



# The Insolvency Law of Central and Eastern Europe

Twelve Country Screenings of the New Member and Candidate  
Countries of the European Union and Russia: A Comparative Analysis

Jens Lowitzsch (Ed.)

Developed by Inter-University Centre Split/Berlin,  
Institute for Eastern European Studies, Free University of Berlin



# International Insolvency Law in Eastern Europe

Alexander Trunk

<b>I. Introduction</b> .....	85
<b>II. Legal Sources and Fundamental Principles of International Insolvency Law in the Region Addressed</b> .....	86
<b>III. Special Regulations</b> .....	90
1. Domestic Proceedings with Cross-Border Effects .....	91
a) International Jurisdiction in Insolvency Proceedings .....	91
aa) <i>Proceeding at the Centre of Main Interests of the Insolvent Debtor (Domiciliary Proceeding)</i> .....	92
bb) <i>Territorial Proceeding</i> .....	92
b) Provisions on Conflict of Laws in Insolvency Proceedings .....	94
2. Recognition of Foreign Proceedings .....	95
a) Pre-Conditions of Recognition and Recognition Proceedings .....	95
b) Effects of Recognition .....	97
3. Coordination of Parallel Proceedings .....	98
<b>IV. Summary and Evaluation</b> .....	99



## Introduction Part 2

# International Insolvency Law in Eastern Europe

Alexander Trunk

### I. Introduction

Enterprise insolvencies nowadays usually have some cross-border dimension and even more and more consumer insolvencies involve a foreign element. A comparative analysis of the first generation of insolvency laws in Central and Eastern European countries conducted in 1997 showed that in most of these countries there existed only rudimentary provisions on international insolvency law.<sup>75</sup> As many Eastern European states have enacted new insolvency laws in the last few years, time has come to re-assess the state of cross-border insolvency law in Eastern Europe. The following analysis includes - as this book in general - the legal systems of Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Russia, Slovakia and Slovenia and is mainly based on the text of the relevant laws<sup>76</sup> and the country reports

<sup>75</sup> See A. Trunk, *Stand und Probleme des Insolvenzrechts in Ost-, Mittelost- und Südosteuropa*, *JbOstR* 1997, p. 233 (244 et seq.).

<sup>76</sup> The following abbreviations are used: the Bulgarian Commercial Code of 1994, CC; the Czech Insolvency Law of 2006, IC; the Croatian Bankruptcy Law of 1996, BL; the Estonian Insolvency Law of 2003, BA; the Hungarian Law on Bankruptcy and Liquidation Proceedings of 1991, LRL; the Latvian Law on the Insolvency of Undertakings and Companies 1997, LIUC; the Lithuanian Enterprise Bankruptcy Law of 1991, EBL; the Polish Bankruptcy and Reorganisation Law of 2003, BRL; the Romanian International Insolvency Law of 2002, IntInsL; the Insolvency Law of the Russian Federation of 2002, FIL; the Slovakian Bankruptcy and Reorganisation Code of 2006, BRC; the Slovenian SCSBL of 1993.

prepared for this book.<sup>77</sup> The overall impression is that legal regulation of cross-border insolvency law has been substantially improved in some - by no means in all - countries of this region, but there is still little experience with application of the new provisions by courts. The situation has started to change, however, with the accession of several Central and East European countries to the European Union and the application of the European Insolvency Regulation to these countries: The EIR database<sup>78</sup> contains some interesting court decisions from the Czech Republic, Hungary und Poland, and some decisions from other jurisdictions relating to Eastern European countries.

## II. Legal Sources and Fundamental Principles of International Insolvency Law in the Region Addressed

1. The majority of the legal systems addressed here have provisions on cross-border insolvency law in their insolvency laws (Croatia<sup>79</sup>; Poland<sup>80</sup>; Slovakia<sup>81</sup>; Slovenia<sup>82</sup>; Russia<sup>83</sup>; basically also Hungary<sup>84</sup>). An exception constitutes Bulgaria which integrates insolvency law in the Commercial Code following the historical French tradition.<sup>85</sup> One country, Romania, has enacted a specific law on cross-border insolvencies,

<sup>77</sup> An analysis of the case law and literature of all countries covered here would go beyond the predetermined scope of this chapter.

