Trunk | Garašić | Silvestri [eds.]

EU International Insolvency Law and Third Countries

Which Way(s) Forward?

Nomos

Alexander Trunk | Jasnica Garašić | Kevin Silvestri [eds.]

EU International Insolvency Law and Third Countries

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Foreword

The European Insolvency Regulation as it stands today (Regulation (EU) No 2015/848 of 20 May 2015) focuses on cooperation in insolvency matters between different EU Member States. On the other side, insolvencies are a global phenomenon, and insolvency proceedings in EU Member States have to deal also with questions related to non-EU countries, e.g. assets in such countries, non-EU creditors or insolvency proceedings opened outside the borders of the EU.

The present book presents contributions written for a research project 'EU International Insolvency Law and Third Countries: Which Way(s) Forward?', which was started in 2021 and was carried through by a group of scholars and legal practitioners from both the EU and outside, in constant contact with UNCITRAL and representatives of the European Commission. The purpose of the project was to develop fresh ideas – on the basis of comparative research – for steps which the EU might undertake in order to regulate cooperation with third countries in insolvency matters, taking into account also (and in particular) the global work of UNCITRAL in this field.

The project was coordinated by Prof. Prof. h. c. Dr. Dr. h. c. Alexander Trunk (Kiel University) and Prof. Dr. Jasnica Garašić (University of Zagreb), with active co-responsibility of Dr. Kevin Silvestri (Kiel University and Trento University).

We received an endorsement by the UNCITRAL Secretariat and financial support by the Fritz Thyssen Foundation (Germany). We wish to express our deep gratitude both to UNCITRAL and to the Fritz Thyssen Foundation for their interest in this project and support. Foremost, of course, or thanks go to the authors contributing to this book, and to the members of our Steering Committee (Prof. Dr. Susan Block-Lieb, Prof. Dr. André Boraine, Prof. Dr. Christoph Paulus and Prof. Dr. Ignacio Tirado) for their highly inspiring input and academic feedback. We would also like to express our sincere gratitude to the other scientific and student assistants at the Institute of East European Law, in particular to Ms. Ina Rohmann who was the first 'administrative assistant' to this project, for their great engagement and help.

Due to the policy-oriented focus of this book, the authors were asked to limit academic references to a reasonable minimum in order to free their minds (and time) for the development of fresh ideas. It turned out that nevertheless most contributions also qualify under the usual academic standards, although we wanted to write mainly for legislators. We very much hope that both the European Commission and EU Member States and UNCITRAL find the outcome helpful.

Kiel/Zagreb, 2 February 2026

Alexander Trunk Jasnica Garašić Kevin Silvestri

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Greeting from the UNCITRAL Secretariat

The Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) is pleased to recognize this important scholarly contribution addressing cross-border insolvency relations between the European Union (EU) and non-EU jurisdictions. The book is both timely and relevant, notably in view of the forthcoming review of the European Insolvency Regulation (EIR) Recast scheduled for 2027, as well as the increasing prevalence of insolvency cases involving assets, creditors, and proceedings across EU and non-EU borders, and omni-territorial assets and business activities.

The volume brings together an international group of contributors, whose diverse professional backgrounds and perspectives ensure that the issues are examined from both within and outside the European Union. This breadth of viewpoints significantly enriches the analysis and enhances the relevance of the book for policymakers, judges, practitioners, academics, and international organizations.

The UNCITRAL Secretariat commends the editors for their sustained engagement with this subject matter and project, their careful curation of contributions, and their thoughtful reflections that frame and connect the individual chapters. Their contribution is also evident in the book's clear and helpful structure, which progresses from foundational issues to domestic insolvency proceedings, recognition of foreign proceedings, concurrent proceedings, overarching approaches and regional and national reports.

The Secretariat particularly welcomes the clear explanation from the outset of the foundational concepts underpinning cross-border insolvency, including the respective objectives, scope, and operating logic of the EIR Recast and the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI), as well as the differences between them. This conceptual grounding provides a valuable point of reference for readers navigating the interaction between these regional and global insolvency frameworks.

Of particular interest and significance to the UNCITRAL Secretariat is the book's discussion of possible avenues for aligning a future framework governing EU–non-EU cross-border insolvency relations with the UNCITRAL framework. The book rightly observes that, while the European Union has developed a highly sophisticated framework governing insolvency within the internal market, the cross-border insolvency relations of EU member States with non-EU jurisdictions remain largely governed by autonomous and often divergent national laws.

The comparative overview of the legal positions of EU member States on such relations provided in the book is therefore highly relevant. It demonstrates that the differences are not minor and that they contribute to legal uncertainty, inconsistent treatment of foreign proceedings, and increased transaction costs. In this area, UNCITRAL's cross-border insolvency framework offers an immediately available and internationally tested model. It provides a coherent set of concepts and procedures, covering access for foreign representatives, recognition of foreign proceedings, relief, judicial cooperation, and the coordination of concurrent proceedings, developed through extensive negotiation and consensus, in which many EU member States participated, either as UNCITRAL member States or observers. This framework promotes global interoperability, enabling courts and insolvency practitioners in EU member States to engage effectively with their counterparts in jurisdictions that have already adopted UNCITRAL instruments. Such engagement is often essential for maximizing the value of the insolvency estate and achieving other objectives of insolvency law. At the same time, the UNCITRAL framework allows for flexibility to accommodate regional and national particularities. The experience of the four EU member States that have enacted the MLCBI, examined in the book (Greece, Poland, Romania, and Slovenia), offers concrete insights into how the UNCITRAL framework may operate alongside EU insolvency law in practice.

The UNCITRAL Secretariat hopes that this book, while at times adopting a careful and non-prescriptive approach and, in other instances, leaning towards particular national solutions, has succeeded in building a compelling case for the desirability of a harmonized EU approach to cross-border insolvency with non-EU countries that is closely aligned with the UNCITRAL framework. The UNCITRAL Secretariat appreciates the reasons for a cautious approach, in particular to institutional and competence-related questions within the EU. It remains neutral on internal EU choices, including whether any future EU rules would take the form of minimum or exhaustive standards and whether they would be supplemented by opt-in or opt-out mechanisms allowing member States to maintain more liberal national regimes. It likewise remains neutral on related technical decisions, including the appropriate placement of any such rules within the EU legislative structure. Any approach that advances the goals of harmonization and cooperation in this important area of UNCITRAL's work would be welcome.

At the same time, the UNCITRAL Secretariat would regard it as a missed opportunity not to encourage EU States, explicitly and strongly, to build upon and enact the UNCITRAL cross-border insolvency framework that they themselves helped to formulate and have long recognized as internationally accepted best practice. Doing so would advance principles of fairness and non-discrimination by promoting a level playing field for recognition and relief in insolvency proceedings both within the EU and vis-à-vis non-EU jurisdictions. It would also set a positive example for other regions considering the development of interoperable cross-border insolvency frameworks and support EU States should they wish to be recognized as attractive restructuring hubs, including for preventive restructuring.

This greeting, while acknowledging the scholarly value of the work, does not imply endorsement of specific proposals or conclusions of editors or other contributors expressed in the book. Nevertheless, the UNCITRAL Secretariat welcomes the book's engagement with proposals concerning the treatment of banks and insurance companies within a possible future EU framework governing cross-border insolvency relations with non-EU countries, subject to existing sector-specific EU regimes and appropriate safeguards reflecting the particular characteristics of such entities. It also welcomes the view that reciprocity should not be required for recognition. At the same time, the Secretariat takes a cautious approach to certain proposals, particularly those that would diverge from the UNCITRAL framework or invite differing interpretations of its concepts and provisions. Recently adopted UNCITRAL insolvency texts, as well as ongoing work and forthcoming updates, may help to further clarify these issues.

The book's emphasis on practical considerations, rather than purely academic discourse, is also welcome, as it may help explain approaches reflected in UNCITRAL insolvency texts. While sometimes associated in theory with particular legal traditions, those texts in practice offer pragmatic solutions applicable across legal systems to the complex and urgent issues that frequently arise in cross-border insolvencies. Such issues include the need: to achieve effective coordination of concurrent insolvency and insolvency-related proceedings, both in cases involving a single debtor and enterprise groups; to prevent holdouts by secured creditors or dissenting minorities and to recognize third-party releases and discharges to make restructuring and a fresh start possible and timely; and to grant relief needed for tracing and recovering concealed or dissipated insolvency estate assets. While the book appropriately highlights the role of the public policy exception, the safeguards for the adequate protection of creditors contained in articles 21(2) and 22 of the MLCBI likewise merit detailed consideration in all these contexts, as they are central to achieving the delicate balance between relief, cooperation, and the protection of local interests.

Further exploration of these practical aspects should be firmly situated in the context of: the growing uptake of a rescue culture worldwide, including for micro and small enterprises; ongoing developments in insolvency law at both UNCITRAL and EU levels; and other relevant developments, such as the establishment of specialized insolvency courts, including in civil law and mixed systems (e.g. Mexico and the United Arab Emirates). Such developments may demonstrate the growing convergence of practice in this area of law across legal systems.

The UNCITRAL Secretariat extends its appreciation to the editors and contributors for elevating the need and urgency of cross-border insolvency reforms across the EU, and highlighting the relevance and utility of UNCITRAL's readily available frameworks in that context. It looks forward to continued engagement with the issues explored in this volume, and hopes for positive outcomes aligned with its views expressed in this message.

