

ABSTRACT

This diploma thesis deals with the topic of international insolvency law, in particular with certain areas of European insolvency law, with an emphasis on the matters of international jurisdiction for opening of main and territorial insolvency proceedings and international jurisdiction to hear actions related to insolvency proceedings. Furthermore, this diploma thesis is aimed at evaluation of the Czech legislation regarding cross-border insolvencies.

The legal framework for European insolvency law was incorporated into the Insolvency regulation in 2002. Due to disagreements between certain member states of the EU regarding some of the important institutes of cross-border insolvencies the Insolvency regulation often contains vague provisions. It, therefore, fell to the Court of Justice of the European Union to provide interpretation of such ambiguous clauses. In 2012 the European commission created a report on the application of the Insolvency regulation and simultaneously presented a long awaited proposal for modernisation of the European insolvency law in the form of the Insolvency regulation recast.

The aim of the Insolvency regulation recast is to promote cooperation between member states in the matter of cross-border insolvency proceedings. Additionally, it codifies a substantial part of the CJEU's relevant case law and addresses criticisms by the professional public. The majority of institutes mentioned in this thesis are to be amended to some extent by the Insolvency regulation recast. In some instances, these amendments bring certainty to cross-border insolvencies, such as in the case of express incorporation of the concept *vis attractiva concursus* as a means to determine the *forum* for hearing of insolvency-related actions. In others the Insolvency regulation recast chose the way of compromise when it on one hand contains an extensive framework for coordination of insolvency proceedings of members of groups of companies, and on the other hand makes it voluntary for insolvency practitioners of such companies to participate in the coordination procedure. Some questions the Insolvency regulation recast leaves unresolved, such as in determining whether the jurisdiction for opening of insolvency-related proceedings is exclusive or a non-exclusive one. In such matters an intervention of the CJEU will be welcome.

The legal framework for cross-border insolvencies in the Czech legislation is rather sporadic and in some matters flawed, although the new Act No. 91/2012 Coll. on Private International Law brings some improvements by stipulating that some provisions of the Insolvency regulation may be applied for cross-border insolvencies without a European element.

This diploma thesis analyses the above mentioned areas of the European insolvency law, discusses extensive case law of the CJEU and courts of the EU member states, highlights some so far unanswered questions and also contains reflections *de lege ferenda*.