

Short presentation of the project
EU Cross-Border Insolvency Law and Third Countries – Which Way(s) Forward?

for the UNCITRAL panel discussion on the occasion of the 25th Anniversary of the MLCBI,
55th session of UNCITRAL, New York, 15 July 2022

Alexander Trunk

Dear distinguished delegates and observers,

thank you very much for the friendly introduction and the honour of being invited to this important and interesting panel discussion.

I am going to give you in the following presentation an overview of the research project on „*EU Cross-Border Insolvency Law and Third Countries: Which Way(s) Forward?*“, which has been started in February this year by a number of scholars from different countries and which we hope to complete in 2023. The project is policy-oriented, i.e. we try to develop fresh ideas how to further develop cross-border cooperation in insolvency matters in the future. It is basically an academic project. This gives every participant the possibility to express his own, personal view. We are in no need to find a generally agreed solution, but can accept even as an outcome of the project different views on certain issues. However, we plan to formulate at least some agreed recommendations.

Although the project is basically academic, we have invited – and are glad to have them in our group – several judges and insolvency practitioners from different jurisdictions. The project came into being in a grassroots manner, from experience in teaching and doing research in cross-border insolvency law. Professor Jasnica Garašić from the University of Zagreb, whom you know from work in UNCITRAL’s Working Group V, and me are the coordinators of this project, and we also have an Advisory Committee which includes some very well-known academics from different legal backgrounds.

The project has received the official endorsement of the Secretary of UNCITRAL and of the Secretary General of the Hague Conference on Private International Law and we have also as from the beginning established good working contacts with the European Commission. The responsible officer of DG Justice of the Commission is an active observer in our project.

What are the links between this project and UNCITRAL’s work? Well, some EU Member States, but by far not all of them, have adopted the Model Law on Cross-Border Insolvency. As is well-known, the EU has passed its own Insolvency Regulation. However, as the Regulation addresses mostly inner-EU relations, insolvency cooperation with non-EU countries is by and large left in the hands of the Member States. Some countries have opted

for the Model Law as a basis for cooperation with non-EU-countries, while others tend to apply the EU Regulation to relations with non-EU countries by analogy, and a third group of countries has no codified approach at all and tends to deny cooperation as a general approach.

This can hardly satisfy from the perspective of creditors or even debtors, specifically also in the context of cross-border restructuring. As many insolvent enterprises have business links, subsidiaries or other property in non-EU countries, there is clearly a need for better, more systematic dealing with „global“ situations.

One can imagine different outcomes. For example, the Model Law, unchanged or with changes, could be used for relations between the EU and non-EU countries. Or the EU Insolvency Regulation could be extended to relations with third countries, perhaps in some modified form. Or the EU might conclude some treaties covering cross-border insolvency matters with non-EU countries

All such deliberations cannot lead to workable results without an intensive dialogue with non-EU countries. Of course, UNCITRAL is the best established institution to organize such a dialogue. However, free academic discussion has its own value and can, at least we hope so, also give some input to UNCITRAL's work. We are very glad that the Secretary of UNCITRAL seems to share this view and has chosen to support our project ideally.

What are we going to do next? Our research group comprises presently about 45 participants from all continents. We are still welcoming new members, in particular from countries which are today not yet represented. I have recently presented the project at the London Congress of INSOL International, and some additional participants have then joined our group.

In our project, we have set a deadline of end-October this year for delivering papers and will then discuss them in the research group and publish them in 2023. Thus the basic outcome of the project will be a publication. However, we have initiated a continuing process of discussion within the research group and recently carried-through a first workshop. Other workshops will follow and we plan two larger conferences for more detailed discussions. Representatives from interested organizations are always invited to participate and we will be happy to discuss with them issues of their interest. We can easily organize educational events and would be very glad if UNCITRAL had an interest in this as well.

Thank you very much for your attention!

Chat: „Please contact the organizers at intins@law.uni-kiel.de in case of interest.“