UNCITRAL Secretariat Vienna, 2026

Databases of consolidated legislation directly referred to in the book

Albania	https://qbz.gov.al/
Argentina	https://www.infoleg.gob.ar/
Armenia	http://www.parliament.am/
Australia	https://www.legislation.gov.au/
Austria	https://www.ris.bka.gv.at/default.aspx
Azerbaijan	https://e-qanun.az/
Belarus	https://pravo.by/
Belgium	https://www.ejustice.just.fgov.be/cgi_loi/
Bolivia	http://www.silep.gob.bo/
Brazil	https://www4.planalto.gov.br/legislacao
Bulgaria	https://apis.bg/bg/
Canada	https://laws.justice.gc.ca/eng/
Chile	https://www.bcn.cl/leychile/
China (PRC)	https://flk.npc.gov.cn/index
China (Hong Kong SAR)	https://www.elegislation.gov.hk/
Council of Europe	https://www.coe.int/en/web/conventions/full-list
Croatia	https://www.zakon.hr/
Cyprus	https://www.cylaw.org/
Czechia	https://www.zakonyprolidi.cz/
Denmark	https://www.retsinformation.dk/
Estonia	https://www.riigiteataja.ee/index.html
Eurasian Economic Union	https://docs.eaeunion.org/
European Union	https://eur-lex.europa.eu/homepage.html?lang=en

Finland	https://www.finlex.fi/fi
France	https://www.legifrance.gouv.fr/
Georgia	https://infohub.rs.ge/ka
Germany	https://www.gesetze-im-internet.de/
Greece	https://www.lawspot.gr/
Hungary	https://njt.hu/
India	https://www.indiacode.nic.in/
Ireland (Eire)	https://www.irishstatutebook.ie/
Italy	https://www.normattiva.it/
Japan	https://laws.e-gov.go.jp/
Kazakhstan	https://adilet.zan.kz/kaz
Kyrgyzstan	https://cbd.minjust.gov.kg/ru
Latvia	https://likumi.lv/
Liechtenstein	https://www.gesetze.li/
Lithuania	https://www.infolex.lt/ta/
Luxembourg	https://legilux.public.lu/
Malta	https://legislation.mt/
Mexico	https://mexico.justia.com/
Monaco	https://legimonaco.mc/
Montenegro	https://www.sluzbenilist.me/
Netherlands	https://www.overheid.nl/
North Macedonia	https://ener.gov.mk/Default.aspx
Norway	https://lovdata.no/
OHADA	https://biblio.ohada.org/
Peru	https://diariooficial.elperuano.pe/home
Poland	https://isap.sejm.gov.pl/isap.nsf/home.xsp
Portugal	https://diariodarepublica.pt/dr/home
Romania	https://legislatie.just.ro/
Russia	https://www.consultant.ru

Serbia	https://pravno-informacionisistem.rs
Singapore	https://sso.agc.gov.sg/
Slovakia	https://www.slov-lex.sk/
Slovenia	https://pisrs.si/
South Africa	https://lawlibrary.org.za/
South Korea	https://elaw.klri.re.kr/kor_service/main.do
Spain	https://www.boe.es/
Sweden	https://www.riksdagen.se/
Switzerland	https://www.fedlex.admin.ch/de/
Türkiye	https://www.mevzuat.gov.tr/
Tunisia	http://www.iort.gov.tn/
Ukraine	https://zakon.rada.gov.ua/laws
United Kingdom	https://www.legislation.gov.uk/
United States of America	https://www.law.cornell.edu/ (LII)
Uruguay	https://www.impo.com.uy
Uzbekistan	https://lex.uz/uz/
Zimbabwe	https://zimlii.org/

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Abbreviations

ABI	American Bankruptcy Institute	
ADR	Alternative Dispute Resolution	
AG	Aktiengesellschaft	Public limited liability company (Germany/Austria/Switzerland)
AJP/PJA	Aktuelle Juristische Praxis/Pratique Juridique Actuelle	
ALI	American Law Institute	
Am.Bankr.L.J.	American Bankruptcy Law Journal	
ASEAN	Association of Southeast Asian Nations	
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht	Federal Banking Supervisory Authority (Germany)
Bankr. L.J.	Bankruptcy Law Journal	
Bankr. S.D.N.Y.	U.S. Bankruptcy Court for the Southern District of New York	
BGBl.	Bundesgesetzblatt	Federal Official Gazette (Germany)
BJE	Bulletin Joly Entreprises en difficulté	
Brook. J. Corp. Fin. & Com.	Brooklyn Journal of Corporate, Financial & Commercial Law	
Brook. J. Int'l L.	Brooklyn Journal of International Law	

BRRD	Bank Recovery and Resolution Directive	Directive 2014/59/EU
BV	Besloten Vennootschap	Private limited liability company (Netherlands)
CAAJ	Contemporary Asia Arbitration Journal	
Cass.	Corte di Cassazione	
Cass. com.	Cour de cassation, chambre commerciale (France)	
CCII	Codice della crisi d'impresa e dell'insolvenza (Italy)	
CEPEJ	Council of Europe European Commission for the efficiency of justice	
Ch	Chancery	
CILSA	Comparative and International Law Journal of Southern Africa	
CIPC	Companies and Intellectual Property Commission (South Korea)	
CIRE	Código da Insolvência e da Recuperação de Empresas (Portugal)	Code of Law on Insolvency and Restructuring (Portugal)
CJEU	Court of Justice of the European Union	
CNUDCI	see UNCITRAL	
Col.J.Transn.L.	Columbia Journal of Transnational Law	
COMI	Centre of Main Interests	
Cornell L. Rev.	Cornell Law Revies	
Cornell L.Rev.	Cornell Law Review	

CPA	Civil Procedure Act (South Korea)	
CPL	Civil Procedure Law (PRC)	
DIFC	Dubai International Financial Centre	
DRBA	Debtor Rehabilitation and Bankruptcy Act (South Korea)	
EAEU	Eurasian Economic Union	
EBL	Enterprise Bankruptcy Law (PRC)	
EBOR	European Business Organization Law Review	
ECFR	European Company and Financial Law Review	
ECJ	CJEU	
ECLI	European Case Law Identifier	
EEA	European Economic Area	
EIR	European Insolvency Regulation	Regulation (EU) 2015/848
EU	European Union	
EUInsVO	EIR	
European Econ. Rev.	European Economic Review	
EuZW	Europäische Zeitschrift für Wirtschaftsrecht	
EWHC	High Court of Justice (England and Wales)	
EWiR	Entscheidungen zum Wirtschaftsrecht (EWiR)	
Fall.	Il fallimento e le altre procedure concorsuali	
Fordham L. Rev.	Fordham Law Review	

FSB	Financial Stability Board	
Gaz. Pal.	Gazette du Palais	
GDP	Gross Domestic Product	
Giur. it.	Giurisprudenza italiana	
GmbH	Gesellschaft mit beschränkter Haftung	Private limited liability company
Harv.L.Rev.	Harvard Law Review	
Hastings Intern. & Comp.L.Rev.	Hastings International & Comparative Law Review	
HCCH	Hague Conference on Private International Law	
HERO	Herstructurering en Recovery Online	
HNLR	Harvard Negotiation Law Review	
IBA	International Bar Association	
IBR	Institutul Bancar Român	Romanian Banking Institute
ICR	International Corporate Rescue	
III	International Insolvency Institute	
IILR	International Insolvency Law Review	
IJLQ	International & Comparative Law Quarterly	
IMF	International Monetary Fund	
INPPI	Institutul Național pentru Pregătirea Practicienilor în Insolvență	National Institute of Insolvency Practitioners (Romania)
InsO	Insolvenzordnung	Insolvency Act (Germany)

INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals	
Insolv.Intellig	Insolvency Intelligence	
Int. Insolv. Rev.	International Insolvency Review	
IO	Insolvenzordnung	Insolvecy Act (Austria)
IPRax	Praxis des internationalen Privat- und Verfahrensrechts	
IRRD	Insurance Recovery and Resolution Directive	Directive (EU) 2025/1
J.Priv.Int.L.	Journal Private International Law	
JDI	Journal de droit international	
JIBLR	Journal of International Banking Law and Regulation	
JOUE	see OJEU	
JZ	Juristenzeitung	
KGW	Gesetz uber das Kreditwesen	Banking Law Act (Germany)
KTS	Zeitschrift für Insolvenzrecht	
KYIL	Korean Yearbook of International Law	
LC	Ley Concursal	Insolvency and Restructuring Law Act (Spain)
LLC	(private) Limited liability company (US)	
Ltd	(private) Limited liability company (UK, Ireland, Canada)	
Mich.L.Rev.	Michighan Law Review	
Minnesota L. Rev.	Minnesota Law Revies	

MLCBI	UNCITRAL Model Law on Cross-Border Insolvency (1997)	
MLEGI	UNCITRAL Model Law on Enterprise Group Insolvency (2019)	
MLIJ	UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments with Guide to Enactment (2018)	
NV	Naamloze Vennootschap	Public limited liability company (Netherlands)
NZI	Neue Zeitschrift für Insolvenz- und Sanierungsrecht	
öBGBl.	Bundesgesetzblatt für die Republik Österreich	Federal Official Gazette (Austria)
OHADA	Organisation pour l'harmonisation en Afrique de droit des affaires / Organization for the Harmonisation of Business Law in Africa	
OJEU	Official Gazette of the European Union	
OLG	Oberlandesgericht	Appellate Court (Germany)
OIA	OHADA (Uniform) Insolvency Act	Acte uniforme portant organisation des procédures collectives d’apurement du passif
PILA	Private International Law Act (Switzerland)	Bundesgesetz
plc	public limited company (UK, Ireland)	

