of the court (Art. 14(3) MLCBI). Namely, the legal position of secured creditors and their participation in insolvency proceedings may be regulated very differently across individual States.[35]

The MLCBI does not contain a provision on the language in which the individual notification of the opening of insolvency proceedings addressed

31 Guide to Enactment, para. 122, third sentence.
32 See Garašić, p. 475.
33 Guide to Enactment, para. 123, sentences 1-2.
34 See the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, https://www.hcch.net/en/instruments/conventions/full-text/?cid=17 (last accessed: 23 May 2026).
35 See Guide to Enactment, para. 126, sentences 1-2.

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to a foreign creditor should be written. This matter has evidently been left to the national law of the enacting State.

The MLCBI also does not contain an explicit provision authorizing or obliging the foreign representative (practitioner) to request the publication of a notice of the opening of insolvency proceedings in other States, in order, among other things, to ensure that foreign creditors are informed of the opening of the proceedings in a timely manner. However, reference should be made to Article 21(1)(g) of the MLCBI, which prescribes the following: upon recognition of a foreign proceeding, whether main or non-main, and where necessary to protect the assets of the debtor or the interests of creditors, the court may, at the request of the foreign representative (insolvency practitioner), grant any appropriate relief that may be available to a person or body administering a reorganization or liquidation under the law of the enacting (recognizing) State. Such relief may be granted even earlier, upon an application for recognition of a foreign proceeding (Art. 19(1)(c) of the MLCBI). It would therefore be desirable for a State enacting the MLCBI to expressly provide that the domestic insolvency practitioner has the authority or the duty, especially in the case of foreign establishment, to request the publication of a notice of the opening of domestic insolvency proceedings in other States, and that the foreign insolvency practitioner, upon recognition of the foreign insolvency proceeding - or even earlier, upon the filing of an application for recognition of that proceeding - has the authority to request the publication a notice of the opening of the foreign insolvency proceeding in the State of recognition.

Furthermore, the MLCBI does not contain an explicit provision authorizing or obliging the foreign insolvency practitioner (foreign representative) to request the entry of a notice of the opening of insolvency proceedings in the public registers of other States. However, even in this context, appropriate judicial relief could be requested pursuant to Article 21(1)(g) of the MLCBI upon recognition of the foreign insolvency proceeding, or, alternatively, even before recognition, following the filing of an application for recognition of a foreign proceeding, in accordance with Article 19(1)(c) of the MLCBI. Therefore, with respect to this issue as well, it would be desirable for a State enacting the MLCBI to expressly provide that the domestic insolvency practitioner has the authority to request the entry of a notice of the opening of domestic insolvency proceedings in the public registers of other States, and that the foreign insolvency practitioner, upon recognition of the foreign insolvency proceeding - or even earlier, upon filing of an application for recognition of that proceeding - has the authority

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to request that a notice of the opening of the foreign insolvency proceeding be entered in the public registers of the State of recognition.

The MLCBI does not contain any provisions on insolvency registers of States.

The MLCBI does not contain any provisions on the consequences of a breach of the duty to notify foreign creditors of the opening of insolvency proceedings. This matter has evidently been left to the national law of the enacting State. It should be noted that the *UNCITRAL Legislative Guide on Insolvency Law*[36], adopted on 25 June 2004, in its Recommendation No. 121, provides in general terms that the insolvency law should specify the consequences of the insolvency representative's failure to perform, or to properly perform, its duties and functions under the law, as well as any related standard of liability imposed. In its Recommendation No. 31, first sentence, *the Legislative Guide* provides that the insolvency law of the State in which insolvency proceedings are commenced (*lex fori concursus*) should apply to all aspects of the commencement, conduct, administration and conclusion of those proceedings and their effects.

D. Conclusions

From the provisions of the EIR and the MLCBI concerning the notification of foreign creditors of the opening of insolvency proceedings over the assets of their debtor, it clearly follows that, in this respect, the EIR contains more extensive and detailed rules than the MLCBI.

However, the problem lies in the fact that, when imposing the obligation of individual notification of foreign creditors of the opening of insolvency proceedings, the EIR understands the term foreign creditor to mean only 'a creditor which has its habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings' (Article 54(1)-(2) in conjunction with Article 2(12) EIR). The EIR does not prohibit creditors whose habitual residence, domicile or registered office is located in a State that is not a Member State of the European Union from being individually notified of the opening of insolvency proceedings in one of the Member State. It merely leaves that matter to the law of the State of the

36 Text of the UNCITRAL Legislative Guide on Insolvency Law, Parts One and Two is available on: https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/05-80722_ebook.pdf (last accessed: 23 Mai 2026).

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opening of insolvency proceedings (*lex fori concursus*), in accordance with Article 7(1) EIR. Yet, this already gives rise to the possibility of unequal treatment between foreign creditors of the debtor who are located within the European Union and those located outside it. An additional difficulty lies in the fact that the national laws of the Member States often do not contain explicit rules on notifying foreign creditors of the opening of insolvency proceedings.

