

CONFERENCE ON EUROPEAN RESTRUCTURING AND INSOLVENCY LAW



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Date: 29 June 2021

Re: CERIL Statement 2021-2

Reporters: Professor Andreas
Geroldinger et al.¹

CERIL Statement 2021-2 on EU Group Coordination Proceedings

CERIL identifies the fact that the EU 'group coordination proceedings' system is not used in practice, resulting in inefficient administration of insolvency proceedings relating to different companies forming part of a group of companies.

Since the end of 2020, two of CERIL's Working Parties² conducted a preliminary impact study into the use in European insolvency and restructuring practice of 'group coordination proceedings', in the meaning of Chapter V (Articles 61-77) of the European Insolvency Regulation (Recast) (Regulation 2015/848). The study comprised of two parts: (1) a review of relevant literature on the subject, and (2) interviews with relevant insolvency practitioners within the EU.

The preliminary results of the study were shared and confirmed both by all participants in the respective working parties and, subsequently, all of the over seventy conferees of CERIL, located in twenty odd European countries. The outcome of the study could not have been clearer – and more disappointing. In practical terms: some four years after the European Insolvency Regulation (Recast) became binding, not a single significant case of a cross-border group insolvency has been handled under the rules on group coordination proceedings.

¹ Prof. Andreas Geroldinger (Austria), Dr. Myriam Mailly (France), Prof. Stephan Madaus (Germany) and Nora Wouters, Esq. (Belgium).

² CERIL Working Party 9 (Code of conduct for the group coordinator), co-chaired by Prof. Geroldinger and Dr. Mailly and CERIL Working Party 3 (Enterprise groups), co-chaired by Nora Wouters and Prof. Madaus.

The CERIL Executive has found it imperative to inform all stakeholders concerned, including associations of insolvency practitioners, organisations of judges, the EU legislator and legislators of EU Member States, about this rather unfortunate finding. These stakeholders include the European Parliament, the Council, the European Economic and Social Committee and the European Commission. The specific results of the study are attached to the Statement in the form of an overview of pros and cons of EU group coordination proceedings.

This CERIL Statement aims to timely identify the considerations and reflections in the appreciation and use of group coordination proceedings throughout the EU. CERIL feels that time is ripe to undertake specific steps to develop proposals for the modification of the current rules in order to enable group coordination proceedings to use their full potential.³ CERIL is in a position to assist in the development of such proposals to promote and enhance the concept of group coordination proceedings by tackling issues such as lack of awareness and guidance, for instance through the establishment of guidelines.

Concluding note

CERIL prides itself that it has, with its unique independent perspective, been able to contribute to long-term improvements in restructuring and insolvency. The full Report is available as Report 2021-2 on CERIL's website www.ceril.eu. This site also informs about the organisation of CERIL and its activities.

In the meantime, professor Reinout Vriesendorp, secretary of CERIL (info@ceril.eu), or the spokesperson on behalf of the Working Parties, Prof. Andreas Geroldinger (andreas.geroldinger@iku.at) welcome the opportunity to further inform you about CERIL or the contents of its present Statement.

On behalf of the CERIL Executive,

Bob Wessels
Chair

ANNEX:

- Pros & Cons of EU Group Coordination Proceedings

³ Article 90(2) EU Insolvency Regulation (Recast) provides: 'No later than 27 June 2022, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the group coordination proceedings. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.'