

**Title: Recent developments of European law in the matter of insolvency law and the treatment of rights in rem: a difficult marriage**

**ABSTRACT**

The latest EU developments in the matter of insolvency law. The approach to business failure and insolvency within EU and the theory of the second chance.

In such a light, a proper, effective and efficient administration of insolvency can only be achieved through a further harmonization and the elimination of divergences between different legal systems within EU.

The European Commission recommendation of 12 March 2014 and the European Commission proposal of 22 November 2016 for a Directive on Insolvency, Restructuring and Second Chance.

At present, the treatment of individual actions and rights in rem whilst insolvency proceedings are pending is still a critical issue.

Different regimes are adopted in different legal systems.

The solution chosen by EU with article 5 of (EC) Regulation n. 1346/2000 which has not been rectified by article 8 of (EU) Regulation 2015/848 on insolvency proceedings (recast) appears dissatisfactory.

Such solution is not desirable under different points of view: it justifies a discrepancy of treatment of actions in rem, depending on whether the assets of the entrepreneur are located in a country different from the one where the insolvency proceedings have been opened; it contradicts the main scope of the Regulation which is supposed to grant a temporary stay of enforcement actions, brought by individual creditors where such actions could adversely affect negotiations for restructuring of the debtor's business; it provides a regime of favour for specific categories of creditors.

Additional criticism can be added from the point of view of maritime insolvency law, not only because vessels are constantly located in different countries, but also in view of article 11 of Council Regulation (EC) N. 1346/2000, specifically dealing with the law applicable to immovable property, ships and aircrafts subject to registration in a public register (now article 14 of (EU) Regulation 2015/848), which adds additional uncertainty.

Some thoughts concerning the impact of the judgment of South Korean Court, declaring Hanjin Shipping bankrupt, especially with reference to the actions in rem of creditors seeking to exercise their rights before the local Courts, by arresting the Hanjin vessels calling at European ports.

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