INDEX - CONTENTS

MOTTO	V
AUCTORIUM - ABOUT THE AUTHOR	VII
GRATIARUM – ACKNOWLEDGMENTS	
INDEX - INDEX	
INDEX COMPENDIORUM - ABBREVIATIONS	LXXXII

TEXT OF REGULATION 2015/848 AND COMPARISON WITH REGULATION 1349/2000

Text of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).....

Comparison table with the texts of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) and Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings CLXV

CORE PART OF THE COMMENTARY

Note concerning the numbering of the individual parts: Roman numerals are used as an identification of secondary headings only in those Chapters and Sections of the Commentary to the individual Articles where the Article is divided into paragraphs. Chapters and Sections of the Commentary relating to those Articles of Regulation 2015/848 whose normative text is not divided into paragraphs are numbered with Arabic numerals only.]

Vol. I

CHAPTER : GENERAL I	PROVISIONS1
Article 1 [Scope]	r en Parliament and the second of the second
1.I.	Article 1(1): positive definition of scope. Public collective proceedings
1.I.1	Public collective proceedings
1.I.2	Annex A to Regulation 2015/8488
1.I.3	Connection to Annex A and Annex C to Regulation 2015/84810
1.I.4	Universal divestment of assets11
1.I.5	Subjective aspect of the definition of scope: personal application12
1.I.6	Participation of all creditors14
1.I.7	Article 1(1)(a) of Regulation 2015/848: appointment of insolvency practitioner

	1.I.8	Article 1(1)(b) of Regulation 2015/848: assets of the debtor are subject to control or supervision by a court	15
	1.I.9	Article 1(1)(c) of Regulation 2015/848: moratoria	
	1.I.10	Grounds for opening proceedings	
	1.I.11	Actions filed by insolvency practitioners against the bank-	
	1.11.11	rupt's debtors	18
	1.I.12	Connection to the definition of collective proceedings according to Article 2(1) of Regulation 2015/848	
	1.I.13	Territorial scope	19
	1.I.13.1	Absence of international dimension in connection with the applicability of Regulation 2015/848	19
	1.I.13.2	Territorial scope	19
	1.I.14	Proceedings preceding the decision on insolvency and on the method of resolving insolvency	
	1.II.	Article 1(1): negative definition of scope: financial market, insurance sector and collective investment	
	1.II.1	Exemption of special entities from the scope of Regulation 2015/848	21
	1.II.2	Credit Institutions Directive (Directive 2001/24/EC of the	
		European Parliament and of the Council of 4 April 2001 on	
		the reorganisation and winding up of credit institutions)	
	1.II.2.1	Principles of Credit Institutions Directive	
	1.II.2.2	Key instruments and principles of Credit Institutions Directive	
	1.II.2.3	Insolvency of Credit Institutions	
	1.II.2.3.1	Reorganisation	
	1.II.2.3.2	Winding-up Proceedings	
	1.II.2.3.3	Common provisions	26
	1.II.3	Solvency II Directive (Directive 2009/138/EC of the Europe- an Parliament and of the Council of 25 November 2009 on	
		the taking-up and pursuit of the business of Insurance and Reinsurance)	27
	1.II.3.1	Principles of Solvency II Directive	
	1.II.3.2	Basic rules of Solvency II Directive	
	1.II.3.3	Bankruptcy of insurance undertakings	
	1.II.3.3.1	Reorganisation measures	
	1.II.3.3.2	Winding-up proceedings	30
Aı	rticle 2	which is the proceedings.	00
	Definitions		32
A	rticle 2	11.6 Participation colores	
		s]: here point (1): [collective proceedings]	37
	2.I.1	Group of Creditors	
		.	

2.I.2	Prohibition of Discrimination (Equal Treatment)39
2.I.3	Qualification of Insolvency Issues under Private Law39
Article 2	
[Definition	a]: here point (2): [collective investment undertakings]40
Article 2(3)	. V enabligemember under under eine der ein
[Definition	a]: here point (3): [debtor in possession]46
2.III.1	Reason for making the definition: To expand the subject-matter scope of Regulation 2015/848 compared to the previous legislation in place
2.III.2	Limited material impact of Regulation 1346/2000: Significance of court-controlled debtor reorganisation and rehabilitation48
2.III.3	Substantive links to UNCITRAL standards48
2.III.4	Addressing doubts about the inclusion, within the subject-matter scope of Regulation 2015/848, of insolvency proceedings in which the debtor remains in possession of assets49
2.III.5	Scope of the rights and obligations of a debtor in possession compared to those of an insolvency practitioner50
Article 2(4)	
[Definition	n]: here point (4): [insolvency proceedings]52
Article 2(5)	
[Definition	n]: here point (5): [insolvency practitioner]55
2.V.1	Tasks of an insolvency practitioner and link with Annex B to Regulation 2015/848
2.V.1.1	Activities of an insolvency practitioner57
2.V.1.2	Functional set of definitions57
2.V.2	Professional organisations and associations of practitioners58
2.V.3	Natural person versus legal person; insolvency practitioner under private law versus insolvency practitioner under public law58
2.V.4	Performance of insolvency practitioner duties on an interim basis59
2.V.5	Relationship between the practitioner's powers and the estate60
2.V.6	Practitioner's status in relation to individual types of proceedings and procedural situations
2.V.7	Change in the mission of an insolvency practitioner compared to Regulation 1346/2000
2.V.8	Achieving the universal effects of insolvency proceedings via a practitioner – demands placed on the practitioner
Article 2(6)	
[Definition	n]: here point (6): [court]64
2.VI.1	Broad concept of a court65

Index	See London Contents
2.VI.2	Broader and narrower interpretation of the term "court" un-
2. 1.2	der points (i) and (ii)
2.VI.3	The broader concept of a court under point (ii)67
2.VI.4	Functional interpretation of the term "court"68
2.VI.5	Entanglement of the function of a "court" and an "insolvency practitioner"
2.VI.6	Problems in the application of Regulation 1346/2000 and the need for the amendment thereof69
2.VI.7	Exercise of judicial power
Article 2(7)	Absence of International Constraint of a distribution and an income
[Definition proceeding	on]: here point (7): [judgment opening insolvency ngs]
2.VII.1	Act of opening72
2.VII.2	Content of a judgment opening insolvency proceedings73
2.VII.3	Material understanding of a judgment74
2.VII.4	Dismissal of a request for the opening of insolvency proceedings74
Article 2(8)	
[Definition	on]: here point (8): [time of the opening of proceedings]75
2.VIII.1	Establishment of the effects of a judgment opening insolven-
2.VIII.2	Opening of proceedings as a point of reference77
2.VIII.3	Temporal application of Regulation 2015/84877
2.VIII.4	Autonomous interpretation77
2.VIII.5	Judgment in Eurofood
2.VIII.6	Provisional measures and other special situations79
Article 2(9)	
[Definition	on]: here point (9): [Member State in which assets are situated]81
2.IX.1	Function and effects of the definition in Article 2(9) of Regulation 2015/848
2.IX.2	Location of assets in relation to secondary insolvency proceedings86
2.IX.3	The importance of establishing the location for certain types of assets – points (i) to (viii)
2.IX.4	Point (i) of Article 2(9): registered shares87