<sup>78</sup> See <http://www.eir-database.com>.

<sup>79</sup> Art. 301 - 335 Croatian BL.

<sup>80</sup> Art. 378 - 417 Polish BRL.

<sup>81</sup> See especially § 172 - 175 Slovakian BRC.

<sup>82</sup> See especially § 184 and 185 Slovenian BRL.

<sup>83</sup> See especially Art. 1 no. 5 and no. 6 FIL.

<sup>84</sup> See especially § 2 para. 4 LRL, which refers to the provisions (§§ 19, 20) of the Law on Branch and Representative Offices of Foreign Enterprises of 1997.

<sup>85</sup> The Bulgarian insolvency law is applicable only to merchants (and certain persons with the same legal status); Art. 757 - 760 CC of 1994.

## II. Legal Sources and Fundamental Principles

which is close to the 1997 UNCITRAL Model Law on Cross-Border Insolvency<sup>86</sup>. Another group of countries has no specific provisions on cross-border insolvencies. This is true for the Czech Republic<sup>87</sup>, Estonia, Latvia and Lithuania, and in Latvia and Lithuania draft legislation dealing with cross-border insolvencies is underway. Also, the new Czech Insolvency Law of 2006, which has entered into force on 1 January 2008, does not address international insolvency law at all. The rudimentary provisions on cross-border matters, which had existed in the former Czechoslovakian law of 1991<sup>88</sup>, have been dropped. The only clear-cut legislation in the Baltic countries and the Czech Republic today applicable to international insolvencies is the European Insolvency Regulation (Council Regulation (EC) of 29 May 2000<sup>89</sup>). In insolvencies linked with non-EU countries the Czech, Estonian, Latvian and Lithuanian courts with will have to develop their own rules on cross-border insolvencies, perhaps partly applying the European Insolvency Regulation by analogy. Apart from this, certain elements of the existing insolvency laws in these countries may be applied to international insolvencies, such as provisions on territorial jurisdiction or provisions that all property (i.e. even property abroad) is covered by a domestic proceeding. Finally, general rules of private international law or recognition of foreign judgments might be applied to cross-border insolvencies, even if these rules do not address specifics of insolvency proceedings.

2. As a basic pattern for structuring international insolvency law, it has become common to use the terms of unity/plurality and of universality/territoriality of insolvency proceedings, further distinguishing between domestic proceedings and foreign proceedings. The following article will use these terms for comparison of the legal systems analyzed here.

<sup>86</sup> The text is available on the UNCITRAL web page, <http://www.uncitral.org>.

<sup>87</sup> With the exception of some recently introduced, very specific provisions in the Czech Private International Law Act of 1963, relating to banking insolvencies, and some provisions in the Czech Insolvency Law 2006, implementing the European Insolvency Regulation (Art. 426 - 430 IC 2006).

<sup>88</sup> See § 69 Czech Bankruptcy Law of 1991.

<sup>89</sup> Regulation No.1346/2000, ABL. EG No.L 160, p.1 et seq.

a) The insolvency law of all states addressed here is based on the principle of universality of insolvency proceedings, i.e. national proceedings should, as a rule, be extended also to foreign assets of the debtor and foreign transactions. In most cases, this follows implicitly from the provisions in national insolvency legislation according to which the insolvency proceedings encompass "all" (i.e. including foreign) assets of the debtor.<sup>90</sup>

Under former Czech and Slovakian legislation, this so-called extra-territorial (universal) scope of national insolvency proceedings related only to foreign movable assets (§ 69 para. 1 of the Czech and Slovakian Bankruptcy Law of 1991). The new insolvency laws in the Czech Republic and Slovakia have, however, dropped this limitation and have now also a general universal scope. Limitations in the sense of a local scope restricted to the assets situated within the national borders are regulated in several legal systems in relation to insolvency proceedings which are opened not at the centre of the debtor's main interests (territorial insolvency proceedings).<sup>91</sup> If the terms universality/territoriality are applied also to foreign proceedings (universality = recognition of foreign proceedings) it can be stated that the principle of so-called controlled universality, i.e. recognition of foreign insolvency proceedings under certain conditions, seems to be implemented in all states addressed here. There may, however, be some doubt in this with regard to the countries, which do not at present expressly deal with international insolvency proceedings outside the sphere of application of the European Insolvency Regulation (Czech Republic and Baltic countries). Courts in these countries might take the view that general rules on recognition of foreign judgments do not fit the specifics of insolvency proceedings.

