Regional economic integration in the sphere of cross-border insolvency: foreign experience as a possible model for the Eurasian Economic Union

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Abstract.

The article reveals the shortcomings of the lack of harmonization and unification of the legal regulation of insolvency in international organizations of regional economic integration, analyses the models of regulation of cross-border insolvency developed by world practice. Based on the analysis of existing examples of legal regulation, a conclusion is made about the urgent need for legal regulation of cross-border insolvency in the law of the Eurasian Economic Union and the harmonization of the national bankruptcy law of the EAEU member states. The article proposes a regulatory model of such regulation within the EAEU, taking into account the level of integration, prospects of the development of the Union law and the geopolitical situation.

Key words: harmonization and unification, Eurasian Economic Union, international organization for regional economic integration, EAEU law, cross-border insolvency.

A. Introduction

Legal regulation of cross-border insolvency historically reflects the vectors of development of a legal system and its maturity. If earlier the purpose of the insolvency proceedings was punishment (sometimes in the form of criminal liability of the debtor), then later the restorative function of law began to play a special role in the form of satisfaction of creditors' claims. Three often-mentioned historical concepts of cross-border insolvency have different goals. Thus, the English approach is aimed at developing entrepreneurial activity, the German one is described as a pro-credit model, the French system is aimed at maintaining the financial stability of the debtor and, as a result, jobs. Currently, the main task of the insolvency proceedings is the rehabilitation focus – the restoration of the debtor's solvency.

However, the presence of a foreign element in relations according to various criteria (the domicile of the debtor, the nationality of creditors, location of debtor's assets on the territory of several states, parallel insolvency proceedings) requires the interaction of national legal systems, their harmonization and unification, This also applies to the framework of international organizations of regional economic integration, primarily due to the fact that the main purpose of creating an international organization for regional economic integration is the functioning of the internal market, including the freedom of movement of goods, services, capital and labour. As a result, the lack of regulation and different approaches to the legal regulation of cross-border insolvency creates an additional barrier to the functioning of the domestic market[1].

The lack of a uniform approach to the regulation of insolvency in such organizations' Member States hinders the pace of economic integration. Of course, the higher the level of integration, the higher the possibility of a single proceedings and automatic recognition of foreign insolvency proceedings.

Researchers note that the degree of approximation of the legislation of states on cross-border insolvency depends on several factors: 1) the degree of similarity and/or differences between the national insolvency law of the Member States, 2) mutual trust between states, 3) the degree and level of integration between states[2].

The purpose of this contribution is to identify existing models of legal regulation of cross-border insolvency in various international organizations of regional economic integration and to design an optimal regulatory model for the Eurasian Economic Union (EAEU)[3].

B. Practical examples: EU and OHADA

International practice has developed several models of supranational legal regulation of cross-border insolvency.

1 Mokhova, p. 15.
2 Mokhova, p. 3.
3 As to the EAEU see https://www.eaeunion.org/?lang=en (accessed 22.12.2025).

I. EU

In the European Union, jurisdiction in insolvency cases is unified – the COMI criterion (centre of main interests of the debtor) is applied, which means the location where the debtor administers its business on a permanent basis and which is ascertainable by creditors (art. 3(1), 5(1) of the European Insolvency Regulation of 2015 (hereinafter referred to as EIR), which has replaced Regulation No. 1346/2000), the applicable law is the law of the state in which the insolvency proceedings are opened (art. 7 EIR). According to this model, the main insolvency proceeding has an extraterritorial effect in relation to all assets and creditors of the debtor (art. 19(1) EIR), while the secondary insolvency proceeding can only be initiated in the state of the principal place of business (establishment) of the debtor and has an effect only in relation to the assets of the debtor located in the territory of the State of the place of opening of proceedings (art. 3(2), 34 EIR).

Thus, the European model does not provide for unified insolvency proceedings and does not require a high degree of harmonization of the national laws of the Member States. However, it is impossible not to note the process of progressive evolution of the legal regulation of insolvency within the framework of this integration association. On 20 June 2019, the EU Directive 2019/1023 on restructuring and insolvency[4] was adopted with the purpose to preserve viable companies, increase legal certainty for foreign investors, increase the value of recovered assets and repaid loans, and increase the number of self-employed by providing a second chance to individual entrepreneurs. At present, the European Union continues to work on harmonization and removal of barriers to the freedom of movement of capital in the internal market, freedom of establishment and attraction of foreign investments, affecting such key aspects of insolvency law as the recovery of assets from liquidated estate, the effectiveness of procedures, predictable and fair distribution of debtor's assets from the property of debtor among creditors[5]. In particular, on 7 December 2022,

4 Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 [Electronic resource].

5 Insolvency proceedings. EU activities in the area of cross-border insolvency cases [Electronic resource]. – Mode of access: https://commission.europa.eu/strategy-and-p

a draft Directive of the European Parliament and of the Council on the harmonization of certain aspects of bankruptcy law (COM (2022) 702 final)[6] (hereinafter referred to as the EU Directive draft) was published.