Point (ii) of Article 2(9) of Regulation 2015/848: book-entry

Point (iii) of Article 2(9) of Regulation 2015/848: cash held in

and rights, ownership of or entitlement to which is entered

financial instruments......88

accounts with a credit institution89

in a public register.....90

Point (iv) of Article 2(9) of Regulation 2015/848: property

2.IX.5

2.IX.6

2.IX.7

Subsidiaries117

Using coordination in proceedings against group companies......117

Private individuals' establishments118

2.X.7

2.X.7.1

2.X.7.2

2. X.8

Article 2(11)		
[Definitio	n]: here point (11): [local creditor]	122
Article 2(12)		
[Definitio	n]: here point (12): [foreign creditor]	125
Article 2(13)		
[Definitio	on]: here point (13): [group of companies]	127
	n]: here point (14): [parent undertaking]	
2.XIII.1	Purpose and significance of definition of members of a group of companies in Regulation 2015/848	
2.XIII.2	Terminological and substantive links between the insolvency, corporate, and accounting definitions in EU law	130
2.XIII.3	Parent undertaking	131
2.XIII.4	Subsidiary undertaking – controlled undertaking	135
2.XIII.5	Group member	136
2.XIII.6	Severability of subjectivity (personhood) and estates of group members (i.e. individual undertakings)	137
Article 3	S.E.	
[Internati	onal jurisdiction]	139
3.I.	Historical context, concept, systematics and basic principles of Article 3 of Regulation 2015/848	151
3.I.1	Historical context	151
3.I.1.1	Importance of the historical context for the practical application of Regulation 2015/848	151
3.I.1.2	1982 Convention	
3.I.1.3	Istanbul Convention	151
3.I.1.4	1995 Convention	152
3.I.1.5	UNCITRAL Model Law on Cross-Border Insolvency (UML)	152
3.I.2	Systematics of international jurisdiction according to Article 3 of Regulation 1346/2000	153
3.I.3	Modified universality and parallel proceedings against the same debtor	154
3.I.4	Competence versus jurisdiction	156
3.II.	Article 1 of Regulation 2015/848: International jurisdiction to open main insolvency proceedings. Centre of the debtor's main interests (COMI)	
3.II.1	Historical context of the evolution of the connecting factor in relation to the contents of the COMI from the perspective	
	of its present concept	156
3.II.1.1	1982 Convention: Origin of the tendencies relevant for the present interpretation of the COMI under currently applicable law	

Index	Contents
2 II 1 2 Interbul Convention	158

3.II.1.2	Istanbul Convention
3.II.1.3	1995 Convention
3.II.1.4	UNCITRAL Model Law (UML)159
3.II.2	Concept of the COMI: closest connection
3.II.3	Importance of the COMI for the determination of the scope of Regulation 2015/848
3.II.4	Relation of the COMI and national (domestic) conflict-of- laws rules of private international law in the determination of jurisdiction
3.II.5	General definition of the centre of the debtor's main interests (COMI) as the connecting factor
3.II.6	Administration of interests on a regular basis163
3.II.7	External manifestations of the centre of main interests (COMI)165
3.II.7.1	Predictability
3.II.7.2	Ascertainable by third parties165
3.II.7.3	Transparency, continuity and objectivity166
3.II.8	The COMI in relation to companies and legal persons167
3.II.9	The COMI in relation to natural persons168
3.II.9.1	Individuals exercising an independent business or professional activity
3.II.9.2	Private individuals
3.II.10	Rebuttable presumptions of the existence of the COMI168
3.II.10.1	Subject-matter scope and natural persons
3.II.10.2	The nature of the presumptions and the process of rebutting the presumptions
3.II.10.3	Companies and legal persons: registered office171
3.II.10.4	Natural persons – entrepreneurs: place of business172
3.II.10.5	Private individuals: place of habitual residence173
3.II.10.6	Temporal test of the rebuttable presumptions of the COMI174
3.II.11	Concept of the centre of main interests (COMI) under the UNCITRAL Model Law (UML) and its importance for application in practice
3.II.11.1	and the state of t
3.II.11.2	Relationship between the UML and Regulation 2015/848 (Regulation 1346/2000)
3.II.11.3	Centre of main interests (COMI) in the UML and in Regulation 2015/848 (Regulation 1346/2000)
3.II.11.4	Importance of the moment of opening the proceedings under the UML and under Regulation 2015/848 (Regulation 1346/2000) in connection with proceedings in other states as

	concerns the identification of the centre of the debtor's main interests (COMI)
3.II.11.5	Importance of including in the UML the rules regulating the determination of the COMI for the application of Regula-
	tion 2015/848 or, as applicable, Regulation 1346/2000, from
	the perspective of insolvency proceedings conducted in EU
3.III.	Member States
3.III.1	Historical context of the concept of parallel proceedings (main proceedings and territorially limited proceedings)186
3.III.1.1	Istanbul Convention
3.III.1.2	1995 Convention
3.III.2	Universal nature of main insolvency proceedings and the possibility of opening territorially limited proceedings
3.III.3	Forms of territorially limited proceedings
3.III.3.1	Secondary and territorial proceedings
3.III.3.2	Connection between secondary proceedings and main proceedings.188
3.III.4	Objective of the secondary proceedings
3.III.4.1	Protection of local creditors
3.III.4.2	Broader spectrum of applicability of the lex concursus
3.III.4.3	Effective realisation of the estate
3.III.5	Establishment as a requirement for the opening of territorially limited proceedings
3.III.6	Purpose of establishment in connection with the purpose of territorially limited insolvency proceedings
3.III.7	Temporal test of the existence of establishment
3.III.7.1	Request to open insolvency proceedings as a criterion for ascertaining the presence of establishment
3.III.7.2	Setting up an establishment after the opening of the main insolvency proceedings
3.III.7.3 liggs	Cessation of activity of an establishment at the moment of filing the request to open secondary insolvency proceedings195
3.III.7.4	No cumulation of requirements regarding the temporal test197
3.III.8	Condition and scope of activity of an establishment198
3.III.9	Possibility to use the assets located in an establishment for the purposes of the insolvency proceedings203
3.III.10	Forms of territorially limited proceedings205
3.IV.	Article 3(3) of Regulation 2015/848: Competing international jurisdictions / conflict of jurisdiction206
3.IV.1	Parallel opening of two proceedings classified as main proceedings206