b) All countries addressed here base their regulations on the principle of plurality of insolvency proceedings, i.e. the opening of proceedings in a foreign country is generally not an obstacle to opening national insol-

<sup>90</sup> See Art. 614 para. 1 Bulgarian CC 1994, Art. 62 Polish BRL; Art. 131 no.1 Russian FIL, § 4 Hungarian LRL. By contrast, the universal scope is expressly regulated in Art. 301 para. 2 Croatian BL 1996.

<sup>91</sup> See Art. 302 para. 4 Croatian BL, Art. 405 sentence 2 Polish BRL.

## II. Legal Sources and Fundamental Principles

veny proceedings.<sup>92</sup> However, possibilities to open national concurrent proceedings were limited in the Polish and Croatian law<sup>93</sup> in anticipation of the European Insolvency Regulation.

3. Under the law of all countries addressed here, insolvency proceedings are conducted according to the basic rule of conflict of laws *lex fori concursus*.<sup>94</sup> Deviations from *lex fori concursus*, e.g. in favour of *lex rei sitae* or the law of the employment contract, are addressed only in the Croatian law<sup>95</sup>, which is substantially based on the European Insolvency Regulation, as well as, fragmentarily, in the Polish and the Romanian laws.<sup>96</sup> However, courts of other countries might also develop similar special rules in case law, e.g. by analogy to the European Insolvency Regulation.

4. A further basic principle of modern insolvency laws is equal treatment of foreign and domestic creditors. All insolvency laws addressed here are expressly or implicitly based on this principle.<sup>97</sup> An explicit exception constitutes the Polish law which stipulates in Art. 380 no. 3 of the new Polish Insolvency Law that foreign public claims shall not be satisfied in a Polish insolvency proceeding.<sup>98</sup> The courts of other Eastern European states might adopt the same position in practice. In addition,

<sup>92</sup> Expressly e.g. Art. 384 and Art. 405 para. 1 sentence 1 Polish BRL. A limitation of foreign insolvency proceedings is not planned by any of the countries and would probably be problematic from the point of view of international public law.

<sup>93</sup> See Art. 325, 326 Croatian BL (limitation of the group of persons entitled to file the insolvency petition), similar Art. 407 Polish BRL. See also Art. 759 para. 1 Bulgarian CC (only for "substantial" property).

<sup>94</sup> See e.g. Art. 303 Croatian BL, Art. 1 no.5 Russian FIL.

<sup>95</sup> See Art. 304 et seq. Croatian BL.

<sup>96</sup> See Art. 404 Polish BRL: *lex rei sitae* for rights in rem as security (in connection with recognition of foreign proceedings).

<sup>97</sup> Expressly e.g. Art. 380 para. 1 Polish BRL, Art. 1 no.5 Russian FIL. Implicitly e.g. Art. 616 Bulgarian CC 1994.

<sup>98</sup> By contrast, tax authorities and social security authorities of other member states are entitled to participate in insolvency proceedings according to Art. 39 European Insolvency Regulation.

there is a risk - also in insolvency proceedings outside Eastern Europe - that foreign creditors can be subject to hidden discrimination.

