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# REALISATION OF THE EU INSOLVENCY REGULATION IN GERMANY, FRANCE AND THE NETHERLANDS

Bob Wessels[1]

## Introduction

With the introduction of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings, that came into effect May 31, 2002[2], the European Union (Denmark excluded) has introduced a legal framework for dealing with cross-border insolvency proceedings. The Regulation is directly applicable in the Member States for all insolvency proceedings opened after 31 May 2002.[3] All the rules the Regulation provides for apply directly: the international jurisdiction of a court in a Member State to open insolvency proceedings, the choice of law (or: private international law) provisions, the (automatic) recognition of these proceedings in other Member States and the powers of the 'liquidator' to act in the other Member States. A Member State can not divert from the contents of the Regulation. Opposite to another EC measure, a Directive, a Member State has no authority to 'implement' a Regulation. As Recital (8) to the Regulation puts it: 'In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Community law measure which is binding and directly applicable in Member States. Nevertheless, as far as I am able to oversee, in the UK, Germany, France and in the Netherlands, it has been recognized that certain measures are necessary to put the Insolvency Regulation into practical effect, in order to secure its seamless operation in the domestic legal environment. One can think of measures of a procedural nature, like: should the request for opening of an insolvency proceeding expressly ask for a main or a secondary proceeding (art. 3(1) or art. 3(2) Insolvency Regulation (InsReg))?. Or: is the court obliged to look into its international jurisdiction ex officio?, or: will a foreign liquidator, in submitting his requests in the proceedings of another Member State need mandatory administrative support (e.g., by a clerk or court official)? In some cases the better coordination of main and secondary proceedings has to be facilitated. Can a liquidator in main proceedings seek a stay (as meant in art. 33 InsReg) in a secondary proceeding which is pending in another member State? May he require to terminate this stay (and the necessity to determine which court in the other Member State is authorised to deal with this request, the possibility of an appeal, and the question who is eligible to make an appeal)?, or: what procedural additions have to be in place with regard to the application for the ending of a secondary proceeding (art. 34 InsReg), to convert earlier proceedings (art. 37 InsReg), to issue the request concerning preservation measures (art. 38 InsReg), or the proposal for a rescue plan by the liquidator (art. 34 InsReg), in case e.g. in domestic law only a debtor himself is allowed to issue said proposal. Other tiny gaps between the Regulation's contents and national legislation can be detected in specific details of publications or registrations, e.g. the method and contents with regard to registration in a national Bankruptcy register of a foreign proceeding, or: which register to use when these registers are not centralised? The same goes for method and content of registration of certain facts with regard to third party rights, for instance the

[1] Partner Holland Van Gijzen Attorneys at law, Rotterdam, The Netherlands; Professor Business Law 'Vrije' University, Amsterdam; 'Commerzbank' Visiting Professor Institute for Law and Finance, Frankfurt, Germany. This paper was presented to Insol International Academics meeting on 'Multinational Insolvency Proceedings – Cooperation among Nations', Las Vegas, Nevada, USA, 20/21 September 2003.

[2] Council Regulation (EC) No. 1346/2000 of 29 may 2000 on insolvency proceedings, Official Journal L 160 of 30 June 2000.

[3] See Moss and Smith, Commentary on Council Regulation 1346/2000 on Insolvency Proceedings, in: Moss, Gabriel, Ian F. Fletcher and Stuart Isaacs (eds.), The EC Regulation on Insolvency Proceedings – A Commentary and Annotated Guide, Oxford University Press (2002), and Bob Wessels, European Union Regulation on Insolvency Proceedings: An Introductory Analysis, published by American Bankruptcy Institute (2003).

necessity of adaptation of a country's national Trade Register or the determination of the sources of publications (official gazette/newspaper) and the languages these publications have to be fulfilled in. In short, the list of legal measures that aim at seamless compatibility between the Regulation on the one hand, and a Member State's domestic law on the other may seem endless.