3.IV.1.1	Principle of priority accorded to the main proceedings opened earlier	
3.IV.1.2	Classification of subsequently opened proceedings	
3.IV.2	Competing simultaneously opened main insolvency proceedings. Positive conflict of jurisdiction	207
3.IV.3	Negative conflict of jurisdiction	
3.IV.4	Alternatives of resolving conflicts of jurisdiction	212
3.IV.5	Entity with an autonomous legal personality as an establishment	
3.IV.5.1	Significance of legal personality of an establishment. The concept of cooperation of insolvency proceedings against a group of companies jeopardised	213
3.IV.5.2	Stojevic case	214
3.IV.6	Independence versus interaction between the decision to open main and secondary proceedings	216
3.V.	Article 3(4) of Regulation 2015/848: (independent) territorial proceedings	
3.V.1	Independence of territorial proceedings on the debtor's COMI	217
3.V.2	Conditions for opening territorial proceedings: general conditions and prerequisites	217
3.V.3	Existence of an establishment	218
3.V.4	Article 3(4)(a) of Regulation 2015/848: impossibility to open main insolvency proceedings in the state of the debtor's COMI	219
3.V.5	Article 3(4)(b) of Regulation 2015/848: request lodged by a local creditor or public authority with <i>locus standi</i> in the state where the establishment is located	219
3.V.5.1	Article 3(4)(b)(i) of Regulation 2015/848: <i>locus standi</i> of local creditors	219
3.V.5.1.1	Locus standi pursuant to Regulation 1346/2000	
3.V.5.1.2	Locus standi pursuant to Regulation 2015/848	220
3.V.5.1.3 (H	Connection to the definition of local creditor in Article 2(11) of Regulation 2015/848	220
3.V.5.2	Article 3(4)(b)(ii) of Regulation 2015/848: <i>locus standi</i> of a public authority in the state where the establishment is situated	
3.V.6	Transformation of territorial proceedings into secondary proceedings	
3.VI.	Annotation and summary of significant decisions of the Court of Justice and the EU Member States	
3.VI.1	Annotation of selected case-law of the Court of Justice:	
3.VI.2	Annotation of selected case-law of the courts of EU Member State	s:226

-			_	
A	rti	-		/8
4	PILL			

[Examinat	ion as to jurisdiction]254
4. I.	Reasons for new legislation and connection to other sources of international insolvency law256
4.I.1	Comparison with other sources256
4.I.2	Reasons for introducing an active duty of the courts relating to the examination and review of international jurisdiction257
4.I.3	Burden of proof and connection to the UNCITRAL (UML) standards
4.II.	Article 4(1) of Regulation 2015/848: examination of international jurisdiction by the court of its own motion260
4.II.1	Determination of international jurisdiction of insolvency courts260
4.II.2	The principle of mutual trust in the judiciary of other Member States under the EU law
4.II.3	Application of the principle of mutual trust in the examination of the courts' jurisdiction to open and conduct insolvency proceedings
4.II.4	Application of the principle of mandatory examination of the courts' own jurisdiction under Regulation 1346/2000 in the case-law of the ECJ/CJ EU
4.II.4.1	Staubitz-Schreiber266
4.II.4.2	Eurofood IFSC Ltd
4.II.4.3	MG Probud Gdynia267
4.II.4.4	Interedil
4.II.5	Application of the principle of mandatory examination of the courts' own jurisdiction under Regulation 1346/2000 in the case-law of the courts of EU Member States
4.II.5.1	Decision of the Higher Regional Court in Vienna (Oberlandesgericht Wien) [AUT], 28 R 70/11m and 28 R 87/08g269
4.II.5.2	Decision of the Supreme Court (Oberstes Gericht) (OGH) [AUT], Case No. 8 Ob 12/06g
4.II.5.3	Decision of the OGH [AUT], Case No. 8 Ob 134/07z270
4.II.5.5	Decision of the BGH [DEU], Case No. IX ZB 287/11271
4.II.5.6	Decision of the Regional Court in Mönchengladbach [DEU] (Landgericht Mönchengladbach), Case No. 45 IN 130/10271
4.II.5.7	District Court in Nuremberg [DEU] (Amtsgericht Nürnberg)272
4.II.5.8	Decision of the High Court Chancery Division [GBR] in <i>European Directories DH6 BV</i> , neutral citation [2010] EWHC 3472273
4.II.5.9	Decision of the High Court of Justice London in <i>Hellas</i> , [2009] EWHC 3199273
4.II.6	Investigative approach of the court's own initiative273

4.111. Article 5		Article 4(2): examination by the insolvency practitioner	2/3
	gunn.	lovely linked with them.	bus
	al re	view of the decision to open main insolvency proceedings]	275
5.I.		Article 5(1) of Regulation 2015/848: the creditors or the debtor may challenge the decision on the request to open main insolvency proceedings. Special and unique mechanism according to the directly applicable EU law	278
5.I.1		Historical context and scope ratione materiae	278
5.I.1.1		Historical context	278
5.I.1.2		Purpose	278
5.I.2		Purpose and development of case-law in selected countries	279
5.I.2.1		Purpose of the rule	279
5.I.2.2		Practice in selected Member States as a template for the introduction of a new mechanism of defence against the judgment opening insolvency proceedings	279
5.I.3		Nature of the law and the instrument of challenging the judgment opening insolvency proceedings	
5.I.4		Locus standi	283
5.I.5		Judgment opening insolvency proceedings as an object of the procedure under Article 5(1) of Regulation 2015/848	284
5.I.6		The court in Article 5(1) of Regulation 2015/848	286
5.I.7		Grounds for challenging the judgment opening insolvency proceedings under Article 5(1) of Regulation 2015/848	
5.I.7.1		Grounds for challenging judgments	286
5.I.7.2		Burden of proof	287
5.I.8		Relationship between the mechanism under Article 5(1) of Regulation 2015/848 and the <i>lex fori concursus</i>	289
5.I.8.1		Autonomous nature of the procedure under Article 5(1) of Regulation 2015/848 and its application alongside the mechanisms provided for under the <i>lex fori concursus</i>	289
5.I.8.2		Scope of the procedure under Article 5(1) of Regulation 2015/848 and absence of any deadline limiting its application	291
5.I.8.3		Other formal requirements imposed on the petitioner	292
5.I.9		Consequences of challenging the decision on the request for	
5.II.		opening main insolvency proceedings	
5.II.1		Objective and nature of the procedure	
5.II.2		Scope <i>ratione materiae</i> and object of the procedure	
5.II.3		Court in Article 5(2) of Regulation 2015/848: conceptual error in the drafting of the Czech language version.	
		ROHOJNA KNIHOVNA	LXVII

Article 6	
ALUCICO	

[Jurisdiction and closely]	n for actions deriving directly from insolvency proceedings [anked with them]296
6.I.	Historical context. Purpose303
6.I.1	Historical and conceptual context303
6.I.2	Purpose
6.I.3	Scope <i>ratione materiae</i> : main and territorially limited proceedings305
6.II.	Article 6(1) of Regulation 2015/848: concentration of international jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them306
6.II.1	Scope <i>ratione materiae</i> and importance of the definition of actions (claims) deriving directly from insolvency proceedings and closely linked with them
6.II.2	Importance of the objectives of Regulation 2015/848307
6.II.3	International jurisdiction for insolvency-derived actions
6.II.3.1	Scope of international jurisdiction pursuant to Article 3 of Regulation 2015/848
6.II.3.2	Connection between Article 3 of Regulation 2015/848 and Article 6(1) of Regulation 2015/848
6.II.3.3	Connection to Article 32 of Regulation 2015/848 and difference from the Brussels Ia Regulation
6.II.4	Concentration of international jurisdiction309
6.II.5	Another court and determination of jurisdiction <i>ratione materiae</i> and territorial jurisdiction: autonomy of national legal
6.II.6	Connection with insolvency proceedings: priority of the material assessment of a connection with insolvency proceedings over a formal concept
6.II.7	Approach of the Court of Justice to the definition of "insolvency-derived" (insolvency-related) in connection with international jurisdiction and in relation to selected types of actions311
6.II.7.1	Action to set a transaction aside
6.II.7.2	General rules313
6.II.7.3	Protective (preservation) measures / reservation of title314
6.II.7.4	Reimbursement to the estate
6.II.8 ban	Application of Regulation 2015/848 with respect to insolven- cy-derived actions against defendants domiciled in non-EU countries (outside the territorial scope of Regulation 2015/848)317
6.II.8.1	Application of the EU insolvency law regardless of the existence of any cross-border dimension
6.II.8.2	International dimension in relation to third countries