PRC	People's Republic of China	
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht	
RCDIP	Revue critique de droit international privé	
Rev. proc. coll.	Revue des procédures collectives, civiles et commerciales	
RIW	Recht der Internationalen Wirtschaft	
RLDA	Revue Lamy Droit des Affaires	
s.a.r.l.	Société à responsabilité limitée	Private limited liability company (France)
SA	Société Anonyme/Sociedad Anonima	Public limited liability company (France, Belgium, Switzerland, Spain)
SA Merc LJ	South African Mercantile Law Journal	
SAG	Gesetz zur Sanierung und Abwicklung von Instituten und Finanzgruppen	
SE	Societas Europea	Public limited liability company (EU)
Sp. z o.o.:	spółka z ograniczoną odpowiedzialnością	Private limited liability company (Poland)
SpA	Società per azioni	Public limited liability company (Italy)
SRM Regulation	Single Resolution Mechanism Regulation	Regulation (EU) No 806/2014
StaRUG	Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen	
StB	Der Steuerberater	

TDM	Transnational Dispute Management
TEU	Treaty on the European Union
Tex. Int'l L.J.	Texas International Law Journal
Tex. L. Rev.	Texas Law Review
Tex.Intern.L.J.	Texas International Law Review
TFEU	Tretay on the Functioning of the European Union
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg / Journal of Contemporary Roman-Dutch Law
TSAR	Tydskrif vir die Suid-Afrikaanse Reg / Journal of South African Law
TvA	Tijdschrift voor Arbitrage
TvOB	Tijdschrift voor Vennootschapsrecht, Rechtspersonenrecht en Ondernemingsbestuur
UAE	United Arab Emirates
UK	United Kingdom of Great Britain and Northern Ireland
UKSC	Supreme Court of the United Kingdom
UN	United Nations
UNBR	Uniunea Naţională a Barourilor din România
UNCITRAL	United Nations Commission for International Trade Law
US	United States of America
USC	U.S. Code

Vand. J. Trans-nat'l L.	Vanderbilt Journal of Transnational Law	
Yale L.J.	Yale Law Journal	
ZFPPIPP	Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju	Insolvency Law Act (Slovenia)
ZInsO	Zeitschrift für das gesamte Insolvenz- und Sanierungsrecht	
ZIP	Zeitschrift für Wirtschaftsrecht	
ZPO	Zivilprozessordnung	Code of Civil Procedure (Germany)
ZRP	Zeitschrift für Rechtspolitik	

Preface

Alexander Trunk, Jasnica Garašić, Kevin Silvestri

The present book contains contributions on a subject, which is basically not covered by the European Insolvency Regulation (Recast) of 2015, and which is of eminent practical relevance: What should the European Union (or other actors) do in order to improve cross-border insolvency cooperation with non-EU countries?

The European Insolvency Regulation (EIR) mainly deals with inner-EU insolvency cooperation, but most larger and even mid-sized business insolvencies have not only an EU dimension (business and creditors in several EU Member States), but also farther-going international dimensions. EU-based enterprises may have business contacts with U.S., UK or Chinese partners, who may become creditors in the insolvency of the EU-based enterprise. Vice-versa, businesses from the U.S. or other non-EU countries may become insolvent in their home countries and commence there an insolvency proceeding, which will have repercussions in the EU. A particular and also very common constellation are insolvencies of international corporate groups with affiliates all over the world.

In all such situations, cross-border insolvency law, which is in the EU mainly governed by the EIR, has to offer a balanced, well-structured legal framework, under which such cross-border insolvencies can be dealt with efficiently and fairly.

The present book is the result of a common research project initiated by the editors in 2021, in which more than 50 scholars and legal practitioners from 30 countries (EU and non-EU) have participated. The research underlying this book was coordinated by Professor Alexander Trunk (University of Kiel) and Professor Jasnica Garašić (University of Zagreb) together with Dr Kevin Silvestri (post-doc researcher at the University of Kiel and the University of Trento). The work received significant intellectual support by a steering committee, the members of which were Professor André Boraine (University of Pretoria), Professor Susan Block-Lieb (Fordham University), retired Professor Christoph Paulus (Humboldt-Universität zu Berlin) and Professor Ignacio Tirado (Universidad Autónoma of Madrid), Secretary-General of UNIDROIT. We would like to express our deep gratitude to the members of the steering committee for their support. The project included several conferences and workshops and received a declaration of support by the UNCITRAL Secretariat. We are particulary grateful to Ms. Samira Musayeva, Secretary of UNCITRAL Working Group V for Insolvency Law as well as to Mr. Miha Žebre (LLM), Legal and Legislative Officer in General Directorate for Justice and Consumers at the European Commission, for their cooperation in this project. It was carried-through in constant contact with both UNCITRAL and staff members of the European Commission. It received significant funding from the Fritz Thyssen Stiftung, for which we are also most grateful.

The project and this book come timely, as the European Insolvency Regulation is due to be reviewed by the European Commission in 2027 and may then have to be revised. One of the major fields where such a revision might be particularly important, is the 'external' dimension of the EIR. Although the primary purpose of the book is to give impulses to the EIR review process of the European Commission, its scientific and practical direction is wider: just as the EIR is only one legal tool in the global structures of cross-border insolvency law, the purpose of the book is also to make a contribution to the further development of cross-border insolvency law on a global scale. The major forum for such work is today UNCITRAL, in which the EU is also represented. Thus, the book is also hoped to contribute to UNCITRAL's ongoing and future work.

Basic concepts

Discussions and legislation on cross-border insolvency law have to deal with three basic constellations, viewed from the perspective of the country where a (basically national) insolvency proceeding is carried-through: 1) domestic insolvency proceedings, 2) cross-border effects of foreign insolvency proceedings, 3) handling of parallel (concurrent) insolvency proceedings in several countries. National insolvency legislation usually deals with all these constellations, though with different intensity. International (or supranational) texts sometimes contain general, overarching provisions for all these constellations. A major example for this approach is the EIR, which nevertheless contains particular provisions for recognition of (foreign) insolvencies and the conduct of parallel proceedings.

For a long time and partly even today, academic discussion of cross-border (or international) insolvency has been centered around so-called 'principles of cross-border insolvency law'. As the two main principles of cross-border insolvency legal literature usually mentions the 'principle of universality' and the, allegedly opposed, 'principle of territoriality'[1]. Whatever the meaning and value of such principles as instruments of academic analysis is, neither of them is realized in legislation and practice in a pure form. The present book takes account of such academic discussions, but bases its analysis and suggestions on more specific, concrete issues and challenges.

Insolvency law is in its basic form the law of insolvency proceedings (before state courts or, possibly, administrative bodies)[2]. It typically includes procedural and material provisions. The term 'material law' is used here as referring to legal relations of (mainly) civil and commercial character in opposition to procedural law. Taken together, procedural and material law are termed in this book 'substantive law' as opposed to conflict of laws (private international law, applicable law). The editors have tried to unify this terminology across the book, but some authors preferred to keep with terminology common in their countries, which may be slightly different.

Consequently, also cross-border insolvency law contains three types of provisions: provisions on conflict of laws and substantive provisions, which include procedural provisions and provisions of material law. Legislators sometimes choose between dealing with a problem through the use of conflict of laws (leading to a national legal system) or by means of substantive law, including internationally harmonised (uniform) substantive law.

Looking at the use of conflict of laws in the context of insolvency proceedings, one can distinguish, firstly, between the use of conflict of laws in domestic insolvency proceedings and conflict of laws in the context of recognition of foreign insolvency proceedings. In each of these constellations the conflict of laws rules can be universal (referring to laws of whatever country, depending on the connecting factor) or unilateral (referring to the law of only one country, mostly the country of the forum). However, there is also an intermediate category of conflict of laws rules, which refers

1 Cf. Irit Mevorach, The Future of Cross-Border Insolvency (2018), pp. 1–12.

2 Atypical cases are pre-insolvency procedures or other court-supported liquidation or reorganisation procedures, which may be based, e.g., on contract law, company law, property law, civil procedure law, mediation or other sectors of law. Whether such procedures are covered (or should be covered) also by rules of cross-border insolvency law, needs to be discussed in each case.

to a limited group of countries, e.g. the of MemberState of a treaty or of the EU. In this book, such conflicts rules are termed 'plurilateral' conflicts rules.

The basic conflict of laws rule in cross-border insolvency law is the lex fori concursus (insolvency law of the country where an insolvency proceeding is conducted). However, several exceptions to this conflicts rule are made by the EIR and the autonomous laws of various countries. If such rules refer to a different country (e.g. the law applicable to a labour contract), this means that also the insolvency rules of this country apply and that they apply in a way 'as if' an insolvency proceeding had been commenced or opened in this country. This may require an analysis, which of several existing insolvency proceedings (and its effects) is most similar ('comparable' or 'equivalent': so-called 'substitution') to the insolvency proceeding which is carried through in the forum concursus. For example, if the insolvency proceeding in the forum concursus is a liquidation proceeding, the special conflicts rule would refer to the effect of a (local) liquidation proceeding in the respective country, not necessarily to the effects of a reorganization proceeding.