This solution, contained in the recast EIR of 2015 (Articles 54(1)-(2) and 2(12) EIR), had already been included in the EIR of 2000[37] (Article 40(1)-(2) EIR), as well as in the Convention on Insolvency Proceedings (Article 40(1)-(2)), from which the EIR in fact originated.[38] In the well-known *Virgós-Schmit's Report on the Convention on Insolvency Proceedings* this aforementioned solution is explained by stating 'that the Convention aims to improve the situation of intra-Community creditors situated outside the State in which proceedings are opened' and that 'the Convention does not take into consideration creditors from outside the Community to whom the national law of the State in which the proceedings are opened applies'[39]. But is it not, in the 21st century, necessary to improve the situation regarding the notification of the opening of insolvency proceedings in relation to all of the debtor's foreign creditors and to take all of them into account, irrespective of where they are situated?

Namely, the classical principle of property law holds that a debtor is liable for their obligations with all of their assets, regardless of where those assets are located, whether in the home country or abroad, and that all creditors have the right to be satisfied from those assets. This principle is accepted in most legal systems, and the principle of universalism in international insolvency law developed, among other things, grounded in that very principle of property law.

Timely knowledge of the opening of insolvency proceedings over the debtor's assets is a prerequisite for a creditor's access to the court conducting those proceedings, as well as for that creditor's participation in the proceedings and the exercise of their rights, including the filing and enforcement of their claims.

37 Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings, Official Journal of the European Communities, 2000, L 160, pp. 1-18.

38 For further details on the historical origins of the 2000 European Insolvency Regulation, see Garašić, p. 30 seq.

39 Virgós/Schmit, Art. 40 para. 271.

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All Member States of the European Union have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950[40], drafted within the framework of the Council of Europe, which in its Article 6(1) establishes, among other things, as one of the fundamental procedural rights, 'the right to a fair trial'. In the interpretation of the European Court of Human Rights, developed through its case-law, this right also encompasses '*the equality of arms principle*', which must be applied to all participants in judicial proceedings in which their civil rights are being determined. There is no doubt that insolvency proceedings involve decisions concerning the property and civil rights of the debtor and their creditors. Therefore, all Member States are obliged, in the insolvency proceedings they open within their territories, to comply with Article 6(1) of that Convention on Human Rights and with the principles encompassed therein. The procedural principles contained in Article 6(1) of the said Convention are also set out in Article 47(2), first sentence, of the Charter of Fundamental Rights of the European Union[41],which forms an integral part of European Union law. It is therefore not surprising that the Court of Justice of the European Union itself, in the *Eurofood IFSC Ltd case*[42], emphasized the importance of applying these principles in the conduct of insolvency proceedings in the Member States of the European Union.

It follows from the foregoing that, in all insolvency proceedings conducted in the Member States of the European Union, the debtor's creditors should be treated equally, meaning that they should have the same opportunities to obtain knowledge of the opening of the insolvency proceedings, so that they may exercise their right of access to the court concerned and their right to participate in those proceedings, for the purpose of satisfying their claims. From this perspective, the solution contained in Article 54(1)–(2) of the 2015 EIR, according to which, when read together with Article 2(12) of the EIR, only the known foreign creditors of the debtor who have their habitual residence, domicile, or registered office in one of the Member States other than the State of the opening of proceedings are to be individually and without delay notified of the opening of insolvency

40 Tekst of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4. 11. 1950 is available at https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=005 (last accessed: 23 Mai 2026).

41 Charter of Fundamental Rights of the European Union, OJEC, 18. 12. 2000, C 364, pp. 1-22.

42 CJEU 02.05.2006 - case C-341/04, ECLI:EU:C:2006:281, Eurofood IFSC Ltd, paras. 65-66.

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proceedings, infringes the '*equality of arms principle*' and is, in its essence, *discriminatory*.[43] Individual notification of known foreign creditors of the opening of insolvency proceedings in a Member State should not depend on whether the foreign creditor comes from another Member State of the European Union or from a third country. An infringement of this procedural principle – the *equality of arms principle* - may result in a creditor learning of the opening of the insolvency proceedings too late, thereby preventing the creditor from lodging and enforcing their claims in those proceedings. This, in turn, leads to an infringement of one of the fundamental substantive principles of insolvency law, namely *par conditio creditorum - the equal treatment of creditors*.

Let us note, in passing, that insolvency proceedings may nevertheless be opened under the EIR over the assets of a debtor whose habitual residence, domicile, or registered office is in a State that is not a Member State of the European Union, provided that its centre of main interests is situated within the territory of a Member State (Article 3(1) EIR). Let us also note that, in the case *Ralph Schmid v. Lilly Hertel*[44], the Court of Justice of the European Union held that Article 3(1) of the EIR of must be interpreted as meaning that the courts of the Member State within whose territory insolvency proceedings have been opened have jurisdiction to hear and determine an action to set a transaction aside by virtue of insolvency, even when such an action is brought against a person whose place of residence is not within the territory of a Member State. It is therefore evident that, in these situations, the EIR may also apply to natural and legal persons whose habitual residence, domicile, or registered office is in a State, country that is not a Member State of the European Union.

