

NIKI continued (now in Austria)

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The Regional Court Korneuburg has opened a main insolvency proceeding – not a secondary insolvency proceeding that the German provisional administrator has applied for – on the assets of NIKI Luftfahrt GmbH in Austria (see here). Therefore, it obviously shares the view of the Regional Court of Berlin that NIKI’s COMI is located in Austria and not Germany.

However, it will be possible to lodge an appeal (“Rekurs”) against the Regional Court’s decision within the next 14 days.

As the German Federal Court of Justice still has to decide about the appeal against the ruling of the Regional Court of Berlin, we now see a main (preliminary) insolvency proceeding in Germany and one in Austria. It is not entirely clear under the EIR how to deal with such a positive conflict of jurisdiction. Depending on the decision of the German Federal Court it might just dissolve (if it locates NIKI’s COMI in Austria as well). Otherwise it should be – from my point of view – solved by cooperation and coordination in the spirit of Art. 42 EIR between the German and Austrian courts.

Interestingly the Regional Court Korneuburg has stated that since the decision of the Regional Court of Berlin no main insolvency proceeding is upheld in Germany. However, the Regional Court of Berlin has stated that, due to the fact that it has admitted an appeal (“Rechtsbeschwerde”) to the German Federal Court against its ruling, it has no legal force yet (see here).