5. In the last 10 - 20 years much work has been done to create internationally unified legal instruments dealing with cross-border insolvency law. The European Insolvency Regulation of 2000 and the UNCITRAL Model Law on Cross-Border Insolvency of 1997, which follows to a greater extent the Anglo-American conception (discretionary power in connection with recognition etc.) are of special importance. In the group of states addressed here all countries except Croatia and Russia are members of the EU and apply the European Insolvency Regulation. Although Croatia is not yet a member of the EU, its insolvency law follows the European Insolvency Regulation very closely<sup>99</sup> and these rules apply generally, not only in relation to EU countries. As to autonomous international insolvency law in other countries, the Polish law incorporates some structural characteristics of the European Regulation (e.g. differentiation between main, territorial and secondary insolvency proceedings, formulation on jurisdiction in main proceedings, coordination rules for parallel proceedings), but modifies them in details. In addition, it is noticeable that the Polish law does not contain a regulation of applicable law. Provisions of the Bulgarian international insolvency law, which are, however, much shorter (Art. 757 - 760 Bulgarian CC HG 1994), also show a certain similarity to the European Regulation. The provisions of the UNCITRAL Model Law on Cross-Border Insolvency have to a large extent been adopted (only) by Romania and, to a certain degree, by Poland.

### **III. Special Regulations**

In this section, some core regulations of international insolvency law in the group of states in question will be examined more in detail. The

<sup>99</sup> For some (arguably, well-founded) exceptions cf. *infra* footnote 112.

analysis follows the distinction between domestic insolvency proceedings,<sup>100</sup> foreign proceedings and coordination of concurrent proceedings. The following part of the article deals only with autonomous insolvency law of the countries addressed. The content of the European Insolvency Regulation need not be described at this place.

## **1. Domestic Proceedings with Cross-Border Effects**

Two issues are of special importance for conducting domestic insolvency proceedings with an international dimension<sup>101</sup>:

- (international) jurisdiction to conduct the proceeding<sup>102</sup>
- and the law applicable to insolvency proceedings.

### **a) International Jurisdiction in Insolvency Proceedings**

In principle, two basic types of international jurisdiction are usually distinguished in international insolvency law:

- jurisdiction of the state within the territory of which the centre of a debtor's main interests is situated,
- and other grounds for jurisdiction, e.g. an establishment or assets of the debtor.

This differentiation is often linked with the desired territorial scope of the proceeding: universal scope or scope limited to the territory of the state of the insolvency proceeding.<sup>103</sup>

<sup>100</sup> From the point of view of the state conducting the proceeding.

<sup>101</sup> An additional basic issue, equal treatment of domestic and foreign creditors, has been already addressed above.

<sup>102</sup> This concerns the opening of proceedings and preceding interim court orders as well as court orders and judgments in the course of proceedings (e.g. actions for rescission in the insolvency proceedings, see e.g. Art. 649 para. 3 Bulgarian CC: *vis attractiva concursus*).

<sup>103</sup> See II. 2.a above.

*aa) Proceeding at the Centre of Main Interests of the Insolvent Debtor (Domiciliary Proceeding)*

In most states dealt with in this article, jurisdiction at the centre of main interests of the debtor is connected to the location or domicile of the debtor (domiciliary jurisdiction in the strict sense) according to the traditional approach.<sup>104</sup> Only the Croatian, the Romanian and the Polish law currently follow the more flexible approach of the European Regulation (domicile jurisdiction in the broader sense) (cf. Art. 301 Croatian BL<sup>105</sup>, Art. 382 para. 1 Polish BRL). The fact that the Croatian and the Polish laws refer to the centre of "activity" instead of the centre of "interests" as Art. 3 para. 1 of the European Regulation should have no impact in practice. The lack of a presumption rule relating to the place of the registered office in Art. 382 para. 1 Polish BRL (by contrast, the Croatian law follows the European Regulation in this point) will probably also have little importance in practice. However, it can not be ruled out that the domicile connection of the Bulgarian, Czech, Estonian, Hungarian, Latvian, Lithuanian, Russian and Slovakian law can lead to positive or negative conflicts of jurisdiction with the European Insolvency Regulation.

