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# Europeanisation of the Member States' Insolvency Laws

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## Introduction

1 In sight of the original claim of the European legislator not to interfere with the national insolvency laws but just to smoothen their interaction in cases of borders crossing insolvencies,[1] it is as tempting as illustrative to examine the validity of this claim and to see whether at all and if so, to which degree the European Insolvency Regulation (the "EIR") has changed, and moreover, is about to change, the national insolvency laws.[2] It should be noted, however, right from the outset that it very much seems as if the modesty of the first approach in pre-2002 (i.e. the entering into force of the EIR) has lost momentum and is increasingly giving way for direct influence. Suffice it to mention as proof for this impression:

> (a) the Recommendation of the Commission from 12 March 2014,[3] which makes perfectly clear that the Commission is expecting the member states to introduce, more or less uniformly, a certain type of insolvency prevention proceeding (resembling very much the English Scheme of Arrangement);[4] and
> (b) to point at the fact that the present status of the amended EIR has increased the number of recitals from 33 to 83, a clear indication of quite some ambition.

2 The following observations will be presented with two caveats:

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[1] See Recital 6, EIR and I. Fletcher, "The European Union Convention on Insolvency Proceedings: Choice-of-Law Provisions" (1998) 30 *Texas International Law Journal* 119-140, at 125.

[2] As a purely factual observation, it should be noted that any Europeanisation certainly depends on the insolvency professionals' knowledge of the European legislation. One wonders, however, in sight of opening decisions regarding secondary proceedings more than nine (sic!) months after the petition whether this banality is already accomplished; See S. Riel, "Das Insolvenzverfahren über das Vermögen der ALPINE Bau GmbH – ein Zwischenbericht" (2014) *ZIK Praxis* 174-178, at 175.

[3] On this, see S. Madaus, "The EU Recommendation on Business Rescue – Only another Statement or a Cause for Legislative Action across Europe?" (2014) 27(6) *Insolvency Intelligence* 81-85.

[4] See C. Paulus, "Keine Rundum-Erneuerung, aber deutlich modernisiert: Die EuInsVO in ihrer künftigen Gestalt" (2014) (4) *BB-Editorial Heft*.

(a) The present author's limitations necessitate the restriction of the following observations and deliberations primarily to the peculiarities of the German law, thereby defying the plural in the headline of the paper. But what is described here is meant to serve as a kind of template for the EIR's influence on other member states' insolvency laws.
(b) It is not intended to deliver here a full list of the entire Europeanisation of the German Insolvenzordnung (Insolvency Ordinance, henceforth: "InsO"). Given the fact that this influence had already taken place by the original EIR and that it had been increased by some of the European Court of Justice (ECJ) decisions, it is evident that the full scope of those and the upcoming influences would fill an entire book in itself.

## Original EIR

3 Evident intrusions of the EIR into domestic law[5] can be found, for instance, in Article 29 or Article 3(2). When section 13(1) of the InsO determines that the right to file a petition is conferred exclusively on the debtor or its creditors this rule is expanded by Article 29 lit. (a) of the EIR which permits additionally the administrator of the main proceeding to file a petition for a secondary proceeding. Similarly, when the notorious Article 3(2), 2nd sentence of the EIR orders secondary proceedings to be liquidation proceedings, German insolvency law gets into trouble, since after having adopted the French approach of a single entry into any insolvency proceeding without distinguishing liquidation from reorganisation proceeding and leaving the decision of either way to the creditors in the subsequent so called report meeting,[6] it is unclear whether the EIR supersedes this German concept of creditors' autonomy.

4 More oblique influences of Europeanisation are found when the French legal family with its reservation of insolvency laws for merchants have to accept, cf. Article 4(2) lit. (a) of the EIR, that on their territory a consumer can become subject to a German insolvency proceeding when and if this person's centre of main interests ("COMI") happens to be in Germany. Another notorious example is what is known in Germany under the term "discharge tourism". As a consequence of Article 4(2) lit. (k) and 17 of the EIR, discharge in English (or Alsace-Lorraine) proceedings relieves the German debtor from his debt burden five[7] years earlier than his neighbour, who did not manage to shift his COMI away from home.