As similar distinction between 'unilateral' and 'universal' rules can be found as to substantive rules in cross-border insolvency: they may be written to apply both to domestic and foreign insolvency proceedings or to only one of these constellations or specifically for the case of parallel proceedings.

Granting effects to foreign insolvency proceedings is described in the EIR by the term 'recognition'(of foreign proceedings or judgments)[3]. The term 'recognition (of foreign insolvency proceedings)' is also used in the MLCBI[4], albeit with a different meaning: it describes a particular variant of judicial assistance to a foreign insolvency proceeding including a significant degree of judicial discretion. In the Civil Law tradition, recognition of foreign judgments (or proceedings) is seen as a legal category different from judicial assistance and largely devoid of judicial discretion. As the term 'recognition' is understood differently in the EIR and the MLCBI, it is important to analyse in detail in which aspects the approaches of both texts (EIR and MLCBI) concur and in which they differ. From such comparison, recommendations to the legislator can be derived.

3 Chapter II EIR.
4 Chapter III EIR.

Legal sources

1. Overview: The research focus of this book is primarily on the EIR and its relevance for insolvency relations with third countries, but it includes also other EU law texts as well as international treaties[5], the UNCITRAL Insolvency Model Law family and autonomous laws. Apart from the EIR, matters of cross-border insolvency law are governed on the EU level by directives for banks and insurances[6] and some other legislative texts of very specific content. The EU Restructuring Directive of 2019[7] does not deal specifically with cross-border issues, but certain of its procedures have been included into Annex A of the EIR. The same is true for the new EU Insolvency (III) Directive of 2026.[8] However, the substantive rules of these directives apply also to insolvency proceedings with an international dimension and have therefore to be taken into account also in this book. The Brussels I a Regulation and other EU regulations on international civil procedure regularly exclude insolvency proceedings from their scope of application, but these excemption clauses sometimes give reason for case-law (CJEU or national courts) on borderline issues of cross-border insolvency and private international law or international civil procedure. In the current process of recasting the Brussels Ia Regulation the relationship with the EIR will have to be taken into count, as well as the question whether the Brussels Ia Regulation should in the future address relations with third countries more systematically than at present[9]

5 E.g. Hague international civil procedure treaties, if they do not exempt insolvency proceedings, or the Council of Europe's Istanbul Convention on Certain International Aspects of Bankruptcy.

6 Banks: Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014L0059-20250117 (accessed 19.03.2025). Insurances: Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings (IRRD), https://eur-lex.europa.eu/eli/dir/2025/1/oj/eng (accessed 19.03.2025).

7 https://eur-lex.europa.eu/eli/dir/2019/1023/oj/eng (accessed 19.03.2025).

8 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32026L0799 (accessed 26.05.2026)..

9 As to this topic, it may be suggested to have a look at Alexander Trunk and Nikitas Hatzimihail (eds.), EU Civil Procedure Law and Third Countries: Which Way Forward? (2021), the preceding'sister publication' to the present study.

The most important text for comparison with the EIR in this book is the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) of 1997, which has at the present time been adopted by 60 states[10], among them four EU Member States (Greece, Poland, Slovenia, Romania). In addition, UNCITRAL has passed two other model laws relating to cross-border insolvency (on insolvency-related judgments, 2018, and on enterprise group insolvency, 2019) and is working on a new model law on applicable law in insolvency proceedings. Beyond this, UNCITRAL's work on insolvency matters includes further texts (e.g. a Legislative Guide on Insolvency Law with different parts), which are also of interest for this research project.

As the EIR applies only if the debtor's COMI is in the EU, there remains ample room for autonomous rules of EU Member States on cross-border insolvency law, e.g. on recognition of non-EU insolvencies, but also on jurisdiction and conflict of laws in EU-based proceedings concerning the assets of non-EU debtors. The present book includes a comparative look at the respective provisions in the EU Member States, but also at legislation and judicial practice in non-EU countries, which may be of interest to the EU. Cross-border insolvency is not a one way matter, it needs to take into account also the perspective of 'the other side', with which cooperation is intended. For this reason, this book includes also views 'from outside', i.e. from the perspective of non-EU countries and their legislation and practice.

Looking at the autonomous cross-border legislation of EU Member States, some of them have passed special legislation, others have integrated cross-border insolvency in their general insolvency legislation and/or in Private International Law Acts. As a rule, Codes of Civil Procedure or general legislation on private international law legislation apply subsidiarily. It is not possible to go into depth of all such solutions within the limits of this book, but exemplary legal provisions or case-law are taken into account as far as feasible. The editors owe gratitude in this respect to the contribution of the various authors of the book as well as to discussions within the project.

2. Contents: Characterizing the contents of these sources briefly and beginning with the EIR, it can be summarized that the EIR does not exclude relations with non-EU countries from its sphere of application, but its rules on recognition of foreign insolvencies and on cooperation between parallel

10 https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status (accessed 19.3.2025).

insolvency proceedings apply only between EU Member States. Also, the specific conflict of laws rules of the EIR[11] refer only to the law of other EU Member States. In contrast, EU-based main insolvency procedings include also property situated in non-EU countries.

The MLCBI is focused on cross-border cooperation between courts and/or insolvency representatives. This includes recognition of foreign insolvency proceedings and cooperation between parallel proceedings, but it basically does not deal with domestic proceedings and also does not contain express rules on conflict of laws. While the MLCBI is based on a judicial assistance approach, which includes a significant degree of judicial discretion, the separate Model Law on Recognition and Enforcement of Insolvency-related Judgments (MLIJ) of 2018 basically follows the classical model of recognition of foreign judgments. The third, presently existing UNCITRAL Model Law relating to insolvency (MLEGI, 2019) deals with insolvency of groups of enterprises and shares some similarities with the corresponding provisions of the EIR, but without their limitation to inner-EU cooperation. The current UNCITRAL work-project on applicable law in insolvency proceedings will the MLCBI‘ s gap with regard to conflict of laws rules and proposes to confirm expressly the basic rule of lex fori concursus as the dominant conflict of laws rule in international insolvency law, adding some – but only few – specific conflicts rules, in particular for avoidance, for set-off, for treatment of secured creditors and for foreign pending litigation and arbitration. Exceptions to the lex fori concursus are also foreseen for labour contracts and relationships, further for rights and obligations of the participants in a payment, clearing or settlement system, a regulated financial market or another multilateral trading facility as well as for operation of a close-out netting arrangement in relation to securities, commodities, derivatives, forward, options, swaps, securities repurchase and master neeting contracts or agreements.[12]

Between the Nordic Member States of the EU and other Nordic countries the Nordic Bankruptcy Treaty of 1934 continues to apply, but it contains only rather rudimentary provisions. The Istanbul Bankruptcy Con-

11 Art.11 – 13, 16, 18 EIR. Without such limitation: Art.9 and 17 EIR. The basic conflicts rule (lex fori concursus) refers only to the law of EU Member States, as it is linked with the direct jurisdiction of EU Member States under Art.3 EIR.

12 See Draft Model Law on Applicable Law in Insolvency Proceedings as contained in the Secretariat's Note for the 13–17 April 2026 meeting of Working Group V in New York, accessible at. https://docs.un.org/en/A/CN.9/WG.V/WP.207. Details of the text are still under discussion and may be modified before finalisation.

vention of 1990, which was developed under the auspices of the Council of Europe, has not entered into force, but can be useful for an academic comparison in some cases.

Some EU Member States have adopted specific autonomous rules on cross-border insolvency. One group of countries took their primary inspiration from the EIR, applying rules of the EIR also – with different variations – to relations with non-EU countries. This is true for Austria, Belgium, Germany, Portugal and Spain. They also regulate along these lines the recognition of non-EU insolvency proceedings and decisions. A second group of EU Member States have adopted the UNCITRAL MLCBI, albeit often with modifications (Greece, Poland, Romania, Slovenia). Taking a closer look, Croatia, Poland and Slovenia are special cases. Croatia has not adopted the MLCBI, as it had already developed its autonomous international insolvency law in detail back in 1996, prior to the adoption of the MLCBI by UNCITRAL. The basic solutions in Croatian international insolvency law are essentially compatible with the solutions contained in the MLCBI. Croatian international insolvency law contains numerous cross-border rules. This includes: international jurisdiction for the opening of insolvency proceedings, the preconditions and procedures for recognition of a foreign judgment opening insolvency proceedings, rules on applicable law in cross-border insolvency proceedings, and cooperation between insolvency representatives when parallel insolvency proceedings are opened against the same debtor in different countries.. Poland complements the MLCBI with rather detailed rules of its own on cross-border insolvencies, without, however, touching upon conflict of laws. Slovenia has adopted the MLCBI, but complemented it with rules of its own and uses the conflicts of laws rules of the EIR also in relation with non-EU countries. Another group of countries have adopted some specific rules on cross-border insolvency without developing a coherent system resembling the EIR or the MLCBI (Czechia, France, Hungary, Italy, the Netherlands, Slovakia, Sweden). The remaining EU Member States have either not specifically regulated cross-border insolvency law at all or have limited themselves to provisions on jurisdiction or on implementing the EIR (Bulgaria, Cyprus, Denmark[13], Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg and Malta). In some countries, foreign insolvencies may be recognized under general rules on recognition of foreign judgments, but this is not guaranteed everywhere and little tested.

