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# REGULATION (EU) NO. 2015/848 - A MEANS OF STREAMLINING INSOLVENCY PROCEEDINGS CONCERNING A DEBTOR WHOSE CENTER OF MAIN INTERESTS IS LOCATED WITHIN THE EUROPEAN UNION *

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**Abstract:** *This article aims at presenting the relevant news brought by the Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings [1] , which entered into force on June 26, 2017, thereby repealing Regulation (EC) no. 1346/2002 of May 29, 2000 on insolvency proceedings[2]. Through the new regulation, the legislator of the European Union has pursued a reform of the previous regulations, which contributes to streamlining the insolvency proceedings taking place in the European Union Member States and which have cross-border effects. The purpose of the analysis is to highlight and contribute to the harmonization of the application of the national insolvency regulations of the Member States of the European Union when the insolvency proceedings are likely to apply different regulations or more regulations. The conclusions of this study may contribute to an improvement in the application of Regulation (EU) No. 2015/848 and / or to an easier understanding.*

**Keywords:** *private law, commercial law, European law, insolvency law*

## I. Introduction

Any business and activity is defined by risk, that is, the chance of winning or the possibility of losing, an essential attribute of the free, functional market economy and which ensures free competition. The business risk also involves insolvency risk[3].

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[1] Published in the OJ L141,5.6.2015, p. 19

[2] Published in OJ L160, 30.6.2000, p. 1

[3] The insolvency status of the debtor is not relevant in terms of insolvency law, but its analysis is important from the perspective of business risk and insolvency risk, the last notion being increasingly relevant for the prevention of pre-insolvency and / or insolvency.

Generally, commercial transactions act as commutative contracts concluded with the clear intention of winning, by the contracting parties, while the business risk is not a condition of validity of the legal act, but only an element without which the transaction loses its commercial nature.

Failure within transactions concluded may have chain effects on the activity of a debtor who may become unable to meet his /her obligations towards the creditors, being obliged to declare insolvency, as its assets are characterized by the insufficient financial availability for payment of enforceable debts.

The essential element of the insolvency procedure is the state of insolvency [4], and its occurrence marks the beginning of the period of restriction of the debtor's rights and arising specific rights for creditors.

Insolvency is an area specific to commercial law, and the procedures established by the law for the prevention of insolvency and insolvency, are regulated in our country by a special law, respectively Law no.85/2014, known as the Insolvency Code[5].

Essentially, the Insolvency Code in the matter of business restructuring focuses on the following rules applicable to all pre-insolvency and insolvency proceedings in the Member States of the European Union, namely: encouraging insolvency prevention procedures by laying down the foundations of a legal and business culture in negotiations; supporting the reorganization procedure, at a rational economic and balanced level, vis-à-vis a viable and good-faith debtor; in the event of reorganization failure, the liquidation of the assets can also be done through a business transfer, with reasonable duration, while asset capitalization is effective.

Given the contemporary European economic context, insolvency is an area that must be based on the same guidelines in the European Union member states. At this level, there is a concern to ensure similar insolvency laws for all EU member states, and their similarity can only result from acquiring common guiding principles[6].

Going beyond the traditionalism of the continental law regarding the institution of bankruptcy, the opinions that seemed immutable regarding the "bankruptcy sanction", the American insolvency law has been the inspiration for the European Union member states legislation.

Pre-insolvency and insolvency proceedings, are today an effective remedy for the debtor who goes through either a period of financial difficulty or a state of insolvency.

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[4] The concept *of insolvency* is defined by art.5 pt. 29 of Law no.85/2014 on the insolvency prevention and insolvency procedures, as that state of the debtor's assets characterized by the insufficiency of the available funds for the payment of certain debts, liquid and enforceable

[5] Published in the Official Journal Part I no. 466/25.06.2014

[6] See Position of the European Parliament of 5 February 2014, the Council position at first reading of 12 March 2015 and position of the European Parliament of 20 May 2015

Insolvency is a field that merges the economic, the social and the legal issues, so that implementation of legal norms in this field must be based on logical reasoning.

