

Information and communication technologies in cross-border insolvency – A brief look

Alexander Trunk

Abstract:

The contribution takes a short look at the developing legal framework for the use of IT in cross-border insolvency, mainly from the perspective of the EIR and other EU law.

Keywords: Information technology law; cross-border insolvency, recent trends and developments.

The use of information and communication technologies (ICT or IT) is present today in all spheres of society, including the judiciary. This is also true for insolvency proceedings. IT can significantly enhance the efficiency of proceedings, but entails also various risks such as instability or unreliability of the technical systems, incompatibility of different systems or issues of confidentiality and data protection. This applies also to proceedings with a cross-border dimension. The following contribution takes a very quick look at this extremely dynamic area of IT law in relation with cross-border insolvency.

A. Legal sources

National legislators started to regulate the use of IT in the judiciary, including insolvency proceedings, already some decennies ago, but the legislative process is still ongoing and on the international scale practice is rather divergent¹. Starting from first legislative steps in the field of electronic com-

1 For a comparative overview see Aurelio Gurrea-Martínez, The Digitalization of Insolvency Proceedings, *International Insolvency Review* 2025, pp.475 – 491, available at <https://onlinelibrary.wiley.com/doi/10.1002/iir.70003> and Gobile, Awoyemi, Ogunwale, Cross-Border Insolvencies in the Digital Age: Challenges and Opportunities

merce, the EU has in recent years developed a strategy on ‘Digitalisation of justice in the European Union’², which has led to a number of legislative acts (such as the e-Codex Regulation of 30.03.2022³) and is still evolving. An important recent act is the Regulation 2023/2844 of 13.12.2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, which unifies some technical aspects of the use of IT in cross-border judicial cooperation within the EU and applies also to cross-border insolvency law⁴.

Beyond this, both the EIR and the EU Restructuring Directive 2019 contain specific provisions on the use of IT in insolvency proceedings, and the new EU Insolvency Directive 2026/799 of 30 March 2026⁵ adds some further rules. Also, artificial intelligence is playing an ever growing role in the judicial sphere as well and undergoes its own particular regulation⁶.

UNCITRAL started early in the field of electronic commerce⁷, but has not developed more detailed rules in direction of digitalisation of justice, with some exceptions as to arbitration and mediation⁸. UNCITRAL’s texts on cross-border insolvency law do not specifically address the use of IT, but the use of IT is implicitly included in the general rule on efficient cross-border cooperation. The same is basically true for Unidroit, although digitalisation of civil procedure is mentioned as a particular topic in the ELI/Unidroit Model European Rules of Civil Procedure⁹.

for International Bankruptcy Law, *Int. J of Multidisciplinary Research and Growth Evaluation* 2024, 1393–1400, DOI: 10.54660/IJMRGE.2024.5.4.1393 – 1400.

2 Cf. the European Commission’s Communication on digitalisation of justice in the EU of 02.12.2020, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:710:FIN>.

3 <https://eur-lex.europa.eu/eli/reg/2022/850/oj/eng>.

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0702>.

5 <http://data.europa.eu/eli/dir/2026/799/oj>.

6 Cf. the EU Artificial Intelligence Act of 2024, <https://artificialintelligenceact.eu/>.

7 See <https://uncitral.un.org/en/texts/ecommerce>.

8 See, e.g. Art.7 Model Law on International Commercial Arbitration (as revised in 2006), and the current work of Working Group II (Dispute Settlement) on an instrument on recognition and enforcement of electronic arbitral awards, s. https://uncitral.un.org/en/working_groups/2/arbitration-.

9 See, e.g., Rule 18 (4) of the Model Rules and Comment 7 on Art.18, see also the points made in the Preamble to the Model Rules, subsection VIII (including remarks on artificial intelligence), <https://www.europeanlawinstitute.eu/projects-instruments/instruments/eli-unidroit-model-european-rules-of-civil-procedure/>.