13 Denmark is not a Member State of the EIR.

Outside the EU, some countries have adopted legislation following to some degree the model of the EIR (Georgia, North Macedonia, Norway and Serbia). On the other hand, a large number of countries have adopted the MLCBI. Among them are economically important jurisdictions like Australia, Brazil, Canada, Japan, Saudi Arabia, Singapore, South Africa[14], South Korea, the UAE (for the DIFC), the UK and the United States). Also, some associated countries of the EU such as Albania, Kosovo, Montenegro, Serbia and Ukraine have taken this approach. For example, the international insolvency law of North Macedonia is a combination of elements of the MLCBI, the EIR and inspirations taken from other sources, in particular the law of Croatia. The rules of international insolvency law currently in force in Bosnia and Herzegovina are likewise inspired by the provisions of Croatian autonomous international insolvency law. The MLCBI has been adopted both by Common Law jurisdictions and by countries of the Civil Law tradition (e.g. in Latin America: Brazil, Colombia, Chile, Mexico and Panama). In conjunction with the MLCBI, other rules relating to cross-border insolvency may apply, in particular rules on direct jurisdiction. Yet other countries have passed specific, but partial legislation on cross-border insolvency (e.g. India[15], Liechtenstein[16], Russia[17] and Switzerland[18]). A final group of countries have not developed any particular rules on cross-border insolvency.

Issues of terminology

The use of terminology is always a challenge in international research groups. This is also true in this book, and while the editors did their best to unify the use of terms, this was not always possible.

14 Introducing a reciprocity requirement into the MLCBI.
15 Sec. 234 and 235 of the Indian Insolvency and Bankruptcy Code (referring, mainly to agreement on the Central Government level).
16 See, in particular, Art.5 Liechtenstein Insolvency Act.
17 See, in particular, Art.1 (6) of the Russian Insolvency Act: general clause on recognition of foreign insolvency decrees, referring mainly to reciprocity.
18 Specific provisions on recognition of foreign insolvency decres, Art.166 – 175 Swiss Private international Law Act).

Some examples can here be given; the terms have for the use in this book in principle the meaning given below:

- 'insolvency proceedings': bankruptcy, other insolvency, pre-insolvency, winding-up, consumer insolvency – in principle a broad understanding; a formal insolvency test may not be required; restructuring proceedings-may fall outside the concept of insolvency proceedings when they are not 'collective' (i.e. including in principle all creditors) or cover only some assets or are not 'public' proceedings[19].
- domestic – foreign proceedings/decisions (or judgments): these terms are used from the perspective of the court dealing with a certain (insolvency or other) proceeding; this distinction is made in numerous national laws, but underlies the EIR only implicitly;
- 'main' – 'non-main' proceedings: under the EIR and the MLCBI this distinction is based on the underlying jurisdictional rule (COMI or COMI-equivalent v. establishment or assets or other limited contact/connection), but includes also the idea that a main proceeding should have a guiding or coordinating function in relation with non-main proceedings;
- forum concursus: the insolvency court in a specific proceeding or the country where this court is located;
- 'opening' and 'commencing' a proceeding: 'opening' is the term used in the EIR, 'commencing' is used in the MLCBI; both terms are slightly different, as 'commencing'; refers to the request of a party, while 'opening' refers to a judicial or administrative decision;
- 'comity': a classical concept used in Common Law jurisdictions with different content, e.g. granting judicial assistance in procedural matters, recognizing foreign court decisons, applying foreign law on a discretionary basis[20];
- applicable law: sometimes used as a synonym for conflict of laws or private international law; can also mean the specific legal system (here in the sense of the legal system of a certain country) to which a conflict of laws rule refers;

19 E.g. the EIR covers only 'public' proceedings under the EU Restructuring Directive of 2019.

20 Cf. Sarah Lee, The Ultimate Guide to Comity Legislation, Navigating the complexities of comity in bankruptcy law and its legislative aspects (2025), https://www.numberanalytics.com/blog/ultimate-guide-to-comity-legislation#google_vignette (last accessed 17.07.2025).

- conflict of laws rules – substantive (procedural – material) rules: rules determining the applicable law of one or another country in cases with an international element v. rules on the conduct and the legal effects of insolvency proceedings which are not conflicts rules, but may be of a procedural or material character (e.g. stay of proceedings v. power to terminate a contract);
- unilateral – plurilateral – universal ('all-sided') conflicts rule: conflict of laws rules which determine only the applicability of the law of one country or of several countries (e.g. EU Member States or Member States of an international treaty) or of whatever country the connection factors lead to;
- lex fori concursus (v. forum concursus): the law of the state of the court opening and further conducting an insolvency proceeding;
- vis attractiva concursus: usually understood in a procedural sense; e.g. can the insolvency court or another court in the country of the insolvency proceeding decide on insolvency-related matters? Sometimes also used as a synonym to the lex fori concursus rule or to the principle of universality.
- universal (extraterritorial) – territorial reach/scope of insolvency proceedings: a substantive rule according to which (from the legislator's perspective) an insolvency proceeding should cover all assets (and acts) of the debtor worldwide or whether it should cover only assets (and acts relating to them) located in one or alimited number of countries, e.g. in the country of the proceeding;
- EU Member State, EIR Member State, non-EU countries/third countries. In the book the term EU Member State is usually meant to refer to EU member countries which are also bound (and entitled) by the EIR, i.e. without Denmark.
- EIR (2015) – EIR 2000: recast version of the EIR v. original version of the EIR. The years are usually omitted, EIR usually refers to the EIR 2015.
- UNCITRAL Insolvency Law family – MLCBI (1997, MLIJ (2018), MLEGI (2019); also, the Legislative Guide on Insolvency Law and related texts including work in progress, e.g. on a Model Law on applicable law in insolvency proceedings.

Structure of the book

The book is divided into three Parts (A. – C.).

Part A. of the book analyses in a systematic structure the major issues of cross-border insolvency law in relations between the EU and third countries. It starts with general topics. These contributions relate to basic concepts of cross-border insolvency laws and regulatory approaches on which approaches the EU might take with regard to cross-border cooperation with non-EU jurisdictions in insolvency matters. This subpart includes also a contribution on specifics of bank insolvencies. The second subpart is structured according to the three major constellations of cross-border insolvency law: domestic insolvency proceedings, recognition of foreign proceedings and parallel proceedings. Each subsection begins with a general report. The starting point of the general reports is the EIR with a particular view to its relevance for relations with non-EU countries. This is contrasted with a look at the UNCITRAL Model Insolvency Law family and also compared with the autonomous cross-border insolvency laws of EU Member States and selected other countries. Some contributions were inserted at the place where their main focus lies, e.g. domestic proceedings, even if they briefly address also other constellations of cross-border insolvency, e.g. recognition of foreign proceedings. Thereafter follow contributions on overarching topics, which do not easily fit into the basic categories of domestic proceedings, foreign proceedings and parallel proceedings, but deserve particular analysis. The focus is here on the impact of insolvency proceedings on other court proceedings, arbitration or mediation. Part B. of the Book is devoted to specific international and national approaches outside the EU. It contains, in particular, one report on the cross-border rules of the OHADA Uniform Insolvency Act and various country reports from the perspective of non-EU countries. These contributions were written with a view to the EIR and include ideas on relations with the EU in insolvency matters from an external perspective. Part C. of the Book contains conclusions and recommendations proposed by the editors of the book being also responsible for the coordination of the research project.

The contributions opening **Part A.**, covering general topics, are united by the observation that the EIR has some notable 'blind spots' that would seem to require reform. The most important of these—also the main subject of the book—is the EIR's limited scope regarding procedures involving third states; a limitation which, as will be discussed below, is actually only partial. Moreover, the EIR does not give due importance to procedures aimed at restructuring failing firms to prevent them from reaching a state of irreversible insolvency. These two issues are intertwined: the rise of such procedures is not solely a European phenomenon, and indeed, the EU Restructuring Directive (Directive No. 1023/2019) is part of a global trend toward establishing a 'rescue culture.' This combination of oversights—a dual limitation (excluding both proceedings initiated in third states and 'new proceedings') – makes the EIR an instrument that needs to be rethought in the current context of cross-border insolvency.

The subpart begins with Eugénie Fabriès-Lecea's contribution ('L'Europe de l'insolvabilité internationale à l'heure du choix des méthodes juridiques'), in which she highlights that the EU's regulatory impact on cross-border insolvency is affected by several factors: Brexit, the emergence of new procedures, and the competition among different models of cross-border insolvency regulation (namely, the MLCBI). To reinvigorate the EU's impact in this field of law, the author proposes combining the strengths of existing regulatory methods in a 'European way': she emphasizes the value of the method of recognizing legal situations created by foreign laws (as followed by, for example, the UNCITRAL Model Law) and underscores the importance of the public policy exception in reaffirming certain fundamental values of European law. She further highlights the role of the EU's harmonizing action on Member States' insolvency laws in stimulating modernization, which can transform the EU into an attractive 'restructuring hub' worldwide. Finally, she suggests amendments to the EIR, such as establishing uniform direct jurisdiction rules for cases where the debtor's COMI is outside the Union, expanding the scope of the conflict rules, and, most importantly, eliminating the inexplicable limitation that restricts exceptions to the application of the lex fori concursus solely to the laws of Member States.