5 A similar "outreach" influences German insolvency law, too. Pursuant to section 15a of the InsO, directors of legal persons (such as a GmbH or Aktiengesellschaft) are obliged to file a petition when and if certain "alarm signals" start to blink, more precisely, when the company is either insolvent pursuant to section 17 of the InsO

[5] See C. Paulus, "Über den Einfluss des Europäischen Insolvenzrechts auf das Deutsche Insolvenzwesen", in H. Haarmeyer *et al.* (eds), *Verschulden – Haftung – Vollstreckung – Insolvenz, Festschrift für Gerhart Kreft* (2004, ZAP-Verlag, Bonn), at 469 *et seq*.
[6] Section 157, InsO.
[7] To be sure, German law offers now also a shorter period of three years. However, to benefit from this rule, the debtor has to achieve the almost impossible: to satisfy his creditors with 35%.

or over indebted pursuant to section 19 of the InsO. Whereas the legislative text evidently assumes that the petition has to be filed with a German court, the question arose whether this duty would be complied with when the director filed the petition at an English court on the assumption that the company's COMI is there.[8]

6 In this context, mention should be made of a recent amendment of the InsO which is more than likely not to have taken place without the EIR. Since in the wake of Article 31 of the EIR and its indirect plea for judges' participation in this communicative exchange,[9] the new section 348(2) of the InsO has opened the possibility for German insolvency courts to communicate directly with their foreign counterparts. This is a ground shaking change given the fact that until recently judges were even hesitant to communicate on a particular case with their colleagues from other German courts. Whereas section 348 of the InsO applies to cases of insolvency proceedings reaching to other states than the member states of the EIR, it is to be derived already now that this right to communication is applicable all the more in cases covered by the EIR.

## ECJ

7 The Europeanisation, of course, could not been restricted to the written law; it was predictable right from the outset of the EIR's enactment that this phenomenon would also become propelled by court decisions, above all from those of the ECJ. The probably farthest reaching is the *Hertel* (or *Schmid*) decision from 16 January 2014.[10] Following the previous example of the extension of the Brussels I-Regulation in the *Owusu* case,[11] where the English court was prohibited to apply the *forum non conveniens* principle due to the alleged applicability of that Regulation if there is just one party citizen of a member state, the ECJ ruled the same with regard to the EIR in a case where only the plaintiff was a German and the defendant was Swiss. Such an outreach beyond the borders of a member state was before thought to be governed by the autonomous international insolvency law: in Germany by section 335 ff. of the InsO. However, after January 2014 this part of the domestic legislation has to be adjusted to the newly established requirements: all rules, and note that a rule can be contained in just one sentence in one particular paragraph of a particular article, which do not indicate explicitly (possibly also implicitly) a member state's correlation are to be applied irrespective of differing rules in the domestic international insolvency law. In contrast, rules that refer

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[8] Cr. Amtsgericht (District Court) Köln, decision from 23 January 2004 - 71 IN 1/04, (2004) *Neue Zeitschrift für Insolvenzrecht* 151 *et seq*.

[9] One of the arguments used in the German discussion has been that the Austrian insolvency court is mentioned in Annex C whereas Germany lists only various types of administrative office holders there.

[10] *Schmid v Hertel* (C-328/12) [2014] WLR (D) 5. On this decision, see G. Moss, "ECJ Takes Worldwide Jurisdiction" (2015) 28(1) *Insolvency Intelligence* 6-9; C. Paulus, "The ECJ's Understanding of the Universality Principle" (2014) 27(5) *Insolvency Intelligence* 70-72.

[11] *Owusu v Jackson* (C-281/02) [2005] ECR I-533.

explicitly (possibly also implicitly) to a member state contact are applicable only for inter-member-states-contacts. It is to be assumed that only in the latter case the autonomous domestic international insolvency law still plays a role.

8 Accordingly, Ms. Hertel could be sued in Munich on the basis of an avoidable transaction. Since the permission for this deviation from the traditional rule of thumb was found in a previous decision[12] in Article 3(1) of the EIR, which is silent regarding other member state contact, it is the ECJ's reasoning that this rule overrides German international insolvency law. Its relevant section 339 of the InsO is also silent as to the procedural implications of any respective avoidance action; as a consequence it was commonly said that such an action has to be initiated at the defendant's place (*actor sequitur forum rei*). From January 2014 on, however, this rule is replaced by the *Hertel* rule. Things are different, however, when we now turn to Ms. Hertel's defence. If we assume that she wants to argue in the Munich court that the transaction in question was governed by Swiss law and that under this law the transaction is not objectionable, Article 13 of the EIR is of no avail for her. Since this article has an explicit reference to the law of another member state. Here – and only here – the autonomous domestic international law is applicable. Thus, Ms. Hertel's respective argument is to be evaluated pursuant to section 339 of the InsO, which happens to provide the same rule as Article 13 of the EIR, but such congruence between the European rule and the domestic one is rather rare.