II. OHADA

A somewhat different model of cross-border insolvency, which was developed within the framework of the Organization for the Harmonization of Business Law in Africa (OHADA), is of interest as well. Here, on 10 September 2015, the revised Uniform Act on Collective Proceedings for Wiping off Debts (originally adopted on 10 April 1998) was adopted (hereinafter referred to as the Uniform Act). The purpose of the Uniform Act is to preserve the economic activity of the debtor and the level of employment, support viable companies and establish a clear ranking of claims of creditors. It should be emphasized that Uniform Acts as a source of OHADA law are a kind of analogue of EU Regulations and are characterized by direct applicability in all 17 OHADA Member States and by priority over domestic law.

The OHADA Uniform Act regulates in detail the procedure for insolvency of individuals, officials of commercial organisations and legal entities. It also includes provisions on cross-border insolvency. The procedure for recognition and enforcement of judgments concerning the opening, conduct and closure of insolvency proceedings, as well as judgments which are directly derived from insolvency proceedings or are closely linked with them, depends on the place where such a judgement was delivered. If the place where the judgments was delivered is an OHADA Member State, then the judgments shall be recognized as *res judicata*. If the insolvency proceedings is opened in a third state, then the legal regulation is based on the UNCITRAL MLCBI and provides for the provision of judicial assistance, unless that would be manifestly contrary to that state's public policy. The

olicy/policies/justice-and-fundamental-rights/civil-justice/civil-and-commercial-law/insolvency-proceedings_en. – Date of access: 25.06.2023.

6 Proposal for a Directive of the European Parliament and of the Council harmonising certain aspects of insolvency law [Electronic resource]. As of early 2026, the proposed Directive has advanced significantly: on 19 November 2025, the European Parliament and Council reached a political agreement on the final compromise text, covering five core areas: avoidance actions, asset tracing, pre-pack proceedings, directors' duty to file, and transparency measures. Formal adoption and publication in the Official Journal are pending.

purpose of the regulation is to ensure cooperation between the courts and authorized bodies of the OHADA Member States and foreign states, ensure legal security in trade and investment, ensure a fair and efficient process in order to protect both all creditors and other interested parties, including the debtor, protect all the debtor's assets and optimisation of their value, to facilitate the restructuring of troubled companies in order to preserve their investments, employees and jobs. Thus, a foreign representative has the right to apply for the opening of insolvency proceedings in accordance with the Uniform Act, provided that there are conditions for opening such proceedings; creditors domiciled in a foreign country have the same scope of rights as creditors within the territory of member states, notices given under the Uniform Act to creditors within the territory of member states must also be sent to known creditors from foreign countries. In order to protect the rights of foreign creditors, the Uniform Act specifies the requirements for notification of foreign creditors.

With regard to the recognition of foreign insolvency proceedings, the Uniform Act establishes a list of documents that must be accompanied by an application, as well as a presumption of the reliability of the facts and documents referred to by a foreign representative.

C. Eurasian Economic Union

As for the Eurasian Economic Union (EAEU), established by the Treaty on the EAEU of 29 May 2014, despite the declared goal of the Union – to create conditions for the sustainable development of the economies of the member states in art. 4 of the Treaty on the EAEU – there is no legal regulation of cross-border insolvency, both internal and cross-border, including the soft law level, advisory acts within this regional integrational economic organization.

It should be noted that none of the EAEU Member States has adopted the UNCITRAL Model Law on Cross-Border Insolvency of 1997, which has been implemented by over 60 states worldwide, including the United States, the United Kingdom, and most EU Member States. This further limits the interaction of EAEU insolvency proceedings with third-country jurisdictions.

As the reasons for the lack of integrational law-making interest in the area of cross-border insolvency, researchers name the low level of mutual investment and assets of small and medium-sized businesses – most of the investments are made by large companies with a high share of state participation in the capital; lack of relocation of companies to countries with a more favourable tax burden; barriers placed in some Member States regarding the admission of foreign companies to the domestic market[7]; lack of practice of recognition and enforcement of foreign insolvency proceedings[8].

However, today there is no doubt that the above-mentioned circumstances have changed significantly. The events of recent years, economic sanctions against legal entities and individuals of the Russian Federation and the Republic of Belarus, firstly, increased the trade and economic ties of the Member States, and secondly, brought the Republic of Armenia and the Republic of Kazakhstan to the first and second places in the list of relocation states or business domiciliation[9].