This is followed by Elina Moustaira's contribution ('Which role and meaning for the concepts of 'universality' and territoriality, 'unity' and 'plurality' (of proceedings) in future international insolvency law—especially in the relations between the EU and third countries?'), who, anticipating many of the themes developed later in the book, situates the subject in the age-old conflict between the principles of territoriality and universality. Moustaira observes that the crisis affecting limited universality seems to have become chronic; the principle—which its proponents viewed as a temporary compromise between territoriality and universality—appears to have stabilized and fragmented into several variants (two examples, Brazil and China, are examined later in the book), some of which are internally undermined by strong territorialist drives. The author therefore sees extending the EIR to proceedings pending in third states (albeit with adaptations, such as indirect jurisdiction control) as an opportunity to revive universalism and thereby reposition the EU as a leader on the path toward the quest for universalism.

Thereafter follows a contribution by a Swiss author, Rodrigo Rodriguez, illustrating how Switzerland, a non-EU country with a strong national approach to insolvency law based on the Civil Law tradition, has recently integrated elements of UNCITRAL insolvency law texts into its provisions on cross- border insolvency law. The author also addresses issues of a possible treaty between Switzerland and the EU on cross-border insolvency matters, thus opening a discussion on instruments which might be chosen by the EU to create fair, efficient and 'reciprocal' rules on cross-border insolvencies in relations with third countries.

The proposal to by and large extend the EIR to relations with third countries, as put forward by the authors of several foregoing contributions, is ideally contrasted with the essay by Susan Block-Lieb and Christoph G. Paulus ('Europe and beyond: What can the EIR learn from the UNCITRAL Model Law?'), in which they consider the hypothesis that the EU should adopt the UNCITRAL Model Law (either by Regulation, or as a chapter within the EIR, or alternatively by directive). They emphasize the 'family resemblance' between the two instruments. The authors begin by pointing out the paradox that the EIR was created to affirm the principle of universality among Member States, yet it reaffirms territoriality by excluding the recognition of procedures from third states. They note that this dual attitude was challenged by the Court of Justice's ruling in *Schmid v. Hertel*, whose reasoning suggests that the provisions of the EIR, unless explicitly stated otherwise, are also applicable to procedures linked to third states. This ruling transformed the EIR into an instrument characterized by an 'outward universality,' which, given today's geo-economic context, should be surpassed in favor of complete openness to third states. The authors see a way to achieve this openness in the MLCBI by borrowing its rules on indirect jurisdiction, the prerequisites and effects of recognition, and the mechanisms for cooperation and communication between bankruptcy courts. They point out that adopting the MLCBI (with supplementary provisions on applicable law where necessary) would add a useful institution to the EIR's toolkit—the institution of ancillary cases, which shows some resemblance to the EIR's secondary proceedings.

Closing the first (informal) subpart of the book are two contributions that address additional 'blind spots' in the EIR: one concerning 'new procedures' (Kevin Silvestri's essay on the relationship between the EIR and preventive restructuring frameworks) and a contribution relating to banking and insurance businesses (Klaus Pannen and Susanne Riedemann, 'Recognition is key, or how to deal with a bank crisis in the internationally interconnected financial industry'). These areas are typically overlooked by the main instruments of international insolvency law due to the inherent complexities they present—a state of things hardly justified given that, as the authors rightly point out- 'in a bank crisis, cross-border situations are the norm rather than the exception.' In relation to bank-related procedures, some EU law provisions actually explicitly govern interactions with third states—for example, Articles 93 and 94 of Directive 2014/59/EU and Article 33 of Regulation (EU) No 806/2014, which Pannen and Riedemann address in detail.

The second subpart of the book is devoted to the regulation of 'domestic' insolvency proceedings (whether main or non-main), which are conducted in EU Member States and have cross-border dimensions. This part is introduced by a general report by Alexander Trunk. It starts with a look at the EIR (which does address some issues related to third countries) and then turns to the MLCBI, international treaties and national legislations. It then turns to specific topic such as direct jurisdiction (for insolvency proceedings as such and insolvency-related proceedings), conflict of laws and substantive issues such as the universal or territorial scope of insolvency proceedings. It turns out that direct jurisdiction for insolvency proceedings not covered by the EIR is defined quite differently in the various EU Member States and abroad, often allowing jurisdiction on the basis of location of assets. Also, the treatment of 'foreign' creditors shows some differences in national legislations.

Two essays on specific topics follow, both united by the idea that the EIR requires improvements—both to extend some of its provisions to relationship with third states and to benefit domestic procedures that interact solely with other Member States.

Renato Mangano's contribution ('Transaction avoidance law and third countries. The case for a set of European private international law rules') offers a critical review of the regulation of jurisdiction, applicable law, and recognition of measures concerning avoidance actions with foreign defendants – a review made imperative by the increasing frequency of proceedings aimed at the reorganization of companies within groups. The contribution first questions the legal basis for extending the relevant rules contained in the EIR to non-EU states, focusing on the issue of compliance with the principle of subsidiarity: it is precisely the potential impact of avoidance actions on group reorganizations – which, in cases involving companies with ties to non-EU states, typically have a pan-European dimension – that could justify legislative intervention under Arts. 81 and 114 TFEU. The discussion then turns to identifying the optimal regulatory approach. Firstly, it proposes revisiting the conditions for departing from the vis attractiva concursus provided by Art. 6(2) EIR (currently, an avoidance action may be brought in a state other than where the insolvency proceedings are pending only if it is closely linked to another civil or commercial case within another Member State's jurisdiction), in order to make forum choice a 'negotiable token,' particularly in group restructurings. Secondly, regarding applicable law, it is suggested that the exception to the application of the lex fori concursus in Article 16 EIR should be removed, as it is based on a misconception (refuted by a comparative analysis of the regulation of avoidance actions) – namely, that such actions must protect the expectations of parties in good faith and the rights vested upon them under the lex contractus. Finally, on the recognition of avoidance judgments from third states, it is proposed to incorporate the 2018 UNCITRAL Model Law on the Recognition of Insolvency-Related Judgments into EU law, retaining only the public policy exception as a ground for denying recognition.

Jasnica Garašić's contribution ('Informing foreign creditors of the opening of insolvency proceedings ') on the other hand addresses the issue of foreign creditor participation in domestic proceedings develops a number of practical proposals how to create more fairness for foreign (non-EU) creditors in EU-based insolvency proceedings, thus also improving the EU's negotiating position in its relations with third countries.

The third subpart is focused on the recognition of foreign insolvency procedures. It is structured similarly to the previous one and opens with a general report by Alexander Trunk and Kevin Silvestri, which frames the concept of recognition, outlines the existing regulatory regimes from which the EU might draw inspiration, and examines in detail the various components of recognition: the common prerequisites of the different regimes and their role (in particular, identifying 'recognizable procedures,' indirect jurisdiction, and respect for public policy), the procedure itself (contrasting automatic and formal recognition), and the effects of recognition. Even though the EIR and the MLCBI are based on different concepts of 'recognition', they converge in essential aspects: Both under the EIR and the

MLCBI recognition is non-discretionary ('ex lege'), and this is also true for a core group of the effects of the foreign proceeding. However, under the MLCBI there still exists a significant degree of judicial discretion as to the effects of the foreign proceeding, while the EIR has chosen an ex lege approach based on a conflict of laws analysis. Some national legislations in the EU have aligned their rules on recogntion of non-EU insolvencies along the lines of the EIR, while others have in so far adopted the MLCBI, but nevertheless avoided open conflicts with the EIR. As a complementary to the general report, a transcript of Georg Kodek's presentation at the project's second Project conference (Kiel, 26–28 October 2023) is included, in which the topics addressed in the general report are synthesized with notable clarity and insight.

Similar to the theme-specific contributions in the previous subpart, the following essays in this section highlight some of the shortcomings of the recognition rules within the EIR, emphasizing the need for reform from the perspective of extending its reach. A new theme emerges in this section: the contribution of the Court of Justice of the European Union. Its jurisprudence is often quoted by the courts of third states when interpreting rules and institutions borrowed from the EIR or coined in its wake, e.g. as to the concept of COMI and the influence of the *Eurofood* ruling sometimes even in jurisdictions that have adopted the UNCITRAL Model Law. Given that, it is plausible that the development of an EU-Third Countries regime of cross-border insolvency will partly rest upon the Court of Justice.

Andreas Piekenbrock's contribution ('Lessons to be learned from 'Galapagos'') examines the case for harmonizing the recognition rules, or at least better integrating the EIR with national regulations, by focusing on the issue of 'conflict of recognition'—that is, when a proceeding initially opened in a third state is followed by one opened against the same debtor in a Member State, and the national law of a different Member State requires recognition of the former, while the EIR mandates recognition of the latter. Such a conflict can arise both in cases of positive jurisdictional conflict and (as in the Galapagos case) when the COMI shifts from one state to another with proceedings being initiated in each. In situations where the conflict involves only two Member States, the positive conflict is resolved (under Art. 19 EIR) through the criterion of prevention (recognition is granted to the proceedings opened first), and in cases of COMI-shift through the lis pendens criterion (as ruled by the Court of Justice in the Galapagos case), but when one of the two proceedings (the one initiated first) involves a third state, no rule resolves the conflict, nor can a solution be sought from the Court of Justice, since recognition of proceedings initiated in third states is governed by national law. Hence, the task of regulating recognition should be taken up by the Union.

