

PUBLICITY (TRANSPARENCY) OF CROSS-BORDER INSOLVENCY PROCEEDINGS

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Abstract

The article insists on the legal solutions of the transparency of the cross-border insolvency. In this study, there were researched issues regarding the existing regulatory framework of the conditions of the cross-border insolvency publicity in the Republic of Moldova and the most important analysis being focused on the provisions of the European and international regulatory framework, which demonstrates a tendency to publish the information on the insolvency procedure, in particular those with international character. The convention of the Nordic states also includes provisions regarding the publicity of bankruptcy proceedings in the contracting states where the debtor owns assets, the disposition of insurance measures, legal assistance and the recognition of judgments between the contracting states. The publicity of the procedures in a sensitive matter subject to the internal legal framework, however at the international level this subject is not a very widespread since it involves additional time and additional costs as well as confidential issues of the parties (foreigners). The author finally comes with conclusions that can be implemented in both international and national regulations regarding transparency and publicity of the procedures in the insolvency process which comes out to be difficult and involved international issues and problems.

Keywords: *publicity; insolvency procedures; cross-border insolvency; jurisdiction; European case-law; harmonisation; cross-border business relations.*

JEL Classification: K33.

1. INTRODUCTION

Transparency in the realm of cross-border insolvency proceedings continues to hold a pivotal position within the context of today's intricately interconnected global economy. The escalating complexity of international financial transactions and the deep-rooted interdependence of businesses across geographical borders underscore the paramount significance of transparency throughout the insolvency process. This article analyzes profoundly into the legal measures aimed at elevating transparency in cross-border insolvency cases, with a focused lens on the Republic of Moldova. Through an exhaustive analysis of the prevailing regulatory framework and juxtapositions with international benchmarks, the

article accentuates the hurdles and potential solutions associated with advancing transparency within this intricate landscape.

2. CROSS-BORDER INSOLVENCY PROCEEDINGS

2.1. Principles governing cross-border insolvency proceedings

The bedrock of principles that govern cross-border insolvency proceedings, as identified by Bork, encompasses efficiency, transparency, predictability, and procedural justice. These principles stand as guiding lights for crafting insolvency protocols that not only incorporate these tenets but also adhere to them meticulously. However, it's noteworthy that within decentralized enterprise groups, the costs incurred during the negotiation and implementation of insolvency protocols might occasionally overshadow their potential benefits. Despite this, the adoption of such protocols is unlikely to compromise procedural justice or infringe upon the right to a fair trial. In fact, these protocols commonly amplify participation rights and meticulously outline notification prerequisites, reinforcing the interconnected nature of procedural justice and transparency (Bork, 2018, p. 7).

2.2. Efficiency and the role of insolvency protocols

Scrutinizing the efficacy of insolvency protocols within decentralized enterprise groups unveils a critical facet: the careful cost-benefit assessment of negotiation and execution. While the advantages of embracing an insolvency protocol are discernible, the expenses entailed by these endeavors might, in certain instances, surpass their advantages. It remains imperative to meticulously evaluate the specifics of each scenario, meticulously weighing the potential gains against the intricacies and costs. Such a nuanced evaluation serves as a compass for bolstering decision-making mechanisms within the realm of international insolvency (Bork, 2018, p. 6).

2.3. Procedural justice and implications for fair trials

Frequently, apprehensions arise regarding the possible repercussions of insolvency protocols on procedural justice and the right to a fair trial. In contrast to these concerns, protocols often weave provisions that not only amplify participation rights but also meticulously delineate stringent notification prerequisites. These provisions, far from diluting procedural justice, are structured to engender a more inclusive and transparent process, thereby aligning seamlessly with the bedrock principles of fairness. Consequently, the adoption of insolvency protocols generally serves as a catalyst for nurturing procedural justice instead of eroding it. It's unmistakably evident that these protocols are tailored to erect a structured and impartial framework for cross-border insolvency proceedings (Spark Legal Network, 2022).