9 Not only that such attributions of rights and duties are somewhat randomly when based solely on the wording – in the ECJ's parlance: purpose – of the EIR; it is also that the *Hertel* rule imposes the universality principle on jurisdictions which, like the Dutch one, are not entirely sure whether or not they follow it at all beyond the EIR. Since if the European rule of Article 3(1) of the EIR is part of a universalistic approach, it is hard to argue that this provision constrains its applicability within the territory of the Netherlands to just the other member states of the EIR.

10 Another striking example for the Europeanisation of domestic insolvency law is the result of the *Bank Handlowy* case.[13] A French company entered into a *Procédure de Sauvegarde* in order to get around the threat of insolvency. Despite contradicting the definition of an insolvency proceeding in Article 1 of the EIR as it does not require the debtor's insolvency, the *Procédure de Sauvegarde* is listed as an insolvency proceeding in Annex A of the EIR, cf. Article 2 lit. (a) of the EIR. Therefore, it is to be recognised automatically in all other member states pursuant to the mechanisms of Article 16 and 17 of the EIR. In that case, the French court applied the standards created initially by English lawyers and later, after a period of heavy objections, copied all over by other member states before they were thought and meant to have been abolished through the ECJ decision in the notorious

[12] *Seagon v Deko Marty* (C-339/07) [2009] ECR I-767.
[13] *Bank Handlowy and Ryszard Adamiak v Christianapol* (C-116/11) [2012] ECR 000.

*Eurofood* case,[14] and included the French debtor's Polish subsidiary into the French proceeding.

11 Thereupon, one of the Polish creditors, the Bank Handlowy, petitioned the opening of a secondary proceeding in Poland, a line of action that has only recently been explicitly permitted by the ECJ.[15] The Polish judge raised the very fundamental question as to whether in this particular case he was allowed (or requested? or maybe even obliged?) to examine the debtor's insolvency. After all, in Poland (like in Germany)[16] the debtor's insolvency is precondition for any insolvency proceeding and the Polish subsidiary was subject of a foreign proceeding which, by definition, excluded the debtor's insolvency. But there is Article 27(1) of the EIR, which provides for the opening of such secondary proceedings "without the debtor's insolvency being examined". Even though the wording is soft enough to permit in such (originally unforeseen) cases the examination, the ECJ interpreted the "shall" as a "must", thereby underlining the unshakable authority of Annex A. Accordingly, secondary insolvency proceedings can become initiated in Europe even though the domestic requirements are not fulfilled.

12 A final example of an ECJ decision points into the opposite direction in that it confines insolvency rules to its domestic borders. The French Code de Commerce provides for a rule which is also (said to be)[17] found in section 105 of the US Bankruptcy Code and which allows for a substantive consolidation when and if the debtor's estate is intermingled with another person's assets ("*en cas de confusion de leur patrimoine*"). In the *Rastelli* case, such other person was located outside France – in Italy. Therefore, the applicability of the EIR was opened and the ECJ, thus, had the last word regarding the question whether such substantive consolidation has to be accepted and recognised by the other member states or not. As is well known, the decision was in the latter sense.[18] There is no doubt that there are good reasons to see the expansion of a French proceeding to an Italian company as the opening of a new insolvency proceeding in Italy. However, given the examples described above and their tendency to an Europeanisation of national insolvency laws it deserves attention that, in this case, the ECJ resisted this temptation – irrespective the fact that several arguments could have been found to come to the opposite conclusion.

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[14] See, additionally, the cases *Interedil Srl* (C-396/09) [2011] ECR I-9915, as well as *Rastelli Davide v Jean-Charles Hidoux* (C-191/10) [2011] EU:C:838. On the development after this decision, see M. Fehrenbach, *Haupt- und Sekundärinsolvenzverfahren: zur sachgerechten Verfahrenskoordination bei grenzüberschreitenden Unternehmensinsolvenze* (2015, Mohr Siebeck, Tübingen), at 33 *et seq*.