Kevin Silvestri's contribution ('The law governing the effects of foreign insolvency proceedings on lawsuits pending in the home forum') addresses the effects of recognizing foreign proceedings on pending domestic proceedings, particularly those involving claims lodged in the foreign proceedings—a matter that touches on a key aspect of domestic insolvency law, namely, the coordination between ascertainment of claims and pending lawsuit on the same claims. In this context, the correct identification of the law applicable to the effects of a foreign proceeding on a pending lawsuit (and thus the determination of the applicable regime for the recognition of the foreign trial's effects) becomes crucial. The author argues that regardless of whether the EIR or the MLCBI model is chosen for governing the recognition of proceedings initiated in third states, there remains a need to clarify further the meaning and limits of the relevant provisions – Art. 18 EIR and Art. 20(1)(a) MLCBI, respectively). He emphasizes that such clarification might not necessarily require legislative action but could also take the form of an ECJ ruling.

The next subpart of the book is devoted to concurrent (parallel) insolvency procedures. It also opens with a general report by Alexander Trunk. It starts with a comparison of the general approaches of the EIR, the MLCBI, international treaties and national legislations in this respect. Taking apart that the EIR does not address cooperation between parallel EU-based and non-EU proceedings, there are significant commonalities as to the concrete provisions on cooperation and coordination.

Thereafter, more specific issues are discussed, e.g. on the role (and limits) of discretion in this field. The specific contributions then focus on two complementary themes: the need for cooperation and communication between the bodies handling the procedures (as discussed in Nicoleta Mirela Nastasie's essay, 'Should issues of mutual exchange of information be addressed in future regulation on cross-border insolvency?'), and the challenges posed by procedures relating to enterprise groups, addressed in two contributions ('Observations on cross-border group insolvencies' by Luciano Panzani and Robert van Galen; and 'The UNCITRAL 2019 Model Law on (Multinational) Enterprise Groups Insolvency with Guide to Enactment. An Example of Legislative Practicality, Convenience, and Pragmatism' by Héctor José Miguens). The two themes are complementary in that both the duty of communication and cooperation between the various procedural bodies and the coordination tools specifically designed for enterprise groups (such as the EIR's coordination procedure and the planning procedures of the 2019 UNCITRAL Model Law on the Insolvency of Multinational Groups) aim to restore the economic unity of a single enterprise (or of a group of enterprises) that has been fragmented by the initiation of multiple proceedings. These proceedings often involve different individuals (judges and practitioners) who may not know one another, speak different languages, and come from varying professional and cultural backgrounds, and oftentimes represent conflicting interests. This is a challenging goal, and while the EIR still struggles to achieve it when competing proceedings are opened in different Member States, that challenge becomes even more complex when some proceedings are pending in non-Member States.

Nastasie's contribution highlights that the barriers to effective cooperation and communication among procedural bodies – what can be termed 'decentralized coordination' – are not only of a legislative nature (primarily differences in procedural, insolvency, and judicial rights) but also stem from language differences, structural deficiencies, a lack of familiarity with handling parallel proceedings, insufficient mutual trust among insolvency professionals across jurisdictions, and, not least, the absence of adequate incentives for cooperation when the benefits are less clear than the risks and challenges. The essay makes it clear that, in order to overcome these additional barriers, legislative interventions may not be the most appropriate solution; rather, other measures (such as educational initiatives and the creation of informal judicial networks) are needed, for which the European Commission could take direct charge, rely on private organizations (such as INSOL Europe or INSOL International), or build upon the longstanding work already undertaken by UNCITRAL.

Panzani and van Galen's essay exposes and compares the regulatory approaches of the EIR and the 2019 UNCITRAL Model Law on Group Insolvency, questioning why they have been so unsuccessful despite the frequent—and perhaps prominent—occurrence of group insolvencies in the international arena. The failure of the EIR in this regard (and in particular, the shortcomings of the coordination procedure under Articles 61 ff.) is mainly attributed to the limited powers of the coordinator (who is not a group insolvency practitioner but rather someone tasked with issuing non-binding directives to the practitioners managing individual company proceedings), whose authority is markedly inferior to that of the group representative in the counterpart institution (UNCITRAL's planning procedure). The authors propose supplementing the existing mechanisms in the

EIR with the unified European Rescue Plan, as proposed by INSOL Europe in a 2012 study, which would apply at least to the restructuring of the parent company's debts to achieve the financial recovery of the entire group; and they suggest adopting (first in the world) the Model Law for cases involving groups of non-European scale.

Finally, Miguens' essay focuses on an analysis of the Model Law, reconstructing its development and offering a reasoned interpretation that highlights the innovative character of its three key components—the planning procedure, the group representative, and the group insolvency solution—as well as the mechanisms and effects of its recognition in the states where the various group companies' COMIs are located.

The final subpart deals with overarching issues of cross-border insolvencies focusing on procedural issues. It begins with a contribution by Alexander Trunk on 'Insolvency-related proceedings in cross-border cases', which start with an overview of the respective rules in the EIR, in the UNCITRAL insolvency law family (in particular the MLIJ) and under the autonomous laws. The author strives to structure the relevant issues and defines major legislative issues which the EU should address in this context. One example is the definition of indirect jurisdiction for recognition of insolvency-related judgments rendered in non-EU countries. The author pleads for flexibility in this respect, allowing recognition of such decisions not only on the basis of COMI, but also on other acceptable grounds.

This is followed by two contributions exploreing the relationship between cross-border insolvency and the subject area of alternative dispute resolution. Vesna Lazić's contribution ('Arbitration and cross-border insolvency') explores in detail the complex relationship between arbitration and transnational insolvency proceedings and develops concrete proposals for reform. Defne Taşman's contribution examines the rise of ADR methods (with a particular focus on mediation) in insolvency law and restructuring ('Mediation in Cross-Border Insolvencies'), as well as the opportunities offered by a gradual increase in their use—opportunities such as greater efficiency, effectiveness, and confidentiality in managing cross-border insolvency proceedings. Taşman reviews the events surrounding the adoption and reception of the European Directive on Mediation (Directive 2008/52/EC) and discusses the role of mediation in harmonized European insolvency law, mostly apparent in the Commission Recommendation of March 12, 2014, on a new approach to business failure and insolvency (2014/135/EU), and less overtly, but still noticeable, in Directive no. 1023/2019 (in which the mediator's facilitating role is assigned to the restructuring practitioner during negotiations between the debtor and creditors on the business recovery plan). Taşman thus proposes reforms to the regulatory framework (as well as organizational reforms, particularly regarding the accreditation of mediators/restructuring practitioners) aimed both at encouraging the use of mediation (for instance, by granting insolvency courts the power to mandate mediation during proceedings) and at facilitating its voluntary use by interested parties and practitioners (overall, the harmonization of mechanisms for enforcing mediation agreements, including through the EU's accession to the United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Mediation Convention). Both contributions (Lazić and Taşman) might stimulate some joint project between UNCITRAL's Working Groups V (Insolvency) and II (ADR) for discussions within the ADR and the Insolvency communities on how to find a broadly accepted solution balancing the interests involved in insolvency and ADR.

The subpart concludes with a short essay by Alexander Trunk on the use of information and communication technologies in cross-border insolvency. The EIR contains some rules in this respect, e.g. on the establishment of insolvency registers, and the EU Restructuring Directive 2019 has added further details for EU-based proceedings. The newe EU Insolvency Directive has added some further provisions in this direction, and national legislations – inside the EU as well as in other countries – have gone even much farther in this respect, providing e.g. for electronic lodging of claims, electronic creditors' meetings, access to electronic court files etc. Often such rules are very parochial, not very open to international (also non-EU related) dimensions[21].

It should be noted, that all contributions in this book are interrelated, sometimes visibly, sometimes a second glance. For example, issues of jurisdiction are addressed in the subchapter on domestic procedings, but also in the subchapters on recognition of foreign proceedings, on concurrent proceedings and on overarching topics.

Although the book tries to address all major issues of cross-border insolvency law in EU-third country relations, it is not – and cannot be – an encyclopedic treatise. Topics, which have remained out of this book, but which would deserve further study, are the links between cross-border in-

21 It should be mentioned that UNCITRAL Working Group IV deals particularly with issues of electronic commerce; perhaps, at some time, Working Groups V and IV might join forces in a project relating to the use of IT in cross-border insolvency.

solvency law and international labour law, international administrative and criminal procedure law, international environmental law or international tax law. However, such topics would go beyond a future EU instrument on cross-border insolvency relations with non-EU countries, which needs to concentrate on more 'classical', but still important issues.

Part B. of the book contains contributions dedicated to the cross-border insolvency law of certain non-European states (namely, Argentina, Brazil, China, South Korea, Switzerland, and the United Kingdom) or non-European regional organizations (OHADA, i.e., the Organization for the Harmonization of Business Law in Africa; and EAEU, i.e., the Eurasian Economic Union). The purpose of this discussion is to offer insights into non-European experiences that may directly inspire thoughtful decision-making.

Part B. opens with two contributions on recent activities in international organizations outside the EU with regard to cross-border insolvency law. Ngaundje Doris Leno ('The Application of International Insolvency Law within and outside the OHADA Space: Issues and Challenges') and Elena Babkina ('Regional economic integration in the sphere of cross-border insolvency: foreign experience as a possible model for the Eurasian Economic Union'), each examining cross-border insolvency within the context of a regional organization, the OHADA and the EAEU respectively. In the OHADA context, there is a unique combination of unified commercial insolvency regulation, the EIR (for cross-border insolvencies of only regional significance), and the MLCBI (for recognition of proceedings initiated in third states). In the EAEU, by contrast, there is currently no corresponding regulatory framework, and the author points out that the growing economic integration among EAEU states requires – from her perspective – adopting a regulatory system akin to the EIR, which would complement existing treaties on civil and commercial judicial assistance[22].

