

CERIL Report Reviews Cross-Border Effects in European Preventive Restructuring

The independent think tank Conference on European Restructuring and Insolvency Law (CERIL) has published its latest Statement and Report 2022-2 on Cross-Border Effects in European Preventive Restructuring. As EU Member States implement the EU Preventive Restructuring Directive (2019/1023), CERIL has identified and assessed the benefits and shortcomings of applying the EU Insolvency Regulation 2015 (EIR 2015) to govern the cross-border effects of proceedings in national preventive restructuring frameworks. In the absence of an adequate framework for these new preventive restructuring proceedings, the CERIL Report and Statement formulate recommendations to the EU and national legislators.

Three Ways Forward

To date, no tailor-made framework exists which could adequately and effectively facilitate the cross-border effects of these preventive restructuring proceedings. To resolve the legal uncertainty resulting from the lack of a clear regulatory framework, CERIL suggests the following three lines of action. Firstly, as the European Commission will review the application of the EIR 2015 by 27 June 2027, it is recommended that this review critically assesses the adequacy of the EU legislator's approach laid down in the EIR 2015 and tailor it to also cover in detail these restructuring proceedings. Secondly, CERIL welcomes any early, if not immediate, action of the European Commission towards the adoption of a special cross-border framework to include restructuring proceedings in the EIR 2015, either as a separate chapter or take the form of a separate regulation. Thirdly, CERIL invites all Member States to timely review their cross-border frameworks to enable and/or facilitate the recognition of foreign preventive restructurings. A European rescue culture, endorsed by Directive (2019/1023), should be complemented by an instrument to adequately provide legal effects of any restructuring for creditors and shareholders, wherever they are located.

About CERIL and its project on Cross-Border Dimensions of Preventive

Restructuring Proceedings

The Conference on European Restructuring and Insolvency Law (CERIL) is an independent and voluntary non-profit organisation of presently 85 members (conferees), consisting of insolvency practitioners, judges, and academics representing 30 European countries and reflecting a diverse array of national insolvency systems and legal traditions.

In January 2022, CERIL commenced a new project led by Prof. Stephan Madaus (Member of the CERIL Executive, University of Halle-Wittenberg, Germany) and Prof. em. Bob Wessels (CERIL Chair, University of Leiden, the Netherlands). This project addresses the policy issues of identifying (and possibly selecting) the regulatory cross-border framework for the new procedural options introduced in most EU Member States when implementing preventive restructuring frameworks flowing from Directive (2019/1023). CERIL studied the role of the EIR 2015, the Brussels Ibis Regulation, and the current national cross-border laws of Member States. The reporters worked with contributions of a large group of scholars and insolvency practitioners (Czech Republic, Germany, Greece, Hungary, Italy, Poland, Portugal, Serbia, Slovak Republic, Spain, The Netherlands).