**Germany, France, The Netherlands**

In 1999 in Germany, the new Insolvenzordnung in Germany came into being. The original proposal to insert provisions on international insolvency law in this Act was taken out of the overall proposals for renewal of German insolvency law by the German Republic's parliament ('Bundestag') in 1995. The approach was taken at that time to await the introduction of (what now is) the EU Insolvency Regulation. After its entry into force of the EU Regulation only ten months later, on March 20, 2003, the new German international insolvency law took effect.[4] It is an autonomous legal domain for international insolvency law, fundamentally based on the EU Regulation's basics and system and inserted as Part XI (International Insolvency Law, § 335 – § 358) in Germany's Insolvenzordnung (InsO).[5] Furthermore, as a second part of the renewed legislation Article 102 Insolvenzordnung has been drastically changed. It presently carries as a heading Realization ('Durchführung')[6] of the Insolvency Regulation and contains eleven provisions.[7]
In France, the insolvency legislation itself has not been altered. The French Ministry of Justice has issued a *Circulaire relative à léntrée en vigueur du règlement no. 1346/2000 du mai 2000 relatif aux procédures d'insolvabilité*[8]. This 'Circulaire' with regard to the Insolvency Proceeding is a twenty-pages letter addressing the key points of the Regulation, providing clarifications with regard to its width. Although it outlines and introduces in quite some detail the contents of the Regulation, it too contains proposals for solutions for certain difficulties in the Regulation's applicability in France. The latter are expressly brought forward under the condition of the sovereign nature of the Regulation.[9]
March 2003 may be regarded as a fruitful month for international insolvency law, as in addition to Germany and France, also in the Netherlands a renewed proposal for an Act for Realization of the Insolvency Regulation has been send to Dutch parliament.[10] The Dutch proposal contains some fifteen articles.[11]

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[4] See for its text, including a 17 pages Elucidation (all in German language): Deutscher Bundestag, 15. Wahlperiode, Drucksache 15/16 (25.10.2002) (<<www.bmj.bund.de>>).
[5] See Bob Wessels, Current developments Towards International Insolvency Law, which article deals with these developments in Germany, Austria, Spain and Poland. Paper presented at Insol International Academics meeting on 'Comparative Approaches to Insolvency', Las Vegas, Nevada, USA, 20/21 September 2003, in: International Insolvency Review (forthcoming).
[6] One should be aware that Germany, France and the Netherlands for the material I present here do not provide translations into English. The ones I provide are my own, e.g. 'Durchführung' may also reflect notions like 'realisation' or 'administration'; no responsibility is accepted for any discrepancies with authentic texts. The foreign texts referred to on websites have been lastly visited 28 August 2003.
[7] For literature: Liersch, *Deutsches Internationales Insolvenzrecht* (German International Insolvency Law), NZI, Heft 6/2003, p. 302.
[8] See: Bulletin Officiel Du Ministére de la Justice no. 89 (1er janvier – 31 mars 2003; CIV 2003-05 D4/17-03-2003 NOR: JUSC0320134C) at <<www.justice.gouv.fr/actua/do/dacs89c.htm>>.
[9] For literature: Dupoux, Measures taken in France, in: Eurofenix, Newsletter Insol Europe, Summer 2003, p. 10. See for a detailed account of the application of the EU Insolvency Regulation in relationships between Germany and France: Niggemann and Blenske, *Die Auswirkungen der Verordnung (EG) Nr. 1346/2000 auf den deutsch-französischen Rechtsverkehr* ('The Effects of the EU Insolency Regulation on German-French Judicial Matters'), NZI, Heft 9/2003, p. 471ff.
[10] The original draft-Act (Parliamentary file 28 654) had been issued to Parliament in October 2002. The Act followed a Circulaire of the Dutch Ministery of Justice, which was addressed to (mainly) the associations of judges and of legal practitioners. The purpose of the Circulaire is merely the same as explained for the Franch *Circulaire*. Those reading the Dutch language may visit <<www.overheid.nl>>.
[11] Those fifteen alter especially the provisions in the Bankruptcy Act with regard to liquidation ('faillissement'). Some other ten provisions apply these same renewals to one of the other insolvency proceeding the Act contains:

In this article I will describe some of the most notable issues in the three aforementioned documents.[12] It may be noted that the issues I touch upon are only a selection of all matters at issue. Where appropriate some comparisons will be made.