The following contributions deal with national approaches, including the view of third countries on their relations with the EU in the field of cross-border insolvency law. For easiness of access, these contributions are organized in the book following the alphabetical order of countries. However, in this preface a short characterizing of these contribution in a thematical

22 It may be added that the Commonwealth of Independent States (CIS), the oldest regional organisation in the post-Soviet region, has recently started work on a Model Law on Transnational Insolvency, see https://eccis.org/news/31708/rabochaja_gruppa_mpa_sng_odobrila_proekt_modelnogo_zakona_o_transgranichnoj_nesostojatelnosti?ysclid=mpmt5tx8zo107873666 (accessed 26.05.2026).

order was chosen to make the relation between these contributions more visible. Two essays illustrate the current regime in Civil Law countries that have adopted the MLCBI: Brazil, via Flavio Galdino-Rodrigo Saraiva Porto Garcia's essay ('Cross-border insolvency and the Brazilian experience (so far): comments on the recent adoption of the UNCITRAL Model Law on Cross-Border Insolvency'), and South Korea, via Young-Seok Kim's essay ('Korean practice about the recognition of the discharge order rendered in foreign insolvency proceedings'). The limitations of the Model Law regime are highlighted, along with a certain stickiness of old habits and concepts in the practices of these states—factors that the EU should consider, given the overall complexity of transplanting an entirely new regulatory model, especially one intended to replace or interact with the legal systems of as many as twenty-six states.

In particular, the contribution of Galdino and Garcia observes that the notion of COMI in the MLCBI is less clearly defined than in the EIR, which has led some Brazilian courts, following the adoption of the MLCBI alongside comprehensive reforms to Brazilian insolvency law (Federal Law No. 14112/2020), to continue interpreting COMI in light of the longstanding jurisprudence on the concept of the debtor's principal place of business (*local do principal estabelecimento do devedor*), defining the direct jurisdiction of Brazilian insolvency courts.

Kim's essay focuses on the ambiguity within the MLCBI regarding whether its Article 21(1)(g) can be relied upon to grant recognition to discharge orders issued by foreign courts—a question that, as is well known, has been resolved differently by various enacting states. In South Korea's case, a territorialist attitude of the Supreme Court (inherited from the previous system), which emerged in a case where a discharge order issued by a U.S. court was denied recognition for reasons specific to that case, has been misinterpreted by lower courts, which have reiterated on several occasions that the MLCBI does not permit recognition of such orders.

Concluding this section is Héctor José Miguens' essay 'A commentary of the Argentine cross-border insolvency bill of 2018' which discusses a draft law designed to transpose (with some adaptations) the text of the MLCBI, while also incorporating provisions on regulating the insolvency of cross-border groups.

Four other essays are devoted to countries (China, North Macedonia, Russia, and South Africa) where at present cross-border insolvency regimes inspired by neither the MLCBI nor the EIR are in force, and which, interestingly, share the provision that recognition of foreign procedures is subject to the requirement of reciprocity. North Macedonia (dealt with in the contribution by Miodrag Dordevic and Dejan Kostovski) is in this group specific as the country has applied for membership in the EU and is undergoing deep reform processes in view of adoption of EU legislation. In this context North Macedonia has created rules on cross-border insolvency, which take some elements both from the MLCBI and from the EIR, but also, in particular, from the law of Croatia. Interestingly, there is now a discussion in North Macedonia to drop the reciprocity requirement in cross-border insolvency law.

Article 5 of the Chinese Enterprise Bankruptcy Act is featured by the essay ofJingxia Shi and Shuaidong Yan ('The Recognition of German Insolvency Proceedings in China and Beyond'). As noted, Article 5 makes recognition subject to a strict set of conditions, including the requirement of reciprocity. The authors examine how Chinese courts have interpreted reciprocity over time: initially as de facto reciprocity (i.e., recognition was conditioned on proof that the requesting state had previously recognized Chinese proceedings), and later as de jure reciprocity (i.e., contingent on the Chinese proceeding being theoretically recognizable under the law of the requesting state).

Russian cross-border insolvency law is addressed in the contribution of Vladimir Yarkov and Ruslan Baldanov ('Analytical Note on the prospects for the development of cross-border insolvency in the Russian Federation'), which describes the growing tendency of Russian courts to open domestic insolvency proceedings with regard to foreign nationals using, de facto, the COMI criterion; and, conversely, the reluctance to recognize foreign proceedings unless reciprocity is ensured. The authors also note that, at present, the adoption of the MLCBI appears to be the only viable solution, given the current significant political obstacles in concluding treaties.

South African law is examined in detail in André Boraine's essay ('Cross-Border Insolvency Principles in Terms of South African Law'), which analyzes the country's 'dual' system—where common law principles (influencing the entire commercial and insolvency law in a system derived from Roman-Dutch law) coexist with one of the earliest versions of the MLCBI. However, the application of the MLCBI in South Africa is limited in relation with a number of states designated by the Minister of Justice on the condition of reciprocity; a requirement that has so far prevented the application of the MLCBI at all.

Finally, the essays by Daniel Staehelin and Élodie Kleider ('Does the Recast Insolvency Regulation violate the ordre public of Switzerland?')

and Gerald McCormack ('UK schemes, plans and international recognition') expose the negative impact of the EIR's frequently mentioned 'blind spots.' Staehelin and Kleider first present a *sui generis* model for regulating cross-border insolvencies found in the Swiss Private International Law Act (IPRG), which has been in force since the 1980s and is centered on initiating, upon recognition of foreign proceedings in Switzerland, a 'mini-proceeding' that is territorial in scope and involves only a limited number of creditors. They point out that the expansive reach granted to the EIR by the Schmid v. Hertel ruling (which theoretically extends the universal reach of EU-based proceedings) and the EIR's contrastingly restrictive stance—particularly concerning the participation of non-EU creditors—could be grounds for rejecting EU proceedings in Switzerland on public policy grounds.

McCormack's contribution, by contrast, illustrates—through a discussion of several high-profile cases, particularly the DTEK case—how uncertainties (which predate even Brexit) regarding whether certain reorganization procedures (especially schemes of arrangement) excluded from the EIR could nevertheless be recognized under the Brussels I-bis Regulation or the Rome I Regulation, continue to pose significant obstacles not only to the circulation but also to the practical usability of reorganization schemes for multinational enterprises, given the English courts' reluctance to sanction schemes involving foreign creditors that do not present significant prospects of recognition abroad. There is a particular link between this contribution and the contribution of Kevin Silvestri in Part B of the book, which also addresses – from the EU's perspective – cross-border issues of foreign schemes of arrangement.

Part C. of the book contains conclusions and recommendations by the editors of the book. The conclusions are drawn from the various contributions. Both the conclusions and the recommendations were beforehand discussed in the research group and with the steering committee and comments have been taken into account in the final version of the text. However, there was no voting in the group with regard to conclusions or recommendations.

The conclusions start with the general structure of the EIR and its approach to relations with non-EU countries. The EIR being assessed as deficient in this regard, the conclusions then move on to possible improvements. Different ways of improvement are discussed, mainly the creation of new rules on relations with non-EU countries in the EIR or another EU instrument. The content of such rules could either be based on the UNCITRAL Insolvency Law family or on the existing EIR rules, in both cases with modifications. The conclusions address also the relations between any new EU rules and the autonomous insolvency law of the EU Member States.

Another general question is the material scope of application of the EIR in relations with non-EU countries, as the present approach of a binding and exhaustive annex[23] collecting all relevant proceedings would not be practicable in relations with non-EU countries.

Thereafter the conclusions turn to central issues of domestic insolvency proceedings (mainly jurisdiction, conflict of laws and substantive law), recognition of foreign insolvency proceedings (structure of recognition, prerequisites, procedure and legal consequences of recognition) and parallel proceedings involving non-EU countries. Issues of conflict of laws and substantive law are discussed for each of these constellations separately, but cross-referring between each other. The distinction between main and non-main proceedings is kept, but the precise design of non-main proceedings should be more flexible. The basic outcome for domestic proceedings is that the existing conflict of laws rules of the EIR should not simply be extended to non-EU relations, but need separate reflection. Overarching issues of the impact of insolvency proceedings on other court proceedings, arbitration and mediation are discussed separately. The same is true for the use of IT in cross-border insolvency law. Banking and insurance insolvencies are touched briefly.

The editors derive from the foregoing conclusion various recommendations. For example, they recommend to pass rules on direct jurisdiction as well as recognition of and cooperation with insolvency proceedings opened in non-EU countries. In some cases, they do not give specific recommendations, but leave the answer open, explaining pros and cons of different options. This is true, mainly, for the question whether the EU should in relations with non-EU countries basically adopt the UNCITRAL Model Laws or whether it should choose an approach closer to the existing rules of the EIR. In both cases, however, modifications are recommended, with opening clauses for autonomous legislation. Separate recommendations are made for the impact of insolvency proceedings on court proceedings and arbitration and for the use of IT and mediation in the cross-border insolvency context.

23 Presently Annex A to the EIR.