7.III.2.2	Immunity and special exceptions351
7.III.2.3	Insolvency practitioner's position in relation to the insolven-
	cy estate351
7.III.2.4	Insolvency of a deceased's estate351
7.III.3	Article 7(2)(c) of Regulation 2015/848: powers of the debtor
	and of the insolvency practitioner352
7.III.4	Article 7(2)(d) of Regulation 2015/848: permissibility of set-offs353
7.III.4.1	Insolvency (procedural) versus substantive-law permissibility of set-offs353
7.III.4.2	Specific nature of set-off in payment and clearing systems354
7.III.5	Article 4(2)(e) of Regulation 2015/848: effects on current
	contracts to which the debtor is a party354
7.III.5.1	The concept of current contracts
7.III.5.2	Extensive effects of the lex fori concursus on current contracts355
7.III.5.3	Exceptions
7.III.5.4	Consumer contracts
7.III.6	Article 7(2)(f) of Regulation 2015/848: effects on proceedings brought by individual creditors, with the exception of lawsuits356
7.III.6.1	Effects of the lex fori concursus
7.III.6.2	Proceedings brought by individual creditors357
7.III.6.3	Effects on lawsuits
7.III.6.4	Effects on arbitral proceedings358
7.III.6.5	Manner of applying the effects of the opening of insolvency proceedings to other proceedings opened by creditors359
7.III.7	Article 7(2)(g) of Regulation 2015/848: claims lodged against the estate
7.III.8	Article 7(2)(h) of Regulation 2015/848: lodging, verification, and admission of claims
7.III.9	Article 7(2)(i) of Regulation 2015/848: distribution of proceeds360
7.III.10	Article 7(2)(j) of Regulation 2015/848: closure of insolvency proceedings
7.III.10.1	Scope of effects of the <i>lex concursus</i>
7.III.10.2	Personal status of the debtor after the closure of insolvency proceedings
7.III.11	Article 7(2)(k) of Regulation 2015/848: creditors' rights after the closure of insolvency proceedings
7.III.12	Article 7(2)(1) of Regulation 2015/848: payment of the costs of proceedings
7.III.13	Article 7(2)(m) of Regulation 2015/848: voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors

8.I. System underlying Articles 8 to 10 of Regulation 2015/848: universality attenuated by special rules on general arrangements under Article 7 of Regulation 2015/848	[Third part	ies' rights in rem]	365
8.II. Historical antecedents	8.I.	universality attenuated by special rules on general arrange-	1.8 1.8 2.6905
8.III. Purpose of Article 8 of Regulation 2015/848			
8.IV. Article 8(1) of Regulation 2015/848: third parties' rights in rem and specifics thereof	8.II.	Historical antecedents	369
in rem and specifics thereof	8.III.	Purpose of Article 8 of Regulation 2015/848	369
8.IV.2 Personal scope of protection afforded by Article 8 of Regulation 2015/848	8.IV.	in rem and specifics thereof	370
8.IV.2 Personal scope of protection afforded by Article 8 of Regulation 2015/848	8.IV.1	Rights in rem	370
2015/848	8.IV.2	Personal scope of protection afforded by Article 8 of Regula-	
8.IV.3.2 Asset forming part of the estate	8.IV.3	2015/848	371
8.IV.3.3 Immovable assets versus movable assets	8.IV.3.1	Absence of the definition of an asset	371
8.IV.3.4 Intangible assets	8.IV.3.2	Asset forming part of the estate	371
8.IV.3.5 Fungible assets	8.IV.3.3	Immovable assets versus movable assets	371
8.IV.3.5 Fungible assets	8.IV.3.4	Intangible assets	371
8.IV.4 Use of the mechanism under Article 32 of Regulation 2015/84837 8.IV.5 Removal of movable assets	8.IV.3.5	Fungible assets	371
8.IV.5 Removal of movable assets	8.IV.3.6	Claims	372
8.IV.6.1 Absence of an express definition of rights in rem	8.IV.4	Use of the mechanism under Article 32 of Regulation 2015/848	372
8.IV.6.1 Absence of an express definition of rights <i>in rem</i>	8.IV.5		
8.IV.6.2 Means of travel	8.IV.6		
8.IV.6.3 Res in transitu (thing in transit)	8.IV.6.1	Absence of an express definition of rights in rem	375
8.IV.7 Link to Articles 20(1) and 52 of Regulation 2015/848	8.IV.6.2		
8.IV.9 Exclusion from the rules of the lex fori concursus	8.IV.6.3		
8.IV.9 Exclusion from the rules of the lex fori concursus	8.IV.7		378
8.IV.10 Opening of insolvency proceedings and the effect on rights <i>in rem</i> 38 8.IV.10.1 Nature of the rules contained in Article 8(1) of Regulation 2015/848 38 8.IV.10.2 Significance of the location of assets in another state versus a debtor's establishment	8.IV.8	applied	
8.IV.10.1 Nature of the rules contained in Article 8(1) of Regulation 2015/84838 8.IV.10.2 Significance of the location of assets in another state versus a debtor's establishment	8.IV.9	Exclusion from the rules of the lex fori concursus	379
8.IV.10.2 Significance of the location of assets in another state versus a debtor's establishment	8.IV.10		
debtor's establishment	8.IV.10.1	Nature of the rules contained in Article 8(1) of Regulation 2015/	848381
rem over assets located in another state	8.IV.10.2		381
	8.IV.11	rem over assets located in another state	
	8.IV.12	Exercise of the rights of creditors whose claims are secured in re	т 383
8.1V.13 The lex rei sitae as the law applicable to the definition of a right in rem	8.IV.13	The <i>lex rei sitae</i> as the law applicable to the definition of a	

