# International Insolvency Law in the New Hungarian PIL Act – A Window of (missed?) Opportunity to Enact the UNCITRAL Model Law on Cross-Border Insolvency

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The Hungarian Parliament has recently adopted a new act on private international law (see the previous post by Tamás Szabados). The legislator set ambitious goals: the new law extends, somewhat surprisingly, to the PIL aspects – jurisdiction, applicable law and recognition of foreign proceedings – of the international insolvency law.

Indeed, the previous Hungarian PIL framework was unfit to adequately address the relevant questions of the international insolvency law outside the context of the Insolvency Regulation. In cross-border situations, the existing regime did not function properly and this resulted in legal uncertainty, improper protection of the foreign debtor's assets located in Hungary and the neglect of the principle of collective proceedings.

Admittedly, the new law appears to make some (limited) progress regarding the provisions on jurisdiction of Hungarian courts and the law applicable for insolvency proceedings. However, concerning recognition of foreign insolvency proceedings opened in non-EU states the legislator has opted for a flawed model: the extension of the effects of the foreign *lex concursus* to Hungary. Extending the legal effects of insolvency proceedings opened in third states to Hungary without any substantive filter (save for the public policy exception) does not appear to be realistic. The counterbalance introduced by the new law – namely that the recognition would be conditional upon reciprocity – does not really help: it will simply make the system inoperative *vis-à-vis* most foreign states. In effect, in most cases no foreign insolvency proceedings would be recognised in Hungary.

This may cause that the foreign debtor's assets located in Hungary would be exposed to individual enforcement actions meaning the violation of the principle of the collective proceedings.

My paper argues that the enactment of the UNCITRAL Model Law on Cross-Border Insolvency by Hungary would adequately fill the regulatory gap left open by the new PIL Act. Rather than extending the legal effects of foreign insolvency proceedings to Hungary, the Model Law attaches limited *sui generis* legal consequences to foreign insolvency proceedings. The Model Law would allow Hungary to keep under control the infiltration of the effects of foreign insolvency proceedings from third states in relation to which it has no full confidence while maintaining the idea of collective insolvency proceedings by protecting the assets of the foreign debtor located in Hungary and preventing individual actions. In other words, the Model Law represents a flexible approach looking for a balance between recognising the universal effects of the insolvency as provided for by the *lex concursus* on the one hand and the rigid territorial principle disregarding the foreign insolvency proceedings on the other.

One could question whether the PIL Act is the proper legal framework for addressing international insolvency law. Arguably, the rules on international insolvency should fall outside the scope of the PIL Act: international insolvency law is a rather complex field of law consisting of elements of conflict of laws, international procedural law and insolvency-specific norms. It would be reasonable to deal with this area of law in the Insolvency Act or in a separate piece of legislation.

The paper has been accepted by UNCITRAL for publication in the compilation to be issued after the 50th Anniversary Congress. An earlier preprint version, reflecting to the preliminary drafts of the new PIL Act, can be downloaded from http://ssrn.com/abstract=2919047.