

Grounds for Refusal of Recognition of (Quasi-) Annex Judgements in the Recast European Insolvency Regulation

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Insolvency-related (annex) actions and judgements fall within the scope of the Recast European Insolvency Regulation ('Recast EIR'). That instrument both determines international jurisdiction regarding annex actions and sets up a simplified recognition system for annex judgements. However, tension between the Recast EIR's provisions on jurisdiction and recognition arises when a court of a state different from the state of insolvency erroneously assumes jurisdiction for annex actions. Such 'quasi-annex' judgements rendered by foreign courts erroneously assuming jurisdiction threaten the integrity of the insolvency proceedings. Besides, the quasi-annex judgements may violate the effectiveness and efficiency of the insolvency proceedings as well as the principle of legal certainty.

In my paper, it is argued that even the current legal framework may offer some ways to avoid the recognition of such quasi-annex judgements. First, the scope of the public policy exception may be extended in order to protect the integrity of the insolvency proceedings from the quasi-annex judgements rendered by foreign courts erroneously assuming jurisdiction. Second, it may be argued that quasi-annex judgements do not equal real annex judgements and therefore do not enjoy the automatic recognition system provided by the Recast EIR. At the same time, their close connection to the insolvency proceedings – disregarded by the forum erroneously assuming jurisdiction – may exclude quasi-annex judgements from the scope of the Brussels Ibis Regulation, as well. As a consequence, those quasi-annex judgements may fall within the gap between the two regulations, meaning that no European instrument instructs the courts of the member state addressed to recognise quasi-annex judgements.

My research article has been accepted for publication by International Insolvency Review. The paper can be accessed in the Early View section at <http://onlinelibrary.wiley.com/doi/10.1002/iir.1284/full>.