8.IV.14	The object of a right <i>in rem</i> and how it links in with the scope of the estate
8.IV.15	Factors specific to rights in rem under English common law385
8.IV.16	Relationship between Articles 8 and 11(1) of Regulation 2015/848385
8.V.	Article 8(2) of Regulation 2015/848: non-exhaustive
	definition of rights in rem386
8.V.1	Definition of rights in rem
8.V.2	Non-exhaustiveness of the list of rights in rem
8.V.3	Rights <i>in rem</i> and the absence of an explicit definition in Regulation 2015/848387
8.V.4	Article 8(2)(a) of Regulation 2015/848: the right to dispose of assets or have them disposed of by virtue of a lien or a mortgage388
8.V.5	Article 8(2)(b) of Regulation 2015/848: lien
8.V.6	Article 8(2)(c) of Regulation 2015/848: right to recover an asset388
8.V.7	Article 8(2)(d) of Regulation 2015/848: right to fruits
8.VI.	Article 8(3) of Regulation 2015/848: record in a public register and extension of protection
8.VI.1	Public register
8.VI.2	Extension of protection via Article 8(3) of Regulation 2015/848390
8.VII.	Article 8(4) of Regulation 2015/848: action for voidness, voidability or unenforceability under Article 7(2)(m) of Regulation 2015/848
8.VIII. Article 9	Breach of Article 8 of Regulation 2015/848392
[Set-off].	396
9.I.	Historical antecedents397
9.II.	Article 9(1) of Regulation 2015/848397
9.II.1	Durnoss and applicability
9.II.1 9.II.2	Purpose and applicability
9.II.2 9.II.3	Set-off
9.II.3 9.II.4	Limitation of the law applicable to principal claims
	Determination of the law applicable to principal claims in obligation relationships
9.II.4.1	Law applicable to set-offs under directly applicable EU law (Rome I Regulation)
9.II.4.2	Concept for determining the law applicable to set-off400
9.II.4.3	Prerequisites when handling the law applicable to set-off401
9.II.4.4	Significance of the international dimension in determining the law applicable to the principal claim from the standpoint
9.II.4.5	of Article 9 of Regulation 2015/848

and unenforceability......426

		- 1		-	-
A	rti	C	0	- 1	

[Contract	s relating to immoveable property]429
11.I.	Historical antecedents, purpose and concept of Article 11 of Regulation 2015/848
11.I.1	Historical antecedents and evolution of the legislation430
11.I.2	The legislative concept, the closest link, and the importance of the <i>lex sitae</i> as a connecting factor for immovable property431
11.I.3	Immovable property432
11.I.3.1	Significance of immovable property and the term "immovable property"
11.I.3.2	Classification of immovable property by location433
11.I.3.3	Alternative assessment of immovable property according to an autonomous interpretation thereof
11.I.3.4	Exclusion of a broader interpretation of immovable property to cover other assets subject to registration
11.I.4	Contracts conferring the right to acquire or make use of immovable property
11.I.5	Remunerative nature of contracts
11.I.6	Undertaking/operation and lease of an undertaking/operation439
11.I.7	Transfer of shares/shareholdings in a company with significant immovable property
11.I.8	Contract duration
11.I.9	Letting and hire purchase of an asset441
11.I.10	Leasing441
11.I.11	Security-based relationships and other relationships con- cerning immovable property
11.I.12	Mixed contracts
11.I.13	Contracts relating to multiple immovable properties442
11.I.14	Application of Article 11 of Regulation 2015/848 to accessory claims (claims deriving from a void contract, etc.)
11.I.15	Application of Article 11 of Regulation 2015/848, depending on the type of insolvency proceedings
11.I.16	Voidability443
11.I.17 11.II.	Territorial effects of Article 11 of Regulation 2015/848
11.II.1	Determination of applicable law and significance of the location of immovable property445
11.II.2	Content and scope of the <i>lex rei sitae</i> in the application of Article 11(1) of Regulation 2015/848445

11.II.3	The relationship to Article 21(3) of Regulation 2015/848 (Article 18(3) of Regulation 1346/2000)	446
11.III.	Article 11(2) of Regulation 2015/848	
11.III.1	Purpose of the provision	
11.III.2	Scope of Article 11(2) of Regulation 2015/848	448
11.III.3	Court	448
11.III.4	Conditions of application	
11.III.5	The legal basis for a court's decision-making determined pursuant to Article 11(2) of Regulation 2015/848	
11.III.6	Scope of jurisdiction (jurisdiction ratione materiae) of a court	
rticle 12	.l. Historical antecedents	
[Payment	systems and financial markets]	452
12.I.	Historical antecedents	457
12.II.	Article 12(1) of Regulation 2015/848	457
12.II.1	Principle underpinning the provision	457
12.II.2	Purpose	457
12.II.3	Other instruments of EU law to protect the financial market	
12.11.5	and coherence with Regulation 2015/848	458
12.II.4	Payment system, settlement system, financial market	
12.II.4.1	Absence of explicit definitions in Regulation 2015/848	
12.II.4.2	Payment system	
12.II.4.3	Financial market	
12.II.5	The special character of Article 12 of Regulation 2015/848 for general arrangements on applicable law	461
12.II.6	Territorial restrictions	
12.II.7	Exception of public policy	464
12.II.8	Banking secrecy	465
12.II.9	Anti-money-laundering rules	466
12.II.10	The exercise of a practitioner's powers under the lex fori concursu	s467
12.II.11	The relationship that the rights and obligations of courts and practitioners have to authorities responsible for the supervision and oversight of systems and markets	468
12.II.12	The impact on payment systems, payment card systems and	
PA serielene	documentary payment instruments, such as bills of exchange and cheques	468
12.II.13	The relationship between the protection of third parties' rights <i>in rem</i> (Article 8 of Regulation 2015/848) and the law applicable to payment systems and financial markets (Article	
	12 of Regulation 2015/848)	469
12.III.	Article 12(2) of Regulation 2015/848	471

12.IV.	Relevance of the Settlement Finality Directive471
12.IV.1	Principles of the Settlement Finality Directive in relation to insolvency proceedings
12.IV.2	Financial market versus payment and settlement systems
12.IV.3	The relationship between the Settlement Finality Directive and Regulations 1346/2000 and 2015/848
12.IV.4	Safeguarding and insulating the rights of holders of collateral security from the effects of the insolvency of the collateral provider474
Article 13	
[Contract	s of employment]479
13.I.	Historical antecedents487
II.E1 52	Article 13(1): the law applicable to the employment status of employees in the event of insolvency proceedings
13.II.1	Purpose
13.II.2	Scope
13.II.2.1	Law applicable to an employment relationship: effects of the opening of insolvency proceedings on the duration and course of employment relationships
13.II.2.2	Employee claims and third-party interests. Exclusion from the scope of Article 13 of Regulation 2015/848489
13.II.3	The employee as a bankrupt490
13.II.4	Contract of employment, individual contract of employment and employment relationship490
13.II.4.1	Need for autonomous interpretation of the concept of an individual contract of employment
13.II.4.2	Characteristics of an individual contract of employment (in- dividual employment relationship)
13.II.4.3	Decisive importance of the actual content of the contract and the contractual relationship
13.II.5	Contracts of employment and employment relationships494
13.II.6	Collective employment relationships495
13.II.7	Exclusive application
13.II.7.1	Impossibility of giving employees more favourable treatment under other applicable law
13.II.7.2	State wage guarantees in cases of insolvency
13.II.8	Determination of the law applicable to employment relationships497
13.II.8.1	Determination of applicable law and the purpose of Article 13(1) of Regulation 2015/848
13.II.8.2	Restriction to the law of the Member State governing the contract of employment