As an interdisciplinary discipline, the implementation and the interpretation of insolvency-related legal norms, by the authorities applying this special procedure, and also by the parties involved, must be carried out on the basis of principles.

The principles established by the Law no. 85/2014 were based on the principles of the World Bank, the European Insolvency Principles and the UNCITRAL Legislative Guide on Insolvency Law.

The principles of the World Bank[7] is a tool of action with wide openness, in order to provide support for countries seeking to improve the legislative framework, to ensure an increasingly competitive legal system in the commercial field, to ensure an increasingly safe and predictable investment environment, to ensure economic growth.

These principles are grouped into 4 chapters, i.e.: legal framework for the protection of creditors' rights, risk-management rules, legal framework for insolvency proceedings and institutional regulations.

The European principles on insolvency[8] were edited by a group of experts from the International Insolvency Institute. These experts have shown that these principles are structured in 14 chapters and contain rules that represent the essence of European insolvency proceedings, reflecting the characteristics of the laws of the European Union member states. Thus, these principles highlight rules regarding the insolvency proceedings in general, the bodies and actors involved in the procedure, the effects of opening the insolvency procedure, the administration of the debtor's assets, the duties and remuneration of the insolvency practitioner, treatment of the creditors' debts, the status of the debtor's employees, the legal regime of the papers concluded by the debtor, the legal regime of the creditors' guarantees, the reorganization of the debtor, the administration of the debtor, the liquidation of the debtor's assets and the closing of the procedure. The purpose of these principles is stated by the group of experts and consists in the future adoption of a European Insolvency Code.

The UNCITRAL legislative guide[9] includes a selection of the guiding principles and objectives that any national insolvency law must propose. It comprises 4 parts. The first two parts were adopted in 2004 and refer to establishing and enacting the main objectives and the structure of the insolvency procedure, and the principles governing this procedure. The third part of the guide was adopted in 2010 and refers to the insolvency of the group of companies. The

[7] *The World Bank* – 2011 Principles for Effective Insolvency and Creditor/Debtor Regimes http://siteresources.worldbank.org/INTGILD/Resources/ICRPrinciples_Jan2011.pdf

[8] http:/www.iiiglobal.org/component/jdownloads/finish/39/405.html

[9] http:/www.uncitral.org/uncitral/en/uncitral_texts/insolvency/2004Guide.html

fourth part of the guide was adopted in 2013 and refers to the responsibility of the decision-making bodies of the companies in imminent state of insolvency.

The recommended principles[10] were enacted to be considered when implementing the insolvency legislation: inducing a degree of security at the relevant market level, to promote stability and economic growth; maximizing the assets and value of the debtor's assets; keeping a balance between bankruptcy and reorganization; ensuring fair treatment of creditors in the same category; ensuring an effective opening of the insolvency proceedings within a reasonable time; creating a legal regime to ensure fair distribution of funds among creditors; provision of a predictable and transparent legislation; recognizing the rights of creditors and establishing clear rules for the categories of creditors participating in the insolvency procedure; establishing a legal framework for cross-border insolvency.

## II. Brief considerations regarding cross-border insolvency from the perspective of Law no.85/2014

The Insolvency Code regulated in Title III Cross-border insolvency, these legal norms constituting, similar to the regulations in the field of private international law[11], the guide for identifying the law applicable when the insolvency proceeding involves extraneous elements.

Prior to approaching the concept of cross-border insolvency, we need to specify that the Insolvency Code defined the notions of *foreign court* and *foreign procedure*, with its forms: *main* and *secondary*.

According to art.5 pt.32 of Law no.85/2014, foreign court is defined as the judicial authority or any other competent authority according to the law of the State of origin, authorized to open and control or supervise a foreign procedure or to make decisions during the course of such a procedure.

According to art.5 pt. 49 of Law no.85/2014 the foreign procedure is the collective, public, judicial or administrative procedure, which is carried out in accordance with the insolvency legislation of a foreign state, including the provisional procedure, in which the debtor's assets and activity are subject to control or supervision by a foreign court, in order to reorganize or liquidate the debtor's business.