*bb) Territorial Proceeding*

Territorial proceedings, i.e. insolvency proceedings in a state with which the debtor has only limited connections, can be reasonable for different purposes, e.g. in order to facilitate the efficient conduct of insolvency proceedings or to enable the regular conduct of insolvency proceedings if the foreign domicile proceeding cannot be recognised. Under the laws of the Czech Republic, Estonia, Latvia, Lithuania, Russia and Slovenia territorial proceedings are, apparently, not possible.<sup>106</sup> This

<sup>104</sup> See Art. 613 Bulgarian CC (location), further Art. 6 para. 1 Hungarian LRL and Art. 33 no.1 Russian FIL [mesto nakhozhdeniya].

<sup>105</sup> On the subsidiary connection to domicile (location) in Art. 382 para. 2 Polish BRL see the next section under bb).

<sup>106</sup> See e.g. Art. 5 Latvian LIUC and Art. 33 no.1 Russian FIL, which only refer to the legal address of the debtor (Latvia) and location/domicile (Russia). Whether this result can be corrected by subsidiary application of the Codes of Civil or Arbi-

cannot be satisfying from the standpoint of legal policy. In other states, there is a wide range of regulations (see e.g. Art. 382 no.2 Polish BRL and Art. 174 Slovakian BRC).

A narrower criterion than entrepreneurial activity is the connection to a branch office within the territory of the respective state utilised by the Croatian and Hungarian law (§ 19 para. 3, § 20 para. 1 Hungarian Law on Branch Offices of Foreign Enterprises<sup>107</sup>, Art. 302 para. 1 Croatian BL: "business unit without legal personality").

Art. 382 no. 2 Polish BRL lists after the connecting factor "doing business" further grounds for jurisdiction (with the same status?): "domicile/location" as well as "property" of the debtor. The inclusion of "domicile/location" in this connection is surprising in so far as domicile or location are usually used as a criterion for the opening of a main proceeding (with a universal scope).<sup>108</sup> It might be concluded from this regulation that all proceedings listed in Art. 382 para. 2 Polish BRL generally, i.e. as far as special provisions on secondary proceedings (Art. 405 et seq. Polish BRL) are not applicable, have a universal scope.

Like the Polish law, the Croatian law contains several criteria of jurisdiction: apart from the branch office, assets situated within the territory of the respective state are sufficient as a ground for jurisdiction (Art. 302 para. 2 Croatian BL). In contrast to the Polish law, the location of debtor's assets constitutes only a subsidiary criterion which allows the opening of proceedings only if further, restrictive pre-conditions (impossibility to open the proceedings in the state of domicile etc.) are fulfilled.

Only the place where the assets are situated is the criterion according to Art. 759 Bulgarian CC. However, this criterion allows only the opening of a (not precisely defined) "assisting proceeding". It seems that a separate territorial proceeding would be not permissible according to this provision.

Advantages and drawbacks of different models are a debatable point. The regulations of the Croatian and Polish law are particularly

trazh Procedure is an open question.

<sup>107</sup> Such proceedings can be conducted only as winding-up proceedings which partly corresponds to Art. 3 para. 3 sentence 2 of the European Regulation.

<sup>108</sup> See above II 2. a.

elaborate. The Polish law is more generous than the Croatian law as far as territorial proceedings are concerned, since the Croatian law allows territorial proceedings on the ground of the location of assets only in a very limited number of cases. Hence, the Croatian law has more similarity with the European Insolvency Regulation than the Polish law. Both laws allow territorial proceedings in connection with the location of assets i.e. also in the case when foreign domicile proceedings cannot be recognised (this is expressly regulated by Art. 302 para. 2 no. 3 in conjunction with Art. 334 Croatian BL); this can be viewed as an advantage in comparison to the European Insolvency Regulation.

### **b) Provisions on Conflict of Laws in Insolvency Proceedings**

Whereas the basic rule of *lex fori concursus* is recognised in all analysed states<sup>109</sup>, the issue of special connection factors is not addressed in the laws of the most of the analysed states. The only exception constitutes the Croatian law which stipulates that *lex rei sitae* of the assets in question is applicable to segregation rights of owners and separation rights of secured creditors (Art. 304 Croatian BL) and the law of the employment contract is applicable to the effects of insolvency proceedings on employment relationships (Art. 305 Croatian BL).