13.III.	Article 13(2) of Regulation 2015/848: special jurisdiction (international jurisdiction) for approval of the termination or modification of contracts	499
rticle 14		
[Effects on	rights subject to registration]	515
14.1	Historical antecedents	516
14.2	Purpose of rules on, and the relevance of, a public register	
14.3	Public register	517
14.4	Subject-matter scope	518
14.4.1	Rights subject to registration	
14.4.2	Rights of a debtor	519
14.4.3	Immovable property	519
14.4.4	Ships	519
14.4.4.1	Types of ships	519
14.4.4.2	Multiplicity of registers	519
14.4.4.3	Ships not registered mandatorily	
14.4.5	Aircraft (aerial vehicles)	
14.5	Territorial scope	
14.6	Cumulative effect and conflict of applicable laws (the lex fori concursus and lex libri)	521
14.7	The law under the authority of which a register is kept	523
14.8	Jurisdiction (international jurisdiction)	523
Article 15		
Europear	n patents with unitary effect and Community trade marks]	525
15.1	Historical antecedents	
15.1.1	Evolution of the legislation	530
15.1.2	Relationship to special regulations governing specific industrial rights in EU law	
15.2.	Purpose, nature and principle of the provision	532
15.3	Relationship to Article 2(9) of Regulation 2015/848 and Article 8 of Regulation 2015/848	
15.4	Method used in the application of Article 15 of Regulation 2015/848, and the relationship to provisions on the insolvency of a holder of industrial rights in special rules governing industrial rights covered by the scope ratione materiae of Regulation 2015/848	
15.5	delimitationdelimitation delimitation	
15.6.	Positive scope ratione materiae	535
15.6.1	European patent with unitary effect	535

Index		Contents
16.6.1	Burden of proof	561
16.6.2	Burden of raising and presenting an issue	562
16.7	Scope	563
16.7.1	Scope ratione materiae: detrimental acts	563
16.7.1.1	Voidness, voidability or unenforceability	
16.7.1.2	Acts	563
16.7.1.3	Detrimental act	564
16.7.1.4	Acts detrimental to all creditors	565
16.7.1.5	Benefit	566
16.7.2	Type of proceedings	566
16.7.3	Subjective scope	566
16.7.3.1	Status, in relation to insolvency proceedings, of an entity against whom an objection is raised regarding a legal act	566
16.7.3.2	Restriction to unsecured creditors	567
16.7.4	Territorial scope	568
16.7.5	Acts aimed at nullifying detrimental acts under the lex fori concursus	
16.7.6	Timeframe: restrictions on acts carried out prior to the	en reloitééé
16.8	opening of insolvency proceedings Voidability	569570
16.8.1	Concept of voidability/voidness	570
16.8.2	Classification of voidability/voidness	
16.9	Impossibility of challenging acts under applicable law	
Article 17		
Protection	on of third-party purchasers]	575
17.1	Introduction	576
17.1.1	Historical antecedents	576
17.1.2	Principles and basis of the provision	
17.1.2	Subject-matter and territorial scope of Article 17 of Regulation 2015/848	578
17.2.1	Scope ratione materiae	578
17.2.1.1	Immovable property	579
17.2.1.2	Ships and shipping registers	580
17.2.1.3	Ships not entered in public registers and analogy with other means of transport not registered in public registers	
17.2.1.4	Securities and the special regime vis-à-vis immovable property, ships and aircraft entered in registers	II.RI

17.2.2	The territorial scope and method of application of Article 17 of Regulation 2015/848 within and outside the territorial
17.3	Significance of the term disposition for consideration (disposal for consideration)
17.4	Consideration and gratuitous disposition, disposition for insufficient consideration591
17.5	Effects of the voidness of an act (disposal of an asset) pursuant to Article 17 of Regulation 2015/848593
17.6	Application of Article 17 of Regulation 2015/848 in main and secondary insolvency proceedings
17.7	Other potentially contentious situations in relation to the subject-matter and application of Article 17 of Regulation 2015/848
17.8	Link to Article 29 of Regulation 2015/848 (Article 22 of Regulation 1346/2000)
17.9	Link to Article 7(2)(m) of Regulation 2015/848 and Article 16 of Regulation 2015/848, and the temporal scope of Article 17 of Regulation 2015/848596
17.10	Relationship with third countries596
Article 18	to T. a. Timeframe restrictions on arts carried out prior to the
[Effects o	f insolvency proceedings on pending lawsuits or arbitral ngs]599
18.I.	Scope of Article 18 of Regulation 2015/848 and the application thereof, especially to lawsuits
18.I.1	Scope ratione materiae of Article 18 of Regulation 2015/848602
18.I.2	Assets, estate (assets and rights that form part of the estate)607
18.I.3	Opening of proceedings – pending lawsuits611
18.I.4	Lawsuits
18.I.5	Scope of application of the applicable law in relation to procedural mandates
18.I.6	Lawsuit under Article 18 of Regulation 2015/848 from the perspective of a conflict of legal cultures (<i>civil law v common law</i>)620
18.I.7	Judicial administrative proceedings and administrative proceedings as a type of lawsuit under Article 18 of Regulation 2015/848
18.I.8	Classification of insolvency proceedings in connection with their effects on lawsuits opened in another state
18.I.9	Territorial scope of Article 18 of Regulation 2015/848623
18.II.	Arbitration versus insolvency proceedings from the perspective of EU law – explicit expansion of the scope ratione materiae of Article 18 of Regulation 2015/848 to arbitration

18.II.1	General conflict of interests between arbitration and insol- vency proceedings
18.II.2	General approach of arbitrators and EU law
18.II.3	Approach of Regulation 2015/848 to the relationship between arbitration and insolvency proceedings
18.II.4	Grounds for the preferential application of the <i>lex fori con- cursus</i> in arbitration, as opposed to the <i>lex arbitri</i>
18.II.5	Scope of the rules affected by Article 18 of Regulation 2015/848 (Article 15 of Regulation 1346/2000)
18.II.5.1	Effects of the opening of insolvency proceedings on the validity of the arbitration agreement
18.II.5.2	Influence of the opening of insolvency proceedings on the procedural capacity of the debtor
18.II.5.3	Influence of the opening of insolvency proceedings on arbitral procedure
18.II.6	Consequences of the opening of insolvency proceedings for the validity (effectiveness) of arbitration agreements and choice-of-court (forum selection) agreements in light of the Report evaluating the application of Regulation 1346/2000 with recommendations for new EU insolvency law (HLV Report)649
18.II.7	Importance of the <i>lex arbitri</i> in the context of insolvency proceedings
18.II.8	Powers of insolvency practitioner in connection to arbitration under the EU law652
18.II.9	Subject matter of arbitration in relation to insolvency proceedings opened against a party to arbitral proceedings (party's assets)
18.II.10	Necessary connection between the subject matter of arbitral (or any other) proceedings and insolvency proceedings
18.II.11	Influence of insolvency proceedings on arbitration in the case-law of courts
18.II.12	Scope and application of Article 18 of Regulation 2015/848 or, as applicable, Article 15 of Regulation 1346/2000 to arbitral proceedings
18.II.13	Article 18 of Regulation 2015/848 and changes vis-à-vis Article 15 of Regulation 1346/2010
18.II.13.1	Preparatory works and assessment of the application of Article 15 of Regulation 1346/2000 in relation to arbitration667
18.II.13.2	Impact of the expanded provision (compared to Article 15 of Regulation 1346/2000) on future application of Article 18 of Regulation 2015/848 in relation to arbitration671
18.II.13.3	Importance of the place (seat) of arbitration672
18.II.14	Method of applying Article 18 of Regulation 2015/848674