According to art.5 point 50 of Law no.85/2014 the main foreign procedure is the foreign insolvency procedure that takes place in the state in which the center of

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[10] *United Commission on International Trade Law*, Legislative Guide on Insolvency Law, New York, 2005

[11] Book VII - Provisions of private international law in Law no.287/2009 regarding the Civil Code reissued in the Official Journal Part I no.505/15 07 2011 for the legal norms of material law and Book VII - the international civil trial in Law no.134/2010 on the Code of civil procedure, reissued in the Official Journal no.247/10 04 2015

the debtor's main interests is located, and according to art.5 point 51 of Law no. 85/2014 the secondary foreign procedure is the foreign insolvency procedure, other than the main one, which takes place in the state in which the debtor has established its headquarters.

Regarding the cross-border insolvency art.273 of the Law no.85/2014 sets out that the internal regulation includes: rules for determining the law applicable to a private international law relation in the field of insolvency; procedural rules in litigation regarding the private international law relations in the field of insolvency; norms regarding the conditions under which the Romanian competent authorities request and provide assistance regarding the insolvency proceedings opened in the territory of Romania or of a foreign state.

We find that the legislator made reference to both the implementation of material and procedural law rules. In this context we believe that the regulation contained in art.342 paragraph 1 of the Law no.85/2014 according to which the provisions of this law are supplemented, to the extent that they do not contravene, with those of the Code of civil procedure and of the Civil Code, remains applicable, including those relating to the international proceedings and private international law.

In terms of insolvency, the private international law relations are the private law with an extraneous element relations, which are subject to settlement as a result of the insolvency procedure opening and under the conditions established by it.

We need to mention that, according to article 342 paragraph 2 of the Law no.85/2014, the provisions of Chapter I of Title III do not apply to private international law relations in the field of insolvency that fall under the scope of the EC Regulation no.1346/2000, repealed by EU Regulation No. 2015/848.

Consequently, the legal rules referred to in the Insolvency Code regarding cross-border insolvency will be applicable whenever we are not within the scope of the EU Regulation no. 2015/848, which includes special legal norms applicable to EU member states only.

Article 4 of the Civil Code and Article 3 of the Code of Civil Procedure, entitled *Priority application of the European Union law,* set out the principle according to which mandatory rules of the European Union law apply as a priority, regardless of the quality or status of the parties.

As it is well known, the regulation - normative act in the European Union law is mandatory is directly applicable, without transposition, in the national law of the European Union member states.

Thus, when the extraneous element comes from the European Union space, in the matter of cross-border insolvency, the EU Regulation 2015/848 will apply, while for all the others, the provisions of the Insolvency Code will apply, except for international treaties or conventions. In this respect, the Regulation (EU)

no. 2015/848 stipulates that this applies only to the proceedings concerning a debtor whose center of main interests is located in the Union, and before opening an insolvency procedure, the competent court must examine ex officio whether the center of the debtor's main interests or its headquarters are actually located within its jurisdiction[12]. In the case of the debtor - legal entity, it is presumed, until the contrary proof, that the center of its main interests is where the registered office is.

Regulation (EU) No. 2015/848 applies only to proceedings concerning a debtor whose center of main interests is located within the European Union

The rules of jurisdiction provided for in the Regulation establish only the international jurisdiction, i.e. designate the Member State whose courts may open the insolvency proceedings. The territorial jurisdiction within each Member State is established by the national law.

The competent court of a Member State must carefully check whether the debtor's main interests are indeed located in that Member State. In the case of a company, there is the possibility of reversing this presumption, for instance if the company central administration is located in a Member State other than the one where the registered office is located and if a comprehensive assessment of all the relevant factors establishes, in a verifiable manner by third parties, that the actual company management and supervision office and center of management of its interests are located in that other Member State. In the case of an individual who does not carry on an independent commercial or professional activity, this presumption can be reversed, for example, if most of the debtor's assets are outside the Member State in which the debtor has its usual residence or in if it can be established that the main reason of relocation was the opening of insolvency proceedings before the new court and if such opening could significantly affect the interests of the creditors whose business with the debtor was conducted before relocation.