Art. 304 Croatian BL is in so far remarkable as the Croatian lawmaker decided to provide a solution by means of a conflict of laws rule in contrast to Art. 5, 7 of the European Insolvency Regulation, which are rules of substantive law limiting the territorial scope of national insolvency law. The reference to the law of the employment contract in Art. 305 Croatian BL corresponds to Art. 10 of the European Regulation. In contrast to the European Regulation, the references in Art. 304, 305 Croatian BL are "universal", i.e. not limited to the EU member states. The Polish legislator touched on the issue of special connections in connection with insolvency proceeding in an isolated provision of Art. 404 Polish BRL. Pursuant to this provision, secured creditors are satisfied according to Polish law if the collateral is situated in Poland or is entered into a Polish register. However, the wording of Art. 404 Polish

<sup>109</sup> See above II 3.

BRL refers only to the recognition of foreign insolvency proceedings. Whether Polish courts would apply Art. 404 Polish BRL by analogy to a reversed case - insolvency proceedings in Poland, the collateral being abroad - is an open question.

## **2. Recognition of Foreign Proceedings**

The second important issue of international insolvency law is recognition of foreign insolvency proceedings.

### **a) Pre-Conditions of Recognition and Recognition Proceedings**

The majority of the analysed states have expressly regulated the possibility of recognition of foreign insolvency proceedings (more precisely: insolvency judgments). Merely the Czech law and the laws of the Baltic countries law do not explicitly address this issue. Whether courts in those countries will apply the general rules on recognition of foreign judgments to recognition of insolvency proceedings, cannot be predicted at the moment.

The majority of the states addressed here connect recognition of foreign insolvency proceedings with the principle of reciprocity.<sup>110</sup> Factual guarantee of reciprocity is sufficient<sup>111</sup>. This is in so far remarkable as e.g. Russia still demands an international treaty for the recognition of disputed foreign court judgments (Art. 409 Russian Code of Civil Procedure 2002, Art. 241 Russian Code of Arbitrazh Procedure

<sup>110</sup> See Art. 757 Bulgarian CC, Art. 1 no. 6 Russian FIL, Art. 18 Romanian IntlnsL, § 173 Slovakian BRC, § 19 para. 2 and 3 Hungarian Law on Branch and Representative Offices of Foreign Enterprises. It should be mentioned that the new Lithuanian Code of Civil Procedure generally does not require reciprocity as to recognition of foreign judgments; whether Lithuanian courts will apply this rule to foreign insolvencies, will have to be seen.

<sup>111</sup> Cf. Art. 757 Bulgarian CC, Art. 1 no. 6 Russian FIL, Art.18 (1) e) Romanian IntlnsL, § 173 Slovakian BRC § 19 para. 2 and 3 Hungarian Law on Branch and Representative Offices of Foreign Enterprises.

2002).<sup>112</sup> The brief reference to reciprocity in the Russian law does not provide information whether further pre-conditions for recognition, e.g. international jurisdiction of the courts of the foreign state conducting the proceedings, is required. According to general rules of recognition of foreign court decisions at least the public policy exception applies also with regard to foreign insolvency proceedings (expressly so stated in Art. 7 of the Romanian International Insolvency Law, see also § 64 d) of the Slovakian and Czech Law on International Private Law, Art. 244 no. 1 point 7 Russian Code of Arbitrazh Procedure). In practice, requirements concerning the proof of reciprocity seem sometimes to be exaggerated. The Croatian and the Polish laws have a special position also in this connection, since both states not only regulate the recognition of foreign judgments in detail, but also do not stipulate the requirement of reciprocity, like Germany (Art. 311 Croatian BL, Art. 392 Polish BRL). This approach is based on the assumption that the effect of the requirement of reciprocity as a means of political pressure is small and that the recognition of every reasonable insolvency proceeding serves the interests of all creditors. The pre-conditions of recognition in both states are, in substance,<sup>113</sup> international jurisdiction of the courts of the foreign state conducting the proceeding (Art. 311 para. 1 no.1 Croatian BL, Art. 392 no.1 Polish BRL)<sup>114</sup> and protection national public policy (Art. 311 para. 1 no. 3 Croatian BL, Art. 392 no. 2 Polish BRL)<sup>115</sup>. The requirements concerning international jurisdiction in connection with recognition are,

<sup>112</sup> For further details see A. Trunk, Jarkov, in: Geimer, Schütze, Internationaler Rechtsverkehr in Zivil- und Handelsachen (Lbl.), Country Section Russia. However, the matter is in dispute; some Russian courts have recently argued that foreign judgments could be recognized in Russia on the basis of factual reciprocity.