18.II.14.1	due regard for the specific features of arbitration and the
628	instruments thereof674
18.II.14.2	Place in which the arbitral tribunal has its seat674
18.II.14.3	Subjective scope of application of Article 18 of Regulation
	2015/848 in relation to arbitration (place of arbitration in a
	Member State where the parties have no relevant relation to any EU Member State)
CHAPTER	II684
	084
RECOGNI	TION OF INSOLVENCY PROCEEDINGS684
Article 19	
[Principle	
19.I.	Historical context690
19.II.	Article 16(1) of Regulation 2015/848: automatic
	recognition of judgments opening insolvency
	proceedings; universal effects692
19.II.1	Automatic recognition in compliance with the principle of universality
19.II.2	Conditions under which the decision produces effects in the
18.L -n	territory of another state695
19.II.2.1	Existence of the judgment opening insolvency proceedings695
19.II.2.2	Effectiveness of the judgment opening insolvency proceedings: ability to produce effects
19.II.2.3	No infringement of public policy
19.II.2.4	Jurisdiction of the court to hand down the judgment opening insolvency proceedings
19.II.3	Personal insolvency capacity
19.II.4	Scope ratione materiae
19.II.4.1	Type of decision701
19.II.4.2	Main insolvency proceedings versus secondary insolvency
	proceedings from the perspective of the principle of universality701
19.II.5	Relationship between the universal effect under Regulation 2015/848 and enforcement proceedings
19.II.6	Effects of the rejection of the request to open insolvency pro-
15 of 91.81	ceedings702
19.III.	Article 16(2) of Regulation 2015/848: recognition of main insolvency proceedings and opening of secondary insolvency proceedings

Article 20	
[Effects of	recognition]708
20.I.	Historical context, concept, and scope714
20.I.1	Historical context/14
20.I.2	Concept714
20.I.3	Scope715
20.II.	Article 20(1) of Regulation 2015/848715
20.II.1	Limited universality715
20.II.2	Limitations resulting from the application of the public policy exception (<i>ordre public</i>)716
20.II.3	Effects of the judgment opening insolvency proceedings under substantive law
20.II.4	Exclusion of any act of recognition717
20.II.5	Prohibition to issue a decision concerning the debtor's assets718
20.II.6	Additional assets discovered in the state of the secondary insolvency proceedings and consequences of the closure of main or secondary insolvency proceedings
20.II.6.1	Closure of main insolvency proceedings after the closure of secondary insolvency proceedings
20.II.6.2	Closure of secondary insolvency proceedings after the closure of main insolvency proceedings
20.II.7	Opening of insolvency proceedings and effects of judgments (court decisions) and similar decisions issued in another country720
20.II.7.1	Decisions issued before the opening of insolvency proceedings in another country
20.II.7.2	Decisions issued after the opening of insolvency proceedings in another country
20.II.7.3 20.III.	Opening of insolvency proceedings and individual enforcement721 Article 20(2) of Regulation 2015/848
20.III.1	Territorial precedence of the effects of secondary insolvency proceedings
20.III.2	Temporal effects of the decision to open secondary insolven- cy proceedings
20.III.3 Article 21	Debt discharge723
[Powers o	f the insolvency practitioner]725
21.I.	Historical antecedents, purpose, subjective scope727
21.I.1	Historical antecedents727
21.I.2	Purpose and significance of the provision727

21.1.5	the perspective of the practitioner's powers	28
21.I.4	Subjective scope: an insolvency practitioner versus a debtor in possession	20
21.II.	Article 21(1) of Regulation 2015/848:	27
	a practitioner in the main insolvency proceedings73	30
21.II.1	Status of a practitioner in the main insolvency proceedings	30
21.II.2	Protective measures	31
21.II.3	Authorisation to remove assets	32
21.III	Article 21(2) of Regulation 2015/848: a practitioner in secondary insolvency proceedings	33
21.III.1	Assets located in the state of secondary proceedings and the territorial overlap of the powers of a practitioner in secondary proceedings	33
21.III.2	Power to re-establish the asset status	
21.III.2.1	Restitution of assets to the estate in secondary insolvency proceedings	
21.III.2.2	Material scope of the right to recover assets for the estate in secondary proceedings: movable property	
21.III.2.3	Restitution of assets from a third state	36
21.III.3	Application of voidability	36
21.III.4.	Removal of assets	37
21.III.4.1	Removal of property under Article 21(2) of Regulation 2015/848 prior to the opening of secondary insolvency proceedings.73	37
21.III.4.2	Cost of removing movable assets	37
21.III.4.3	Protection of creditors in the country in which the property	
21.IV.	was originally located	
21.IV.1	The obligation to act in accordance with the law of a Member State73	38
21.IV.2	Prohibition of coercive measures and dispute resolution74	40
21.IV.2.1	Prohibition of ruling on legal proceedings or disputes	40
21.IV.2.2	Prohibition of coercive measures	40
21.IV.2.3	Compliance with local law	41
21.IV.3	Defence against the exercise of the practitioner's powers74	41
21.IV.3.1	Possibility of putting up a defence	
21.IV.3.2	Defence against the practitioner's powers versus defence against the exercise of the practitioner's powers	
21.IV.3.3	Defence against the practitioner's actions in the context of the exception of public policy	

Article 22

[Proof of t	he insolvency practitioner's appointment]	744
22.1	Historical antecedents	745
22.2	Scope	
22.3	Purpose	
22.4	Practitioner's obligation to prove his authority	746
22.5	Proof of the practitioner's authority by means of a certified copy (duplicate)	
22.6	Exclusion of legalisation	
22.6.1	Exclusion of the legalisation of documents on the practitioner's appointment	
22.6.2	The need for the legalisation of copies or duplicates of documents on the practitioner's appointment	747
22.7	Type of confirmation of the practitioner's appointment and formalities thereof: application of the <i>lex fori concursus</i>	748
22.8	Translation	749
22.9	Authorisation or power of attorney conferred by the practition	er750
22.10	Refusal to recognise the practitioner's powers	750
22.11	Assessment of the scope of a foreign practitioner's authority	751
rticle 23		
[Return an	d imputation]	752
23.I.	Historical antecedents	753
23.II.	Article 23(1) of Regulation 2015/848: return of proceeds from individual satisfaction to the estate	
23.II.1	Purpose and significance	753
23.II.2	Principles for the application of the procedure under Article 23(1) of Regulation 2015/848	
23.II.2.1	Applicability in time	
23.II.2.2	Performance acquired by and at the disposal of the creditor after the judgment opening the main proceedings	
23.II.2.3	The debtor's assets to the detriment of which the creditor is satisfied	
23.II.2.3.1	Location of the debtor's assets	755
23.II.2.3.2	Type of debtor's assets: assets forming part of the estate, or any other assets	756
23.II.3	The nature of a claim to the surrender of satisfaction. Sale in cases of individual satisfaction generating lower proceeds than could be achieved by realising the estate	