[15] *Burgo Group SpA v Illochroma SA* (C-327/13) [2014] WLR (D) 386.

[16] To be sure, section 18, InsO permits an opening in the case of "imminent insolvency".

[17] To be sure, section 105 says nothing about substantive consolidation; but it is interpreted as permitting it under certain circumstances.

[18] *Rastelli Davide v Hidoux* (C-191/10) [2011] EU:C:838.

13 To apply them, however, would have required knowledge about the dynamics of insolvency law particularly within the last 10 to 15 years – or, more precisely: to know about UNCITRAL and its Working Group V's efforts to come to a workable solution of group insolvency cases: As a matter of fact, the Legislative Guide has in its Part III[19] a recommendation[20] for substantive consolidation in cases of an intermingling of assets. The rationale behind that being that the creditors are usually better served in such cases by a common participation on both estates. After all, the costs of "unscrambling scrambled eggs" is in most cases for the sole benefit of the lawyers and insolvency practitioners entrusted with this work. With this knowledge, the Luxembourg judges could have applied either Article 4(2) of the EIR by stating that this is a French *lex concursus* peculiarity, which has to be tolerated (recognised) by the other member states.[21] Alternatively, an argumentation along the lines of the abovementioned *Deko Marty* decision and its *effet utile* reasoning could have been used or, finally, it would have been possible to refer to Article 25(1)(2) of the EIR. It is hardly dubitable that the French court's order to include the Italian company into the French proceeding "derives directly from the insolvency proceeding" and is "closely linked" with it.

14 By ignoring these alternatives, the ECJ prevented the other member states from another Europeanisation of the other member states' insolvency laws and kept thereby the door open for a European-wide group insolvency law modelled after the German example.

**Amendments of the EIR**

15 The latter brings us to the next step of such Europeanisation taken by the prospective amendment of the EIR. It is much further reaching than the original Regulation; but again be it said, that only examples are presented here. A full coverage would require a booklet. The new Article 56 ff. of the EIR will provide for special rules that are to apply in cases of parallel insolvencies of more than one member of a group. However, they do not envisage any form of substantive consolidation. The rules, thus, are well founded on the traditional concept of dealing with group members' insolvencies as legally separate entities: one company, one insolvency, one proceeding. As indicated supra, the German influence is particularly striking in this part as the rules are very much in parallel to an amendment of the InsO, which is to be enacted in 2015.

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[19] Available at: <http://www.uncitral.org/pdf/english/texts/insolven/Leg-Guide-Insol-Part3-ebook-E.pdf>.

[20] Ibid., at 71 (Recommendation No. 220).

[21] This would have been a comparable feature to what has been mentioned already supra: due to Article 4(2) lit. (a), EIR, jurisdictions like France do have to recognise its own consumers' insolvencies when and if these consumers happen to have their COMI situated in Germany. There is no remedy like: we do not have such a proceeding for our non-merchants.

16 It makes good sense that these rules intensify the existing Article 31 of the EIR by expanding the provisions on mutual cooperation. Whereas the present status confines the respective duties on cooperation, coordination and information sharing to the insolvency administrators of main and secondary proceedings, will the new provisions include the judges of separate proceedings if only the respective debtors are interconnected as members of a common group. Jurisdictions that so far have not yet provided for this sort of task – like Germany until recently – will have their law changed by the new Articles 57 (cooperation and communication between courts) and 58 (cooperation and communication between administrators and courts).[22]

17 It seems as if, thereby, insolvency law is changing fundamentally its appearance. While having been for decades, if not centuries, the prime example for the unchangeable law's rigidity (*rigor iuris*), it is now becoming more and more influenced or even steered by communication and consensual solution finding. It is in the consequence of this evolution that even mediation – a prime example for a consensual search for solutions – is getting increasingly part of the insolvency process, both inside and outside of the judicial proceeding.