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7 In particular, in the Republic of Belarus there is a ban on the establishment of branches of legal entities by foreign entities, while the legal capacity of a representative office of a legal entity is substantially limited. Art. 51–1 of the Civil Code of the Republic of Belarus provides for foreign commercial organizations the possibility of establishment only of representative offices. It should be emphasized that this circumstance was recognized as a barrier by the decision of the Board of the Eurasian Economic Commission dated March 3, 2020 No. 31 'On the fulfilment by the Republic of Belarus of obligations within the framework of the functioning of the internal market of the Eurasian Economic Union'. The issue of the progress of ongoing work to remove the barrier was discussed at consultations on September 23, 2021, December 20, 2021, August 12, 2022, and December 1, 2022. During these meetings, representatives of the Republic of Belarus declared their readiness to make amendments to the national legislation, however, despite the Order of the Eurasian Intergovernmental Council adopted on October 21, 2022 'On the progress of work to remove barriers by the member states of the Eurasian Economic Union within the framework of the functioning of the internal market of the Eurasian Economic union', which ordered that the Member States have to remove all barriers within the framework of the functioning of the internal market of the Eurasian Economic Union, included on the date of entry into force of this order in the register of barriers posted on the official website of the Eurasian Economic Union, the situation today remains the same. – See: Кейсы. Об отсутствии возможности открытия юридическими лицами государств – членов Евразийского экономического союза своих филиалов на территории Республики Беларусь ('Cases. On the Absence of the Possibility for Legal Entities of Member States of the Eurasian Economic Union to Open Branches in the Territory of the Republic of Belarus') [Electronic resource]. – Mode of access: https://barriers.eaeunion.org/ru-ru/Pages/cases.aspx#InplviewHashb35c0261-874c-4ff9-8b66-f95871466dce=. – Date of access: 30.05.2023.

8 Mokhova, p. 4.

9 Bukach, p. 11–12.

Moreover, the development of the EAEU as an international organization of regional economic integration[10] urgently requires the convergence of the legal regulation of insolvency relations, taking into account the Decision of the Supreme Eurasian Economic Council, adopted on 11 December 2020 No. 12 «On Strategic Directions for the Development of Eurasian Economic Integration until 2025»[11].

The legal basis for EAEU regulation in this area could be derived from the Treaty on the EAEU: art. 4 (goals of the Union, including stable development and formation of a single market), as well as art. 62–63 (coordinated macroeconomic policy and macroeconomic sustainability indicators), art. 65–67 (trade in services, establishment and investment). However, the competence of the Eurasian Economic Commission does not currently extend to insolvency law, which remains within the exclusive national competence of the Member States.

It is important to note the fundamental differences in the legal regulation of insolvency in the EAEU's Member States. Thus, in the Republic of Belarus there is no regulation of out-of-court insolvency, as well as the institution of insolvency of an individual as of the time of writing, while the laws of the Russian Federation, the Kyrgyz Republic and the Republic of Kazakhstan contain detailed regulations of these relations[12]. Also, there is no uniformity of the substantive rules of insolvency law in the Member States, for example, the ranking of creditors' claims, the legal regime for contesting transactions, subsidiary liability, etc.

Attention should also be paid to the absence of special legal regulation of cross-border insolvency in the domestic law of the EAEU Member States. The regulation is of a general nature and does not take into account the peculiarities of the presence of a foreign element in insolvency relations. Thus, general norms of private international law (international treaties

10 Babkina in Shadursky et al., 130 (130–132).

11 Order of the Council of the Eurasian Economic Commission of April 5, 2021 № 4 (ed. from 22.05.2023) 'On the plan of measures to implement the Strategic directions of development of Eurasian economic integration up to 2025'. [Electronic resource] // ConsultantPlus. Belarus / LLC 'YurSpectr'. – Minsk, 2023; Decision of the Supreme Eurasian Economic Council of December 11, 2020 № 12 'On the Strategic directions of development of the Eurasian economic integration until 2025' [Electronic resource], ConsultantPlus [Electronic resource], ConsultantPlus. Belarus / YurSpectr LLC. – Minsk, 2023.

12 Law of the Republic of Kazakhstan of December 30, 2022 № 178-VII 'On restoration of solvency and bankruptcy of citizens of the Republic of Kazakhstan' [Electronic resource]. Information system Paragraph, 2023.

on legal assistance), as well as the norms of business and civil law, are applicable to such relations.

D. Conclusions

Due to the presence of such significant differences in national law and the absence of any regulation in the EAEU law, we see the best approach in unifying the jurisdictional criteria for cross-border insolvency and applicable law, as well as the introducing a system of mutual recognition of judgments concerning the opening, conduct and closure of insolvency proceeding in the EAEU Member States in accordance with the recognition regimes established within the framework of the Commonwealth of Independent States by the Kiev Agreement of the CIS countries on the procedure for resolving disputes related to the economic activities, adopted on 20 March 1992, the Minsk Convention on legal assistance and legal relations in civil, family and criminal cases, adopted on 22 January 1993, the Chisinau convention on legal assistance and legal relations in civil, family and criminal matters, adopted on 7 October 2002.

It is advisable to choose the law of the Member State of the opening of proceedings as the applicable (*lex concursus*) as the uniform rules on conflict of laws which replace more general national rules of private international law. This conflict of laws rule should apply both to the main insolvency proceedings and to local (territorial) proceedings. The *lex concursus* should determine all effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.

A new EAEU international treaty on legal assistance and legal relations in civil, family and criminal cases should be developed, which should also address issues of cross-border insolvency. It should set out as a rule of jurisdiction the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. With regard to the recognition of judgments concerning the opening, conduct and closure of insolvency proceedings in the EAEU Member States, the following rules should apply: the Member States, on the condition provided for by the relevant EAEU international treaty, at the request of the interested party, mutually recognise and execute the judgments of the competent courts of the Member States that have entered into force. The list of grounds for refusing to recognize and enforce the judgment must be exhaustive.

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