**International jurisdiction**

In the Netherlands the request to open insolvency proceedings[13] should provide such information that the court is able to judge whether it has jurisdiction as meant in art. 3 InsReg (art. 4(4) Dutch draft). In general the view is taken that this information can be brief. For legal persons, mention should be made of its registered office, while this results in the (rebuttable) presumption that this is the place of the debtor's centre of main interest (COMI). Where this presumption does not help the applicant – because the registered office is not in the Netherlands – it is important that the applicant provides information to verify whether the debtor possesses an establishment as meant in art. 2(h) InsReg.[14] The obligation to pose aforementioned information is limited to the EU territory. In a case that does not involve the application of the InsReg, an applicant can limit himself to provide information that results in that conclusion. In that case the applicant has to further information with regard to the jurisdiction of the court when e.g. the debtor or the court do request so. It should be noted that the applicants' duty (to provide sufficient information) is not sanctioned.[15]
When outside of the Netherlands a main insolvency proceeding has been opened, art. 6(1) of the Dutch draft provides that the registrar ('griffier') of the court invites the foreign liquidator without delay to present his views with regard to the request for opening of a secondary proceeding within a period to be decided by the court. The views of the liquidator of the foreign main proceedings are rightly valued as useful for the coordination between both proceedings.
A hot debated question in Dutch literature is whether, and if yes, to what extend, the judge opening the insolvency proceeding should in his judgement explicitly account for the type of proceeding opened (main or secondary proceedings). Originally in the Netherlands the legislator took the view that it was not necessary for the court to expressly provide any information referring to its international jurisdiction supporting his decision, laid down in the judgment which opened an insolvency proceeding. This judgement could have the type of proceedings (main or secondary) unmentioned. The position was taken that the Regulation would not allow for the recognition of a judgement in another member State by making it dependent of the stipulation that the judgement expressly disclosed the type of proceeding. Quite rightly in literature it has been stated that a duty to account for certain specifics in a judgement can derive of a country's Constitution. Furthermore, it has been brought forward that the presumption of the Regulation is that a judge ex officio has to verify whether the Regulation applies and what type of proceeding is opened. This presumption one recognises too in the provisions with regard to publication and registration in a public register (art. 21 and art. 22 InsReg).[16] Although the Dutch Minister of Justice is not convinced by these arguments[17], the renewed art. 6 lid 4

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'surseance van betaling' (moratorium or reorganisation) and 'schuldsaneringsregeling natuurlijke personen' (fresh start for natural person-debtor).

[12] It should be noted that, allready before May 31, 2002, in the UK a set of five statury instuments has been adopted to ensure compatibility between UK law and practice and the Regulation, see Moss et al, p. 332.

[13] Only the French *Circulaire* provides guidance in detecting which nature of proceedings qualify as 'collective insolvency proceedings which entail the partial of total divestment of a debtor and the appointment of a liquidator' and therefore are subject of the scope of the Insolvency Regulation, e.g. the proceeding with regard to director's liability for not paying social insurance contributions is regarded as not being based on 'insolvency'.

[14] The French *Circulaire* (I.2.2.1) explains that a simple bank account and the existence of an isolated asset does not constitute an 'establishment'.

[15] In the Netherlands to be able to request for the opening of an insolvency proceeding one needs the assistance of a procurator litis ('procureur'), which applies e.g. in case a foreign liquidator in the main proceedings requests for a stay of the liquidation in a secondary proceedings in the Netherlands or the termination of that stay (art. 33(1) InsReg).

[16] See: Polak/Wessels X, Internationaal insolventierecht (*International insolvency law)*, 2003, par. 10415.

[17] It should be noted that the German Elucidation (p. 15) holds that the Insolvency Regulation indeed presumes that every court has to prove its own international jurisdiction.

Dutch draft now contains the opposite. When a Dutch judge derives its international jurisdiction from the Insolvency Regulation, the judgement opening the insolvency proceeding should state whether it concerns a main or a secondary proceeding. The provision as it reads now has been introduced to clarify – also (to judges) in other countries – the consequences of a judgement of a Dutch court, because these consequences are so different (main proceeding with 'universal' effect; secondary proceeding only with 'territorial' effect). The provision, too, aims to prevent that a court in another Member State has to do research into what a Dutch court actually has decided.
Both the German and the French Minister of Justice have taken this latter view, as the UK had done, from the first instance. Art. 102 § 2[18] Insolvenzordnung (InsO) says: when it can be assumed that assets of the debtor are located in another Member State (than Germany), the judgement with regard to opening of the insolvency proceedings should summarily deal with the actual facts and the judicial considerations that lead to the international jurisdiction of the German court according to art. 3 InsReg. The French *Circulaire* (under I.2.3) stresses the importance of describing expressly the bases of the court's international jurisdiction (main of secondary). It holds as the ideal situation that the jurisdictional criteria will be discussed and argued during the hearing. The *Circulaire* explains too that French internal law may not hinder the application of the Regulation. Therefore the specific French provision that whenever the registered office is transferred within six months prior to the opening of the insolvency proceedings, the court of the previous registered office will have jurisdiction, can not be applied. Nevertheless, the *Circulaire* reserves its applicability in cases of fraud (I.2.1). This seems in contrast with what the EU Insolvency Regulation would allow, unless the statement can be seen as a starting point for the interpretation to rebut the presumption of art. 3 EU InsReg that the place of the registered office of a company or a legal person shall be presumed to be the centre of its main interests.