18 It makes less sense, however, that the EIR also adopts the rules on what is called a group coordination proceeding, Article 61 *et seq*. This new type of proceeding is very similar to what the German InsO will introduce in 2015. Even though not yet in force, it seems, however, to be a fair guess that this approach is, if at all, of very rare practical use in real cases. Since what is required is one appointed administrator who is administering the case of one group member and discovers the need for coordination through a third person, cf. Article 61 of the future EIR. It is thus dependant on this insight that things are better served when and if someone who has not yet been involved in this case, cf. Article 71 of the future EIR, is organising the coordination. It is to be noted that the powers to have all administrators of that particular group following the ideas and proposals of this coordination administrator are quite limited. Not only that each one of the administrators has the right to opt-out from the inclusion into such coordination scheme, cf. Article 64 of the future EIR; the coordination administrator has, moreover, not more than just the right to recommend or submit proposals, Article 72 of the future EIR, which means that the adherence to those recommendations is dependant more or less on the good-will of the participating administrators and/or the persuasive power of the coordination administrator.

[22] On the uniqueness of the insolvency communication – as opposed to judicial cooperation in other areas of law – cf. C. Paulus, "A German's Thoughts on a Dialogue between Courts in Borders Crossing Insolvency Proceedings", in C. Baudenbacher (ed), *International Dispute Resolution – Dialogue Between Courts in Times of Globalization and Regionalization* (2010, German Law Publishers, Stuttgart), at 177-184.

19 Another Europeanisation will be regulated in Article 24 *et seq*. of the future EIR. They set up rules for a registration system in order to increase the effects of the Regulation in general. Since what has happened again and again – and very likely more often than has publicly become known – has been the opening of cases even though the debtor had already become subject to a foreign insolvency proceeding. This might happen because the acting officials don't know (or even ignore) the mechanism of the EIR.[23] Or it might just occur out of ignorance of the fact that a proceeding has already been opened abroad.

20 In order to overcome this latter risk, the new rules impose the duty on all member states to entertain a register that contains at least the information described in Article 24(2) of the future EIR. It makes a lot of sense even though creating innumerable practical difficulties that Article 25 of the future EIR orders the Commission to take care of the interconnection of all those member states' registers. In a case like the Viennese *Stojevic* one,[24] where the Austrian court opened a proceeding in order to get informed only one day later by a letter from the debtor that this opening was void because of a previous opening in England such an interconnected registration system can help to prevent endless complications stemming from the rescission of the initiated proceeding.

21 Irrespective of the evident usefulness of these new rules, it must be noted that here, too, the Regulation steps away from its original humble approach of leaving the national insolvency laws unaffected. Quite to the contrary, these Articles 24 *et seq*. of the future EIR impose considerable burdens on the judicial and legislative authorities of the member states; they seem to be driven by the idea to establish in a future not too far away a pan-European uniform registration system.

22 The last example of the domestic insolvency laws' Europeanisation to be addressed here is Article 36 of the future EIR. It deals with the admission of what has become known as "synthetic secondary proceedings",[25] which themselves have been introduced to the astonished continental insolvency world in the well-known Collins & Aikman case by the English lawyers and Judge Lindsay.[26] In order to avoid real secondary proceedings, English administrators were allowed by the court in London to deviate from the rule of *par condicio creditorum* and to promise creditors to receive without such a secondary proceeding what they would have

[23] This has been the case, for instance, in the ECJ's *MG Probud Gdynia* case (C-444/07) [2010] ECR I-417.
[24] OLG (Court of Appeal) Vienna, decision from 9 November 2004 – 28 R 225/04W, reprinted in (2005) *Neue Zeitschrift für Insolvenzrecht* 56 (with comment by C. Paulus at 62).
[25] See J. Pottow, "A New Role for Secondary Proceedings in International Bankruptcies" 46(3) *Texas International Law Journal* 579-599, at 579 and 586.
[26] *Re Collins & Aikman Europe SA* (2006) EWCH 1343; on this case see Moss and Smith in Collins & Aikman, "International Caselaw Alert No. 12" – V/2006, 11. For a similar case in France, see M. Menjucq, "EC-Regulation No 1346/2000 on Insolvency Proceedings and Groups of Companies" (2008) 5(2) *European Company and Financial Law Review* 135-147, at 145.

received if it had been opened. In the realm of the EIR so far the Collins & Aikman rule had to be recognised by other member states pursuant to Article 4 of the EIR and could be described as an emanation of the particular flexibility of the English insolvency system.[27]

23 The amended Regulation, however, not only permits such strategy but also imposes this possibility on all member states in Article 36 of the future EIR. This is quite a remarkable step, given that this syntheticism implies an unequal treatment of the creditors. As a matter of fact, one might – with good reasons – argue that this time-honoured principle of equal treatment has always been over-estimated (particularly in Germany where it enjoys a status akin to a holy cow[28]); after all, one could easily describe the history of insolvency as an ongoing fight for privileges. However, dogmatic as well as psychological and economic reasons make a good case for taking the *par condicio* at least as something like the starting point or baseline for any insolvency law;[29] each deviation should be guided by and based on solid and coherent reasons. Otherwise there is a danger that lobbyism and political strength ultimately leads to fundamentally unfair distribution results and shifts, thus, the particular insolvency risk finally to the weakest who have no such tools of influence at hand.