If the specific circumstances give rise to doubts as to the court jurisdiction, it should ask the debtor to provide additional evidence to support his claims and, if the law applicable to the insolvency procedure allows it, to confer the debtor s creditors the opportunity to submit their viewpoints regarding the jurisdiction.

We believe that if the Romanian court, compared to the evidence taken, considers that it is not internationally competent to apply the debtor's insolvency procedure, the solution is to dismiss as inadmissible the request, similar to the situation in which the court would admit the general lack of jurisdiction of the courts, or of the Romanian courts[13].

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[12] In terms of procedural law this obligation confers efficiency to the provisions of art.131 of the Code of civil procedure according to which the judge must verify his/her competence, this time the one at the level of the European Union - international, before fulfilling any other duties

[13] See the provisions of art. 132 para. 4 Civil Procedure Code

**III. Aspects considered relevant in terms of cross-border insolvency from the perspective of Regulation (EU) no. 2015/848**

The enactment of this regulation aimed to make cross-border insolvency proceedings work efficiently and effectively. Corporate business are increasingly having cross-border effects and are therefore increasingly regulated in the EU law. Insolvency of such companies undermines the smooth operation of the domestic market, as there is a need for a Union act to require supervision of the actions to be taken regarding the assets of an insolvent debtor.

(EU) Regulation no. 2015/848 was adopted to improve implementation of some of the provisions of EC Regulation no. 1346/2000 in order to improve the effective administration of cross-border insolvency proceedings.

Regarding the *scope*, we show that Regulation (EU) no. 2015/848 applies exclusively to insolvency court proceedings, a set of special legal norms at the level of the European Union law, compared to Regulation (EU) no. 1215/2012[14].

The regulation refers to the concept of *confidential* insolvency proceedings, considering that they are not subject to this normative act.

With respect with *the scope,* we show that Regulation (EU) no. 2015/848 applies to collective and public procedures based on insolvency legislation, which are aimed at saving, adjusting the debts, restructuring or liquidating the assets of a debtor in financial distress[15]. The provisions of the Regulation do not apply to insurance undertakings[16], credit institutions[17], investment firms and other institutions or companies that are the subject of Directive no. 2001/24 /EC [18] and collective investment bodies.

The scope of this Regulation has been extended to procedures that promote the rescue of economically viable, but distressed businesses, and which give entrepreneurs a second chance. This includes rules that refer to the restructuring of a debtor at a stage where there is only a probability of insolvency, and to rules that allow the debtor full or partial control of its assets and business. This refers to debt remittance or adjustment of debts procedures in relation to consumers and individuals who are self-employed, for instance by reducing the amount payable

[14] Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on legal jurisdiction, recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1)

[15] According to art.5 paragraph 1 pt. 27 of the Law no.85/2014 the debtor who is in financial distress is the debtor who, although executes or is able to execute its obligations, has a short term liquidity degree and / or a high ong-term endebtness degree, which may affect the fulfillment of the contractual obligations in relation to the resources generated by the operational activity or with the resources attracted through the financial activity

[16] Law no.85/2014 regulates the bankruptcy of credit institutions - articles 204 - 241

[17] Law no.85/2014 regulates the bankruptcy of insurance / reinsurance companies - articles 242 - 272

[18] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganization and liquidation of credit institutions (OJ L125, 5.5.2001, p. 15)

by the debtor or by extending the payment term granted to it. Given that such procedures do not necessarily involve the appointment of an insolvency practitioner, they fall under the regulation if operate under the control or supervision of a court. In this context, the term *control* includes situations in which the court intervenes only following an appeal brought by a creditor or other interested parties.

The financial distress of the debtor is a patrimonial condition specific to pre-insolvency of the debtor and is not mistaken for the state of insolvency.

Regulation (EU) no. 2015/848 aimed at clarifying and extending the EC Regulation no. 1346/2000 in order to apply its regulations both to the insolvency prevention procedures (agreement with creditors and ad hoc mandate), and to insolvency procedures, regardless of the stage - judicial reorganization or bankruptcy[19].

