



# Communication and cooperation in cross-border insolvencies within the European Judicial Space: Issues under the new Insolvency Regulation

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## *Fragmentation of Practices*

- Warning: Continental practice is overall not numerous
- Institutional fragmentation: practitioners tend to cooperate more than courts
  - Legislative fragmentation: MS where e.g. Protocols have been made (UK), MS that have adopted domestic legislation (DE), State that will rely on the InsRecast (IT)

## *(... Continues)*

- Substantive law protocols (rights of creditors, procedures to lodge claims, etc...)
- Protocols dealing with jurisdiction approved by courts: ensure that jurisdiction is not affected by protocols
  - Protocols dealing with choice of law for contractual obligations: uncertainties in the scholarship on the applicability of the Rome I Regulation
  - No provision in the InsRecast

## InsRecast: duties to communicate and cooperate

- What does “communication” and “cooperation” mean?
- Which law governs the professional conduct and liability of insolvency office holders?
- Predominance of main insolvency proceedings (request for stays / relationship between territorial proceedings)



## News of the InsRecast

- Duty to cooperate for courts and between practitioners and courts as well
  - Duty to cooperate in cases of insolvency proceedings opened against different debtors part to a group
- Possible coordination procedure for proceedings opened against companies part to a group



## Issues

- What is a group?
- Who appoints the coordinator?
- What are the powers of the coordinator?
- Do the rules on communication and coordination also apply where the “mother company” has its COMI in a third country?