24 Irrespective of this ground shaking intrusion into the existing insolvency systems, the new Article 36 of the EIR prescribes in every detail the new instrument. To be sure, there are numerous arguments speaking in favour of this rule's adoption. However, if it had been introduced by the national legislator, a long discussion would have accompanied more or less any single step of this process. Being introduced "from above", as it were – i.e. by means of supranational law – the new instrument is there and it will predictably take quite some time until it will be adjusted internally to the respective domestic insolvency laws and their specific policies.

25 To name but one example: Article 36(5) of the future EIR requests the approval of the "known local creditors" of the main proceeding's administrator's undertaking (as defined in paragraph 1). This is somewhat irritating given the fact that present Article 32(1) (future Article 45(1)) of the EIR allows all creditors to lodge their claims both in the main and the secondary proceedings. Thus, if this right of

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[27] To be sure, some commentators assumed that similar results could be achieved also under German law; see B. Meyer-Löwy and L. Plank, "Entbehrlichkeit des Sekundärverfahrens bei flexibler Verteilung der Insolvenzmasse im Hauptinsolvenzverfahren?" (2006) *Neue Zeitschrift für Insolvenzrecht* 622 *et seq*., or C. Köhler-Ma and J. Burkard, "Deutsches insolvenzrecht=inflexibel?" (2007) *Deutsche Zeitschrift für Wirtschafts- und Insolvenzrecht* 410 *et seq*.

[28] But see also the comparative study by G. Kodek, "Der insolvenzrechtliche Gleichbehandlungsgrundsatz in vergleichender Perspektive – eine Skizze, Zeitschrift für Insolvenzrecht" (2014) *KTS - Zeitschrift für Insolvenzrecht* 215 *et seq*.

[29] On this, see C. Paulus, "The Wonderful World of Privileges – The *Par Condicio Creditorum* vs Closeout-Netting" (2015) 11(4) *European Company and Financial Law Review* 479-632.

lodging is not confined to domestic creditors what justification could be given for the limitation of the approval. All the more so, since the main administrator's obligation under Article 32(2) (future Article 45(2)) of the EIR to lodge "his" creditors' claims in other proceedings as well and thereby taking into account these creditors' interests will always be determined by the consideration[30] whether the creditors will receive additional value in the other proceeding compared with a sole participation in the main proceeding. But they shall have no vote. A strange phenomenon that a unifying act creates differentiations of nationalities – provided that "local creditors" refers to nationality (what certainly is doubtful) – which actually should be overcome.

## Conclusion

26 The pieces which have been put together in the preceding observations mark only small details of a much larger picture – a picture that oscillates between harmonisation, homologisation and individualisation.[31] The phenomenon is nothing new in the recent European legal world. Earlier, company law, for instance, has undergone very similar processes – and it is now the insolvency law's turn to follow the same path. Given the indubitable advantages of competition also for the evolution of law it is to be hoped for that the European authorities refrain from all too aggressive unification efforts. The abovementioned Recommendation from the Commission from 12 March 2014, demonstrates a high degree of impatience which appears to be the way that should not be pursued. Insofar, it will be fascinating to observe the subsequent steps in which the national and the European insolvency laws develop.

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[30] See C. Paulus, *EuInsVO* (4th ed) (2012, C.H. Beck, Munich), Article 32 paragraph 15.

[31] On this see also P. Mears and S. Pandya, "Convergence in National and International Insolvency Laws Since 2002" (2013) 7(1) *Insolvency and Restructuring International* 12-19; C. Paulus, "Rechtsvergleichung im Nationalen und Internationalen Insolvenzrecht: eine Erfolgsgeschichte", in R. Schütze (ed), *Einheit und Vielfalt des Rechts: Festschrift für Reinhold Geimer zum 65 Geburtstag* (2002, C. H. Beck, Munich), at 795 *et seq*.