The purpose of the regulation is, however, to avoid the parties to be tempted to transfer assets or legal proceedings from one Member State to another, in an attempt to obtain a more favorable legal situation to the detriment of the list of creditors (*judicial tourism*).

Regulation (EU) no. 2015/848 recommends that in case of relocation of the center of main interests, creditors should be informed at the right time about the new place where the debtor carries out its business, for example by drawing attention to the change of commercial correspondence address or by publicly announcing the new place by other appropriate means.

Insolvency proceedings do not necessarily imply the intervention of a judicial authority, each Member State being free to choose the internal insolvency regulations. Therefore, the term "court", used in the regulation, in certain provisions, must be understood broadly as including a person or a body empowered by the national law to open the insolvency proceedings.

Regulation (EU) No. 2015/848 took into account the fact that, due to the major differences in the national law, introduction of universally applicable insolvency proceedings throughout the EU is not useful. In this context, application without exception of the law of the state in which procedures are opened, often leads to difficulties. For example, in the national laws, the regulations are very different in terms of guarantees[20]. In addition, the preferential rights of certain creditors within insolvency proceedings are, in some cases, completely different. In this respect, special rules regarding the law applicable to certain rights have been established and significantly important legal relationships (for example, real rights and employment contracts).

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[19] *M. Comşa*, Regulation on insolvency proceedings, Jurisprudence of the Court of Justice of the European Union, Universul Juridic Publishing House, Bucharest, 2017, p.281

[20] The law-maker of the European Union refers here to the notion of guarantee of obligations, being known that the international law in civil matters - the civil codes, which complement the insolvency legislation, have much different concepts and notions, at the level of the Member States, in relation to the insolvency legislation that is much more convergent

Regulation (EU) No. 2015/848 allows the opening of the main insolvency procedure in the Member State in which the debtor's main interests are located. These procedures have a universal scope and include all the debtor s assets. For protecting various interests, the regulation allows the opening of secondary insolvency proceedings parallel to the main insolvency procedure. Secondary insolvency proceedings may be opened in the Member State where the debtor has its headquarters, in accordance with the case law of the Court of Justice of the European Union. The effects of the secondary insolvency proceedings are limited to the assets located in the state concerned. Unity within the EU is ensured by mandatory rules of coordination with the main insolvency procedures.

The insolvency practitioner in the main insolvency procedure or any other person qualified according to the national law of the respective Member State, may request the opening of secondary insolvency proceedings.

Regulation (EU) no. 2015/848 provides rules for determining the location of the debtor's assets, and the rules must be applicable when determining the assets included in the main or secondary insolvency proceedings or which enter into situations involving real rights of third parties.

Secondary insolvency proceedings may pursue different purposes, in addition to protecting the interests of local creditors. There may be cases where the set of assets subject of the debtor's insolvency is too complex to be administered in whole or the differences between the respective legal systems are so great that difficulties may arise due to the extension of the effects deriving from the legislation of the State opening the proceedings to the other Member States in which the assets are located. For this reason, the insolvency practitioner within the main insolvency procedure may request opening of secondary insolvency proceedings for an efficient management of the insolvency assets.

Secondary insolvency proceedings may also prevent the effective administration of the assets that are the subject of the main insolvency. The regulation sets out two specific situations in which the court notified with a request to open a secondary insolvency procedure should be able to, at the request of the insolvency practitioner in the main insolvency procedure, defer or refuse to open such a procedure.

Firstly, the Regulation confers the insolvency practitioner from the main insolvency procedure the possibility to make a *commitment* to the local creditors, according to which they will be treated as if a secondary insolvency procedure had been opened. This commitment must meet a number of conditions set out in the regulation, in particular be approved by the most qualified local creditors. If such a commitment has been made, the court referred with a request to open a secondary insolvency procedure may refuse the respective application when it considers that this commitment adequately protects the general interests of the local creditors. When evaluating these interests, the court should keep in mind that the commitment has been approved with most qualified local creditors.