On the basis of the above, it would be necessary, in the next revision of the EIR, to extend the duty to individually notify known foreign creditors of the opening of insolvency proceedings to known foreign creditors whose habitual residence, domicile, or registered office is in a State that is not a Member State of the European Union, that is, in a third country. The MLCBI, in its Article 14(1)-(2), rightly provides for the duty of individual notification of known foreign creditors in respect of all known foreign creditors, irrespective of the State in which they are situated.

Both the EIR (Art. 54(2)) and the MLCBI (Art. 14(3)) lay down a minimum content for the individual notice to be sent to foreign creditors, while

43 In the same direction, Bělohlávek Art. 54 mn. 54.26-54.29.

44 CJEU 16.01.2014 - case C-328/12, ECLI:EU:C:2014:6, Ralph Schmid v. Lilly Hertel.

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not excluding the possibility that, in accordance with the national law of the State in which the insolvency proceedings have been opened, additional information that may be useful to foreign creditors may be included in the notice.

The MLCBI does not contain provisions on the language in which individual notice is to be sent to foreign creditors, whereas the EIR goes further in this respect and expressly provides that, in addition to the language of the State in which the insolvency proceedings have been opened, such notice may also be sent in another language (Art. 54(3) EIR). This undoubtedly facilitates communication in cross-border insolvency proceedings.

The EIR authorises the insolvency practitioner (as well as the debtor exercising personal management, debtor in possession) to request the publication of the opening of insolvency proceedings in another Member State. Where the debtor has an establishment in that Member State, the practitioner or debtor in possession is even obliged to request such publication (Art. 28(1)-(2)). The MLCBI contains no explicit provision on this point, but a foreign insolvency practitioner could request such assistance in the recognising State, as a form of relief within the meaning of Art. 19(1)(c) or Art. 21(1)(g) MLCBI. Since the publication of the opening of insolvency proceedings in other Member States under Article 28(1)–(2) of the EIR also serves, among other things, to inform foreign creditors that such proceedings have been opened, it may be advisable, in a future revision of the EIR, to extend the insolvency practitioner's authority to request publication abroad to third countries as well, that is, to States that are not Member States of the European Union. This would contribute to the equal treatment of foreign creditors from Member States of the European Union and creditors from third countries with regard to their collective notification of insolvency proceedings opened in one of the Member States of the European Union. Naturally, whether such an authority of an insolvency practitioner from an EU Member State would be recognised in a third country would depend entirely on the international insolvency law of that third country in which the publication is sought. As a rule, in international insolvency law, the State of recognition acknowledges the powers of a foreign insolvency practitioner as determined (conferred) by the *lex fori concursus*. It is therefore important to provide expressly for such an authority on the part of the insolvency practitioner in proceedings opened in an EU Member State, so that this authority may also be recognised abroad. In any event, an EU Member State may expressly provide in its autonomous international insolvency law that its insolvency practitioner is

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authorised to request the publication of a notice of the opening of domestic insolvency proceedings also in third countries. Likewise, it may recognise the authority of a foreign insolvency practitioner from a third country to publish in its territory a notice of the opening of insolvency proceedings opened in that third country.

For the same reasons, it would be desirable to extend the authority of the insolvency practitioner (as well as the debtor in possession) under Article 29(1)-(2) EIR to request the registration of a notice of the opening of insolvency proceedings in the public registers of another Member State, so that it also encompasses third countries. In any event, an EU Member State may expressly provide in its autonomous international insolvency law that its insolvency practitioner is authorised to request the registration of a notice of the opening of domestic insolvency proceedings also in the public registers of third countries. Likewise, it may recognise the authority of a foreign insolvency practitioner from a third country to request that a notice of the opening of insolvency proceedings opened in that third country be entered in its domestic public registers. Although the MLCBI does not expressly regulate this issue, a foreign insolvency practitioner could certainly request such assistance in the State of recognition as relief within the meaning of Article 19(1)(c) or Article 21(1)(g) MLCBI.

The introduction of mandatory electronic national insolvency registers in the Member States and their interconnection through the European e-Justice Portal significantly contributes to ensuring that foreign creditors learn in a timely manner that insolvency proceedings have been opened against their debtor in a Member State of the European Union. It is important to emphasise that these registers may be used not only by foreign creditors whose habitual residence, domicile or registered office is located in a Member State, but also by all other foreign creditors from any third country.

Neither the EIR nor the MLCBI expressly regulates how to address a breach of the duty to inform foreign creditors of the opening of insolvency proceedings over the debtor's assets. It must therefore be taken that the law of the State opening the insolvency proceedings, as the *lex fori concursus*, will govern the resolution of that issue. Given the very diverse practice of national courts on this matter, and in view of the exceptional importance for foreign creditors of receiving timely information on the opening of domestic insolvency proceedings, it would nevertheless be desirable, in the next revision of the EIR, to formulate a uniform solution to this issue,

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one that would apply to all of the debtor's foreign creditors, irrespective of whether they are creditors from EU Member States or from third countries.

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