2.4. Transparency as the cornerstone

The edifice of effective cross-border insolvency management is unequivocally founded on transparency (Wittle and McCourtie 2019, p. 32). The triumphant negotiation and embrace of an insolvency protocol hinge upon the vibrant involvement of stakeholders. The unequivocal exchange of information amongst concerned parties, especially within a decentralized context, emerges as a linchpin for informed judgments. Moreover, lucid channels of communication between courts emerge as pivotal components in sustaining transparency throughout the proceedings. Through such transparency, trust is nurtured, and the terrain is steered clear of potential conflicts or misinterpretations (Spark Legal Network, 2022).

2.5. Challenges and resolutions in information exchange

The intricacies of information exchange are navigated by the protocols in a nuanced manner. While the exchange of non-public information is indispensable for informed decision-making, limitations might materialize owing to concerns regarding confidentiality or conflicts of interest. Addressing these challenges necessitates a judicious calibration of information sharing, ensuring that a fine balance is struck between transparency and the safeguarding of sensitive data (Spark Legal Network, 2022).

2.6. Harmonization with national laws and jurisdictional norms

Central to the essence of insolvency protocols is their seamless alignment with national laws, jurisdictional norms, and pertinent legal frameworks. While these protocols pivot towards an international approach to insolvency proceedings, their harmonious integration with the distinct legal milieus of the concerned jurisdictions is of paramount importance (Kokorin and Wessels, 2021, p. 316). This harmonization not only fosters consistency and predictability but also underscores the overarching principles of equity in the application of protocols across geographical boundaries (Kokorin and Wessels, 2021, p. 317).

In a nutshell, Bork's bedrock principles of efficiency, transparency, predictability, and procedural justice manifest as a sturdy cornerstone for erecting potent cross-border insolvency protocols. While these protocols remain subject to an intricate cost-benefit analysis, their cardinal role lies in ameliorating procedural justice, transparency, and active participation. (Kokorin and Wessels, 2021, p. 317). The intricate interplay between these principles and their intricate intermingling with challenges such as information exchange and conformity with national laws and regulations crystallizes the intricate tapestry of cross-border insolvency. By intricately aligning insolvency protocols with these principles and adroitly tackling associated challenges, the panorama of international insolvency proceedings evolves into a more level, transparent, and efficient mechanism for steering the complexities of cross-border financial turmoil (Kokorin and Wessels, 2021, p. 317).

2.7. Legal avenues for transparency in cross-border insolvency

Throughout the trajectory of this academic inquiry, the spotlight has been firmly fixed on investigating the regulatory scaffolding that underpins transparency in cross-border insolvency within the precincts of the Republic of Moldova. However, the panorama of promoting transparency transcends national frontiers due to the inherent essence of cross-border insolvency cases.

2.8. Comparative scrutiny of global regulatory frameworks

A significant facet of this exploration has entailed an exhaustive dissection of the tenets enshrined within both the European and global regulatory frameworks. The trajectory of global evolution showcases a discernible drift towards augmenting transparency by divulging information pertinent to insolvency procedures, particularly those interlaced with an international dimension. This evolution unfurls prominently within the edicts of the European Union's insolvency regulations, where the clarion call is for openness and lucidity within cross-border insolvency cases. Furthermore, the convention upheld by Nordic states equally weaves clauses pertaining to the publicity of bankruptcy proceedings within the contracting states (Hallak, 2023).

2.9. Balancing the dichotomy of confidentiality and transparency

The juxtaposition of transparency and the confidential nature of certain proceedings often unfurls a nuanced duality (Chan Ho, 2016, p. 48). While transparency stands as the vanguard for ensuring fairness, accountability, and efficient resolution within cross-border insolvency cases, its trajectory invariably intersects with the confidential underpinnings of certain procedures. Nationally, concerns might germinate due to the delicacy of the matter, potentially triggering conflicts between transparency and confidentiality. However, it's imperative to underscore that on an international spectrum, the growing emphasis on transparency finds resonance due to its pivotal role in cultivating trust among an array of stakeholders (Chan Ho, 2016, p. 48).