Regarding approval of such a commitment we consider that the national regulations should be complied with. More specifically, when, on the grounds of the national law for the approval of a reorganization plan, they should also apply to approve the commitment. If there are different procedures to adopt restructuring plans under the national law, Member States should designate a specific procedure that should be relevant in this context.

Secondly, the Regulation provides for the possibility for the court to temporarily suspend the opening of the secondary insolvency proceedings, when a temporary suspension of the individual enforcement proceedings has been granted within the main insolvency procedure, in order to maintain the efficiency of the suspension granted in the main insolvency proceedings. The court has the possibility to grant a temporary suspension if it deems that adequate measures are in place to protect the general interest of local creditors. In such a case, all creditors who might be affected by the result of the negotiations on a restructuring plan should be informed about these negotiations and should be allowed to be involved.

To ensure actual protection of the local interests, the insolvency practitioner in the main insolvency procedure may not capitalize or abusively move assets located in the Member State in which an office is located, in particular, in order to circumvent the possibility that such interests are effectively satisfied, in the event a secondary insolvency procedure is opened later.

The main and the secondary insolvency proceedings can contribute to the efficient management of the assets that are the subject of the debtor's insolvency or to the efficient capitalization of the assets if there is an adequate cooperation between the actors involved in all the parallel proceedings. The good cooperation implies that the various insolvency practitioners and the involved courts cooperate closely, in particular through a sufficient exchange of information. To ensure the predominant role of the main insolvency procedure, the insolvency practitioner within this procedure has available several possibilities to intervene in the secondary insolvency procedure which is carried out in parallel with the main one. The insolvency practitioner is able to propose a restructuring plan or an agreement with creditors or to request suspension of the recovery of assets in the secondary insolvency procedure. In their cooperation, insolvency practitioners and courts should consider the best practices for cross-border cooperation in insolvency cases, as set out in the principles and guidelines for communication and cooperation adopted by the European and international law enforcement organizations active in insolvency, in particular the relevant guidelines developed by the United Nations Commission on International Trade Law (UNCITRAL).

For such cooperation, insolvency practitioners and courts may enter into agreements and protocols in order to facilitate cross-border cooperation of several insolvency proceedings from different Member States targeting the same debtor or companies member of the same group, when this is compatible with the rules

applicable to each of the procedures. Such agreements and protocols may have different forms, in the sense that they may be written or oral, different fields of application, i.e. vary from general to specific, and may be concluded between different parties. Simple general agreements may emphasize the need for close cooperation between the parties without addressing specific issues, while more detailed, specific agreements can establish a framework of principles that govern multiple insolvency proceedings and can be approved by the courts involved, when the national law requires so. They may reflect an agreement between the parties to take or refrain from certain measures or actions.

Similarly, courts in different Member States can cooperate by coordinating the appointment of insolvency practitioners. In this context, they may appoint a single insolvency practitioner for several insolvency proceedings targeting the same debtor or different member companies of the same group, provided that this joint appointment is compatible with the rules applicable to each of the proceedings, and in particular any requirement on the qualification and authorization of insolvency practitioners.

Regulation (EU) no. 2015/848 ensures the efficient administration of insolvency proceedings relating to the different companies belonging to a group [21].

Any creditor with its habitual residence, domicile or registered office in the EU shall have the right to register its application for admission of the receivable on the debtor's assets in any insolvency proceedings in progress in the European Union.

It is essential that the creditors who have their habitual residence, domicile or registered office in the Union are informed about the opening of an insolvency procedure regarding the assets of their debtor. To ensure fast transmission of information to creditors, Regulation (EC) no. 1393/2007 of the European Parliament and of the Council[22] is not applicable, considering that Regulation no. 2015/848 refers to the obligation to inform the creditors.

Regulation (EU) No 2015/848 provides for the immediate recognition of the decisions on the opening, conduct and closure of the insolvency procedure that fall within its scope and of the decisions directly related to this insolvency procedure. Therefore, automatic recognition means that the effects attributed to the procedure under the law of the Member State where the procedure was opened extend to all other Member States. Recognition of judgments made by the courts of the Member States is based on the principle of mutual trust. For this purpose, the grounds for non-recognition have been reduced to a minimum.