**Conflict of international jurisdiction**

Another strongly debated issue in the Netherlands is the one on the possibility of conflict of jurisdiction. As there is only one COMI of a debtor the Dutch Minister takes the view that according to Recital 22 of the Regulation that '…… recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise the court's decision'. The Dutch Minister of Justice holds that the cited Recital makes clear that the judgement of a court in another Member State, opening an insolvency proceeding, may not be tested: every other judge in a Member State has to abstain from opening (a 'second') 'main' insolvency proceedings. In Germany this rationale has lead to a material provision in art. 102 § 3 InsO, under the heading: To prevent conflict of jurisdiction. The German legislator aims to provide more precision to the 'principle of mutual trust'.
Art. 102 § 3 seeks to prevent two main categories of conflict of jurisdiction, positive conflict (section 1) and negative conflict (section 2). Art. 102 § 3(1) determines that in case a court of another Member State has opened main proceedings, a request to open such main proceedings for a German court is to be disallowed, as long as the main proceedings in the other Member State are pending. The German legislator strongly stresses that German courts have to respect the judgement which opens the insolvency proceeding without materially testing this judgement. In case the German court is unaware of the opening of main proceedings in another member state, art. 102 § 3(1) continues to determine that main proceedings opened in Germany will not be continued. § 3(1) furthermore authorizes the foreign liquidator to claim before the German court the priority of his proceedings. Art. 102 § 3(2) seeks to avoid a negative conflict of jurisdiction by providing that in case a court of a Member State has denied its international jurisdiction according to art. 3 InsReg, because courts in Germany will have jurisdiction, the German court is not allowed to reject the opening of the insolvency proceedings

[18] Art. 102 § 1 deals with Germany's domestic competence of a court.

on the grounds that a court in this another Member State has jurisdiction. The German court will of course be allowed to deny its jurisdiction because another court of another member State seems to be the court with international jurisdiction.
In case the German court – unaware of the opening of main proceedings in another Member State – has opened main proceedings and according to art. 102 § 3(1) is not allowed to continue these proceedings, the German court ex officio institutes the proceeding in the favour of the foreign court, after having heard the German liquidator and the debtor. Will indeed these proceedings be set up, every creditor has the right to object (art. 102 § 4(1)). The objection could be that instituting proceedings abroad influences the right to start secondary proceedings in Germany. The German legislator recognises that this method of instituting proceedings elsewhere does not have retroactive effect and harmonises the (unilateral legal) effects of the foreign main proceedings with the fall of the German proceeding. Art. 102 § 4(2) states that legal effects of the German proceeding, already in force and not limited to the duration of the proceedings, will stay in force when they conflict with legal effects of the foreign main proceeding as far as they influence Germany. This rule also applies to legal acts of the German liquidator or acts from third parties against him. Rather unique seems to me art. 102 § 4(3) by creating a duty for the German court to communicate with the court in the other Member State. Before the aforementioned method of instituting of proceedings the German court informs the foreign court, which supervises the main proceedings. The information should contain (i) the way the proceeding to be instituted has become known, (ii) which publications and registrations already have been made, and (iii) who the liquidator is. The decision contains a reference to the foreign court, which has to be named. This court will receive a transcript. This arrangement has been put in place to secure the position of the foreign liquidator (to take measures that can not wait) and to safeguard that the debtor will not be reinstated in his rights to manage and dispose of his assets in Germany. The German liquidator has to handover these assets to the foreign liquidator or to secure these on his behalf.