<sup>113</sup> According to Art. 311 para. 1 no. 2 Croatian BL, the foreign court judgment on commencement of bankruptcy proceedings must be enforceable under the law of the foreign state. This would be required also by the Polish law without an express provision.

<sup>114</sup> The Polish law is more liberal in this connection and requires merely the observance of the Polish exclusive jurisdictions.

<sup>115</sup> In addition, the special provision of Art. 311 para. 2 Croatian BL on *ordre public* contains irregularity of service and violation of basic rights as obstacles to recognition.

to some extent, more liberal in Poland than in Croatia: Art. 392 no. 1 Polish BRL requires only the protection of the Polish exclusive jurisdiction, i.e. probably (only) the jurisdiction according to the list in Art. 382 no. 1 Polish BRL. Thus, the domicile or location of the debtor would not constitute an obstacle for recognition in Poland. Under Croatian and Romanian law, a positive determination of jurisdiction according to the grounds for jurisdiction in the national (Croatian or Romanian) law is additionally required.<sup>116</sup>

The recognition procedure is also regulated in detail in the Croatian, Polish, Romanian and Slovakian laws (see e.g. Art. 309 et seq., 312 - 317 Croatian BL, 385 - 391, 393 - 396 Polish BRL). It should be noted that the Croatian law allows incidental recognition as well as a separate recognition proceeding (Art. 317 Croatian BL). This issue is not regulated in the Polish law.

#### **b) Effects of Recognition**

The effects of recognition of a foreign proceeding are regulated only scarcely in almost all analysed states.<sup>117</sup> Art. 758 Bulgarian CC addresses the "rights" of the foreign insolvency administrator; they must be regulated by the (foreign) *lex fori concursus*. Slovenian law takes a rather unique position with respect to the powers of foreign insolvency administrators, applying to them the *lex concursus* of Slovenia, not the *lex fori concursus* of the foreign proceeding (§ 185 Slovenian SCSBL). Combining Slovenian law with the law of the foreign insolvency proceeding may cause considerable practical difficulties, e.g. with regard to supervision of the foreign administrator (also by Slovenian courts?) The provision of the former Czechoslovakian insolvency law, which restricted recognition to movable property of the debtor (§ 69 para. 2 sentence 1 Slovakian BRL 1991 and Czech CBRL 1991) has been dropped both in the Slovakian Insolvency Law of 2004 and in the Czech

<sup>116</sup> Cf. Art. 18 (1) d) Romanian IntlInsL, referring to the rules on international jurisdiction under Art. 5 of the law. In contrast, the Slovakian law does not mention the requirement of (indirect) jurisdiction.

<sup>117</sup> In Romanian and Russian law, there are no express regulations on the effects of recognition.

Insolvency Law of 2006. Worth mentioning is also the specific conflicts rule with regard to segregation rights of owners and separation rights of secured creditors in Art. 404 Polish BRL, according to which the Polish *lex rei sitae* applies to rights in rem as securities.<sup>118</sup> The Polish law also regulates some further important effects of insolvency proceedings in Art. 397 Polish BRL: the stay of execution proceedings and transfer of the power to administer and dispose of the assets from the debtor to the foreign insolvency administrator. Pursuant to Art. 397 para. 1 Polish BRL, the stay of execution proceedings must be regulated "by analogy" to the Polish legal provisions; it seems to be an implicit special connection to the Polish law (*lex fori executionis*). Thus, the stay of execution proceedings can be more or less prolonged than in the foreign state conducting the proceedings (this is regulated differently in Art. 4 para. 2 f) of the European Insolvency Regulation: *lex fori concursus*). Also, the Romanian law contains both substantive and conflicts rules about the effects of the recognised foreign proceeding (see Art.21 - 25 Romanian IntInSL).