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[21] Law no.85/2014 contains special provisions regarding the insolvency of the group of companies - articles 183 - 203

[22] Regulation (EC) no. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the notification or communication in the Member States of judicial and extrajudicial documents in civil or commercial matters (notification or communication of acts) and repealing Regulation (EC) no. 1348/2000 of the Council (OJ L324, 10.12.2007, p. 79)

Regulation (EU) No. 2015/848 provides for unitary conflict rules, which replace, within their field of application, the internal rules of private international law. In the absence of contrary provisions, the legislation of the Member State of opening (*lex concursus*) shall apply. This conflicting rule is applicable to both the main insolvency procedure and the local procedures. *Lex concursus* determines all the effects of the insolvency proceedings, both procedural and material, on the individuals and the relevant legal relationships. It regulates all the conditions regarding the opening, the progress and the closing of the insolvency procedure.

The automatic recognition of an insolvency procedure to which the law of the State of the procedure opening is commonly applied may interfere with the rules governing the transactions in other Member States. To protect the legitimate expectations and the security of transactions in a Member State other than the state of opening the procedure, a number of exceptions to the general rule are foreseen.

For example, in the case of real rights, a special derogation from the law of the state of opening the proceedings was required, because such rights are of particular importance for granting loans (collaterals for debts). The justification, the validity and the extent of the real rights is determined by *lex situs* and it is not affected by the opening of the insolvency procedure. The holder of a real right may further capitalize the right to delimit the real guarantee from the assets. If the assets are subject to the law of the state where they are located, but the main insolvency procedure takes place in another Member State, the insolvency practitioner within the main insolvency procedure may request the opening of a secondary insolvency procedure in the jurisdiction in which the real rights have arisen, to the extent the debtor has one seat in the respective state. If no secondary insolvency proceedings are opened, any surplus obtained from the sale of an asset that is subject to real rights should be paid to the insolvency practitioner in the main proceedings.

Similarly, to protect the employees and the jobs, the effects of the insolvency proceedings on the continuation or termination of the employment relationships and on the rights and obligations of each party arising from these relationships are determined by the legislation that governs the relevant employment contract in accordance with the general conflictual rules. Moreover, if termination of the employment agreements requires the approval of a court or an administrative authority, the Member State in which the debtor's office is located retains the power to grant such approval even if no insolvency proceedings have been opened in that member state. Any other matter related to the insolvency legislation, such as the protection of employees' claims through preferential rights and the status that such preferential rights may have, are established by the law of the Member State in which the insolvency procedure was opened (main or secondary), except cases in which a commitment has been made, to avoid the secondary insolvency procedure.

For a better information of the creditors and of the courts and to prevent the opening of parallel insolvency proceedings, Member States are required to publish the relevant information in cross-border insolvency cases in an electronic publicly available register[23]. To facilitate the access of creditors domiciled in another Member State and of the courts based in another Member State to this information, the regulation provides the interconnection of such insolvency registers through the European e-Justice portal. Member States are free to publish relevant information in several registers and each Member State can interconnect in more than one register.

## IV. Conclusions

In our opinion, Regulation (EU) No. 2015/848 is a much more efficient and more *friendly* legal instrument for cross-border insolvency proceedings in the European Union area, compared to the former regulation. Its regulations are more clear and more accurate and we believe that they will have a greater application, being known that under the old regulations there were numerous cross-border insolvency proceedings that developed exclusively according to the national insolvency law, *avoiding the* provisions of the European Union law and due to the difficulty of their acquiring and implementation.

[23] The European Insolvency Proceedings Bulletin which interconnects the national Insolvency Proceedings Bulletin. According to art.5 pt. 6 of Law no.85/2014, the insolvency proceedings bulletin, called IPB, is the publication edited by the National Trade Register Office, which aims to publish summons, convocations, notifications and communications of the procedural documents performed by the courts, receiver/judicial liquidator after the opening of the insolvency procedure provided by this law, and of other acts that, according to the law, must be published.