2.10. Challenges in perspective and culmination

The labyrinthine labyrinth of cross-border insolvency cases introduces an array of challenges to the seamless integration of comprehensive transparency. These tribulations span additional temporal and financial investments, concerns pertaining to confidentiality, and the intricacies of steering international legal nuances. Despite these obstacles, the inquiry culminates in a resolute assertion that propelling transparency is not only viable but quintessential for upholding an equitable and effective cross-border insolvency regime.

2.11. Recommendations for pragmatic implementation

The elucidation advanced within this discourse propounds that the principles of transparency can be actualized within both international and national regulatory frameworks. This translation mandates a judicious equilibrium between the yearning for openness and the safeguarding of confidential information. To tackle this, jurisdictions such as the Republic of Moldova and its counterparts can contemplate embracing measures that seamlessly ensconce transparency while safeguarding the interests of the entities embroiled. Such measures might encompass the formulation of guidelines for the dissemination of pertinent information, the delineation of protocols for managing classified data, and the fostering of international cooperation within insolvency cases (Boone, 2012, p. 45).

3. CONCLUSIONS

To culminate, the clarion call for transparency within the intricate tapestry of cross-border insolvency proceedings resounds with an unwavering resonance, transcending the delineations of national frontiers. The odyssey through the corridors of legal thought and pragmatic solutions, embarked upon within the course of this intellectual voyage, illuminates a profound shift in the global compass—a resolute trajectory oriented toward nurturing openness and crystalline clarity within insolvency proceedings that bear the indelible mark of international implications.

As one navigates through the labyrinthine pathways of these complex procedures, it's undeniable that lingering challenges linger like shadows, casting occasional doubts on the feasibility of this pursuit. However, the dividends that transparency yields are both compelling and consequential. They stretch far beyond mere ideals, unfurling as tangible manifestations that reverberate across the landscape of cross-border insolvency. Enhanced trust becomes a foundational cornerstone, anchoring the interactions between stakeholders across geographical divides. In this arena of multifaceted complexity, the prism of transparency refracts rays of efficient resolutions, untangling the intricacies that might otherwise mire the process.

Notably, the value of transparency is underscored by its role in leveling the terrain, paving the way for a truly equitable field for all stakeholders involved. Within these meticulously constructed protocols, the intricacies of power dynamics and geographical disparities dissolve as transparency plays the role of a great equalizer. It ensures that no party is left in the shadows, that every voice finds resonance in the symphony of proceedings, and that a harmonious accord is struck between interests that might have otherwise seemed discordant.

The Republic of Moldova, standing at the crossroads of its own legal evolution, holds the potential to become an active contributor to this burgeoning global movement. Its synergy with global counterparts is poised to facilitate a synchronized dance toward a future steeped in transparency. This endeavor,

however, is no mere Utopian aspiration; it necessitates pragmatic strategies and meticulous blueprints. The envisioned legal avenues must not only delicately balance the twin facets of transparency and confidentiality but also be adaptable to the nuanced peculiarities that cross-border scenarios bring to the fore.

Through the adoption of these well-conceived measures, the contours of the insolvency process hold the promise of a transformative metamorphosis. What was once a labyrinth of uncertainty becomes a paragon of equity and accountability. The insolvency process itself transcends its former dimensions, evolving into a mechanism that not only addresses financial distress but does so with a profound sense of fairness, responsibility, and a global perspective.

In our ever-shrinking world, where distances collapse and connections span continents in the blink of an eye, the significance of transparent cross-border insolvency proceedings reverberates with a resonance that transcends mere legalities. It embodies the spirit of collaboration, the embodiment of a shared understanding that the challenges we face are intertwined, as are the solutions we devise. Through transparency, the global community takes a resolute stride toward a more harmonious and just world - one where the complexities of financial turmoil are met with an unwavering commitment to fairness, and where accountability stands as the bedrock upon which the edifice of our interconnectedness is built.

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