The effects of recognition are regulated in more detail in Art. 318-325 Croatian BL which are based on the European Insolvency Regulation. Art. 319 para. 1 Croatian BL determines that the (foreign) *lex fori concursus* should be generally applied, unless special connections are established (esp. Art. 304, 305 Croatian BL).<sup>119</sup> There are several substantive provisions on special connections: on stay of execution proceedings (Art. 320 Croatian BL), on the validity of dispositions by the debtor (Art. 321 Croatian BL), on the discharge of obligation by performance in relation to the debtor (Art. 322 Croatian BL) as well as on the priority satisfaction of privileged claims (Art. 324 Croatian BL).

### **3. Coordination of Parallel Proceedings**

The third issue of international insolvency law, coordination of parallel proceedings in several countries, is also regulated in detail in Croatia

<sup>118</sup> See above III.1.b).

<sup>119</sup> See above III.1.b).

and Poland,<sup>120</sup> and at least fragmentary<sup>121</sup> in some other analysed states. The Polish law systematically differentiates between the coordination of parallel proceedings in general following the European Insolvency Regulation (Art. 413 - 416 Polish BRL) and - in the preceding provisions - the special rules on secondary insolvency proceedings supplementing a foreign main proceeding (Art. 405 - 412 Polish BRL). Differing from the European Insolvency Regulation, the opening of a national secondary proceeding in parallel to a foreign main proceeding conducted in the state in which the centre of the debtor's main interests are located is possible according to Art. 405 para. 1, 382 para. 1 Polish BRL. By that, the Polish law highlights the concept of plurality of insolvency proceedings a little more than the European Regulation. The same solution presents the Croatian law which even provides for opening of a parallel proceeding as one of the possible consequences of recognition of a foreign proceeding (conception of an "assisting proceeding", see Art. 325, 326 Croatian BL). Both the Croatian and the Polish law stipulate the principle of cooperation of insolvency organs in parallel proceedings.<sup>122</sup> Similar and very detailed rules in this respect are also contained in the Romanian International Insolvency Law (Art. 29 - 33 of the Law).

#### IV. Summary and Evaluation

International insolvency law is currently addressed in the laws of the majority of the analysed countries. The most far-reaching effect is caused by the European Insolvency Regulation, which binds most of the countries, which were addressed here, and which might also be applied

<sup>120</sup> See e.g. Art. 318, 325 - 331 Croatian BL, Art. 405 - 417 Polish BRL.

<sup>121</sup> See e.g. Art. 759 et seq. Bulgarian CC, § 19 para. 3 and 4, § 20 Hungarian Law on Branch and Representative Offices of Foreign Enterprises. The Romanian and Russian law do not regulate this issue either.

<sup>122</sup> See Art. 331 Croatian BL on insolvency administrators; a wider scope of Art. 413 - 417 Polish BRL.

by analogy to relations with non-EU countries. Particular attention deserve the Romanian and the Croatian laws. The Romanian International Insolvency Law of 2002 combines the UNCITRAL Model Law of 1997 with the European Insolvency Regulation. The Croatian Insolvency Law of 1996 is the interesting example of legislation by an EU candidate country implementing the European Insolvency Regulation before EU accession and giving it universal application even with regard to non-EU countries. Additionally, the Croatian law includes some elements consciously deviating from the EU Regulation and which will deserve a close look should the European Insolvency Regulation be amended some day in the future. Also, the Polish Insolvency Law of 2003, which contains numerous interesting provisions partly deviating from the European Insolvency Regulation, deserves special attention. From the standpoint of foreign countries, certain provisions of the Polish law providing preferential treatment to domestic persons might seem problematic. All countries - with an unclear state of the law in the Czech Republic and the Baltic States - also provide for recognition of foreign insolvency proceedings. In order to promote legal certainty and enhance the spirit of cooperation in the field of cross-border insolvency, more detailed regulations of international insolvency law would be helpful in the course of future reforms of insolvency laws.