**Publications**

The Dutch Draft and the German article 102 do not contain any specifics with regard to the evidence abroad of the liquidator's appointment (art. 19 InsReg). The French *Circulaire* (II.4.1) requires a copy of the appointment, certified by an authority ('une autorité'), who may be the registrar. It is suggested that the opening judgement in French should specify the tasks of the appointed liquidator. It is stated that the liquidator carries the burden of proof of the contents of his local law (lex concursus), by way of a written statement ('certificat de coutume') or an equivalent notice, e.g. containing translations provisions of the law.
At the request of a foreign liquidator of a main or a secondary proceeding in the Netherlands the registrar ('griffier') of the Court in The Hague notifies without delay the information as meant in art. 21 InsReg. The data have to be provided to the Registrar in Dutch, English, German or French. One may expect to use sworn translations, although the Dutch draft is silent on this issue. According to art. 23 InsReg the costs of publication will be borne by the foreign liquidator. Art. 19b Dutch draft deals with the publication in a public register (as provided for in art. 22 InsReg). It is a centralised publication in the Insolvencyregister of the Court in The Hague.
In Germany the request to make public the information (ex art. 21 InsReg) has to be provided by the foreign liquidator to the German court, which is the court that has jurisdiction as meant in § 1 (in general the German court of the district where the debtor has his COMI). The Court is allowed to ask for a translation to be provided by a sworn translator. When the debtor possesses an establishment in Germany the public announcements follow ex officio by the Court. Both The Netherlands and Germany make use of the possibility ex art. 21(2) InsReg to require mandatory publication when the debtor possesses an establishment (art. 2(h) InsReg) in the respective countries. The publication of data in public registers follow in Germany the same course (§ 6(1)). In France the explanation in the *Circulaire* takes the same view. The Dutch legislator on the other hand is of the opinion that registrations in a public register directly flow from art. 22 InsReg. In Germany art. 102 § 6(2) provides some alignment: form and content of the registrations will be adapted according to German law, which includes substitution of unknown foreign registrations. When requests for notification or registration

are directed to the incompetent court in Germany, this court has a duty to forward, without delay, the request to the court that indeed has jurisdiction, and a duty to inform the applicant. Art. 102 § 7 provides for an appeal procedure when a request for notification of registration is denied.
Art. 21(1) and art. 22(1) InsReg provide that the liquidator 'may' request the publication and the registration. The *Circulaire* reads these provisions in the way that the registrar ('greffier') of the French court is not allowed to reject the request for publication from a foreign liquidator. The essentials of the opening judgements should be published, including the fact whether the proceeding is a main or a secondary proceeding.
While exercising the rights of the creditors in the main proceeding as provided for in art. 32 InsReg, the *Circulaire* disallows creditors from lodging their claim in the secondary proceedings if the liquidator of the main proceedings has done so. He is presumed to be empowered by the creditors.

**Rescue plan in secondary proceedings**

Art. 34 InsReg, second sentence, requires that in secondary insolvency proceedings a rescue plan, a composition or a comparable measure (without liquidation) shall not become final without the consent of the liquidator in the main proceedings; failing his agreement, however, it may become final if the financial interests of the creditors in the main proceedings are not affected by the measure proposed. Where this provision would not provide the authority of the court in the Netherlands to approve of such a rescue plan (the approval of the court is a mandatory requirement), it is necessary to have a rule in place that gives the court power to act in case the foreign liquidator although not refusing his consent, would not approve. According to art. 153 of the Dutch draft the court may withhold its approval when the foreign liquidator withholds his consent, unless the court is of the opinion that the plan does not affect the financial interests of the creditors in the main proceedings. Art. 172a Dutch draft confirms what already is contained in art. 34(1) InsReg, the authority of the foreign liquidator to issue directly a rescue plan in these secondary provision. Before May 31, 2003, in the Netherlands only the debtor was given this opportunity.
The German legislator aims to avoid the troublesome situation that a creditor who did not give his consent would lodge his claim in the main proceedings, where a creditor who did give his consent but who's claim has not been satisfied in the secondary proceeding – his claim is regarded as a natural obligation ('Naturalobligation')[19] – could not lodge the unsatisfied part of his claim in the main proceedings. For this reason § 9 says that when a rescue plan leads to any restriction of the rights of the creditors, the court only may approve the plan when all creditors have given their consent to the plan. The wording mirrors art. 34(2) InsReg, in an aim to align German law. The German provision of art. 102 § 10 provides that during the stay of the process of liquidation in the secondary proceedings (art. 33 InsReg), which can be requested by the foreign liquidator in the main proceedings, the creditors with a right of pledge ('Absonderungsrecht') receive interest.
Art. 247d Dutch draft builds in the procedural requirements necessary to be fulfilled when according to art. 37 InsReg a foreign liquidator wishes to convert previously opened insolvency proceedings into a proceeding that aims at liquidation. The *Circulaire* recognizes this possibility without further suggestions. Probably French law is already tailored to allow for this conversion.