B. Issues

Bringing the provisions of EU law on the use of IT in insolvency proceedings (including cross-border cases and cooperation) into a system, one can distinguish general and specific rules, with specific rules corresponding to the major topics/stages of insolvency proceedings.

Generally, the rule of conducting insolvency proceedings in an efficient manner, includes also the use of IT. This is specified in Art. 28 of the EU Restructuring Directive 2019 as to electronic communications between the participants of insolvency proceedings and the insolvency organs including the insolvency court. Art. 3 and 4 of the IT in Judicial Cooperation Regulation 2023 add to this the requirement (with some exceptions) of using a 'secure, efficient and reliable decentralised IT system', including the 'European electronic access point shall be established on the European e-Justice Portal'.

Other general rules relating (directly or indirectly) to insolvencies provide for the establishment and the interconnection of insolvency registers in the EU member states (Art. 24 – 27 EIR) as well as for publication (including entry into public registers) of insolvencies in (EU member) countries outside the forum concursus (Art. 28, 29 EIR). Going beyond concrete insolvency proceedings, Art. 3 (3) of the EU Restructuring Directive 2019 provides for online access to early warning tools. As a general information tool, Art. 51 of the EU Insolvency Directive 2026 foresees Member States' 'fact sheets' of core elements of national insolvency laws as a tool for transparency, which are to be made available on the European e-Justice Portal..

More specifically, lodging of claims by foreign creditors through electronic communications is foreseen by Art. 53 EIR, but this right is granted only under applicable national law, and the notion of foreign creditor under the EIR does not include creditors domiciled outside the EU. Art. 28 of the EU Restructuring Directive 2019 now explicitly guarantees the right to electronic filing of claims on the EU level, without distinction according to the domicile of creditors¹⁰. However, details of filing are still governed by applicable national law, in so far as the European Commission does not pass secondary normative acts.

The use of videoconferencing or other distance communication tools by (among others: insolvency) courts is foreseen by Art. 5 of the IT in

¹⁰ Art. 28 is not limited to lodging of claims, but applies also to notification of creditors, submission of plans, filing challenges and appeals.

Judicial Cooperation Regulation 2023, but depends on the availability of such means on the national level. Similarly, Art. 47 (3) of the EU Insolvency Directive 2026 states that ‘Member States shall provide that the members of creditors’ committees are allowed to participate and vote either in person or via electronic means’.

The issue of asset tracing in or for the conduct insolvency proceedings is addressed in Art.14 -20 of the EU Insolvency Directive 2026, which distinguishes between asset tracing through access to bank information (available for designated courts or administrative authorities of EU Member States, be it in cooperation with insolvency practitioners), and access to beneficial ownership registers and national asset registers (available for insolvency representatives of EU Member States). Asset tracing at the request of courts or administrative authorities or insolvency representatives of third countries is not foreseen. In addition, Art.50 – 54 of the draft EU Insolvency Directive foresaw the introduction of electronic auctions as a uniform standard in the EU, though only for insolvency microenterprises, and the respective Title VI. of the Commission’s proposal was dropped in the legislative process¹¹.

Generally speaking, EU law is currently in a process of step-by-step widening and specifying the legal framework for the use of IT in insolvency proceedings, including cross-border cooperation. This is done in an inter-play with general provisions of IT law and (cross-border) civil procedure.

C. Summary and recommendations

In the present very dynamic development of EU legislation on the use of IT in insolvency proceedings it is difficult to determine specific provisions on this topic relating to non-EU countries. It would seem preferable to include some general rule into the EIR opening the way to the use of IT in cross-border cooperation also in relations with non-EU countries ‘as far as feasible’ and conditioned on some kind of agreement, be it on the level of the European Commission or Member States. This would also align with the (more general) formula of cooperation under the MLCBI.

11 Cf. https://www.europarl.europa.eu/doceo/document/A-10-2025-0126_EN.html.

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