**Information to the creditors**

In addition to the quite detailed provisions of providing information to all creditors abroad (art. 40-42 InsReg) in Germany § 11 obliges that next to information with regard to the judgement opening the insolvency proceedings, creditors who have their habitual residences, domiciles or registered offices elsewhere in the EC receive information on all the consequences of not lodging a claim in time. Art. 40 InsReg provides that the information is given by the court or by the liquidator. Art. 102 § 11 provides that the court can instruct the liquidator to do so. In France, the *Circulaire* (II.2.1.1) reads art.

[19] A moral duty of the debtor to pay the discharge of his debt to the creditor. When he would do so the idea is that this payment is legally valid and is not to be seen as a gift.

40 InsReg (duty to inform known creditors) as a duty to inform all creditors in all Member States; this duty also lays on a French liquidator who is appointed in a secondary proceeding. Therefore he will have to obtain a list of all creditors of the company or legal person ('personne morale') including those situated in other Member States, even in cases when their claims do not relate to the activity of the company in the state the court of which has opened the proceedings. The *Circulaire* specifies that the information given by the liquidator in accordance with articles 40-42 InsReg must contain particular matters specified by the French insolvency rules. The French liquidator has the right to ask foreign creditors to translate their proof of claims, including related supporting documents.
Although a main insolvency proceeding opened in another Member State does not affect the rights in rem of assets located abroad (art. 5 InsReg)[20], the *Circulaire* qualifies it as prudent to inform creditors with rights in rem as they are also under the obligation to give notice with regard to their claims. A failure to duly give notice of their claim can, however, not prejudice their rights in rem.[21]

**Recognition and enforceability of related judgements**

As indicated earlier, both the Dutch, German and French rules provided for a countless number of other provisions aiming to alter domestic law and make it compatible with the EU Insolvency Regulation. The countries take the same approach to insolvency-related judgements: art. 5a of the Dutch Act to Realize the Brussels 2003 Regulation on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters ('Uitvoeringswet EG-executieverordening') is declared applicable by analogy to all judgements as meant in art. 25(1) InsReg. The aim of the provision is to create a seamless fit between aforementioned Brussels 2003 Regulation and the Insolvency Regulation. Art. 102 § 8 Insolvenzordnung makes the same type of connection between the two, as the *Circulaire* (V) does too.

**Conclusion**

In this article I have dealt with a few of the compatibility issues Germany, France and the Netherlands took into account in order to have the EU Insolvency Regulation operate efficiently. Detailed legislation in the three countries provide a better knitting together of the Regulation and domestic (procedural) insolvency law. It is quite surprising to see that in the respective countries some of the issues I posed in the beginning of this article are taken care of in the law of all discussed countries, some of them only in two or one of them and some are still open. In the insolvency procedural practice most of the times the devil is in the detail. Here, too, it is notable that e.g. the issue of publication and registration all three countries address, one sees differences (in courts authorised, in languages to use, in form of translations, in type of publications). In cases domestic legislation is silent, future court cases may fill in gaps. Judges may take guidance in their decisions of the rationale of the Regulation, especially contained in Recitals (2) and (4) of the Regulation, in that the proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively, and in the prevention of 'forum shopping', being the necessity to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position.

[20] See: Wessels, The Secured Creditor in Cross-border Finance Transactions Under the EU Insolvency Regulation, in: Journal of International Banking Law and Regulation 2003, Volume 18, Issue 3, pp. 135ff.
[21] In French proceedings the inconsiderate creditor who possesses a right in rem to which an asset situated in another Member State is subjected, loses his right for distribution on the assets of the debtor company; he may however exercise his rights on the assets in the Member State where these assets are situated. The French legal rule here cannot affect the position provided for in art. 5 InsReg. The same is true for the Netherlands, although the Dutch draft is silent here.