Index	Content
23.II.4	The relationship between the practitioner's claim under Article 23(1) of Regulation 2015/848 and territorially restricted proceedings
23.II.5	The relationship to rights <i>in rem</i> and reservation of title (Articles 8 and 10 of Regulation 2015/848)758
23.II.6 23.III.	The relationship to set-off (Article 9 of Regulation 2015/848)
23.III.1	Purpose
23.III.2	Set-off by imputation759
23.III.3	Basic default rules on set-off//satisfaction760
23.III.4	Creditor's satisfaction from proceeds generated in third countries outside the territorial scope of Regulation 2015/848761
Article 24	
[Establish:	ment of insolvency registers]763
24.I.	Purpose of the provision and interconnectedness with other sources of international insolvency law
24.I.1	Comparison with other sources of international (EU) insolvency law
24.I.2	Legal basis for the provision in EU primary law766
24.II.	Ad Article 24(1): obligation to maintain a domestic [national] insolvency register
24.II.1	Domestic insolvency registers767
24.II.2	Form of domestic insolvency registers768
24.II.3	Time limit for publication in domestic insolvency registers769
24.II.4	Substantive scope of the rules of Article 24 of Regulation 2015/848769
24.II.5	Consequences of failure to establish an insolvency register with electronic access
24.III.	Ad Article 24(2): information that is mandatory to publish771
24.III.1	Ad Article 24(2)(a) of Regulation 2015/848: date of opening of insolvency proceedings
24.III.2	Ad Article 24(2)(b) of Regulation 2015/848: determining the court that opened the insolvency proceedings and the case reference number (if any)
24.III.3	Ad Article 24(2)(c) of Regulation 2015/848: type of insolven- cy proceedings as per Annex A to Regulation 2015/848; sub- type of insolvency proceedings pursuant to national law
24.III.4	Ad Article 24(2)(d) of Regulation 2015/848: basis for international jurisdiction of the court
24.III.4.1	Basis for international jurisdiction of the court and manner in which it is entered in the register

24.III.4.2	Specification of the basis for jurisdiction in proceedings without a manifest international element
24.III.5	Ad Article 24(2)(e) and (f) of Regulation 2015/848: identifica-
	tion details of the debtor – legal and natural persons779
24.III.5.1	Identification of the debtor
24.III.5.2	Protected postal address
24.III.5.3	Registration number
24.III.5.4	Company versus legal person
24.III.5.4.1	Purpose of the differentiation between company and legal person; subjectivity from the vantage point of EU law781
24.III.5.4.2	Autonomous interpretation of company and legal person pursuant to Regulation 2015/848
24.III.6	Ad Article 24(2)(g) of Regulation 2015/848: name and con-
	tact details of the appointed insolvency practitioner786
24.III.7	Ad Article 24(2)(h) of Regulation 2015/848: time limit for lodging claims; reference to the criteria for calculating it
24.III.8	Ad Article 24(2)(i) of Regulation 2015/848: date of closing main insolvency proceedings
24.III.9	Ad Article 24(2)(j) of Regulation 2015/848: court in which the decision to open insolvency proceedings may be challenged; time limit or criteria for calculating it
24.IV.	Ad Article 24(3) of Regulation 2015/848: inclusion of documents and other information in national insolvency registers
24.V.	Ad Article 24(4) of Regulation 2015/848: subjective scope of the published information; option to exclude non-self-employed natural persons
24.VI.	Ad Article 24(5) of Regulation 2015/848: legal effects of the publication of information in the insolvency register
rticle 25	AV. III. V. A. W. Friede W. (S) of Regulation 20 (S/8 (S) Notice S/8 (S)
[Insolvency	v registers]798
25.I.	Ad Article 25(1) of Regulation 2015/848: a decentralised system for the interconnection of national insolvency registers
25.I.1	Interconnection of national insolvency registers799
25.I.2	European e-Justice801
25.II.	Ad Article 25(2) of Regulation 2015/848: implementing acts804
25.II.1	Issuance of implementing acts804
25.II.1 25.II.2	Aspects to be governed by implementing acts805
25.II.3	Article 25(2)(a) of Regulation 2015/848: technical specification defining the methods of communication and information exchange by electronic means on the basis of the

	established interface specification for the system of intercon- nection of insolvency registers
25.II.4	Article 25(2)(b) of Regulation 2015/848: technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers806
25.II.5	Article 25(2)(c) of Regulation 2015/848: minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 24
25.II.6	Article 25(2)(d) of Regulation 2015/848: minimum criteria for the presentation of the results of such searches based on the information set out in Article 24
25.II.7	Article 25(2)(e) of Regulation 2015/848: means and technical conditions of availability of services provided by the system of interconnection
25.II.8	Article 25(2)(f) of Regulation 2015/848: glossary with a basic explanation of the national insolvency proceedings listed in Annex A
25.III.	The language aspect of the operation of the interconnection of registers
Article 26	-lailand tura stuffeessarrings the natural trade ad
[Costs of	establishing and interconnecting insolvency registers]811
Article 27	o 24.4V
	ons of access to information via the system of interconnection]813
27.I.	Ad Article 27(1) of Regulation 2015/848: Free availability of information
27.II.	Ad Article 27(2) of Regulation 2015/848: Reasonable fee for information outside the scope of mandatory publication815
27.III.	Ad Article 27(3) of Regulation 2015/848: Non-self- employed individuals
27.IV.	Ad Article 27(4) of Regulation 2015/848: Form requests; evidence of legitimate interest
Article 28	
[Publicat	ion in another Member State]824
28.I.	Historical context and purpose of the provision825
28.I.1	Development of the legal framework over time825
28.I.2	Character and purpose of the provision827
28.I.3	Legal significance of publication828
28.II.	Ad Article 28(1) of Regulation 2015/848: obligatory publication
28.II.1	Legal framework for publication

28.II.2	Establishment as a prerequisite for the practitioner's obligation as per Article 28(1) of Regulation 2015/848830
28.II.3	Time limit for publication831
28.III.	Ad Article 28(2) of Regulation 2015/848: optional publication832
28.III.1	Publication in the absence of an establishment in another Member State
28.III.2	Time limits for publication834
28.IV.	Language of publication834
28.V.	Costs of publication835
28.VI.	Manner of publication835
28.VII.	Published scope of information835
rticle 29	and by analogy Regulation 2015 for an excellation 43996
[Registration	on in public registers of another Member State]838
29.I.	Historical context, purpose of the provision and subjective scope, cooperation duty and other obligations of courts and local bodies (persons) in the state of the register839
29.I.1	Purpose of the provision839
29.I.2	Scope840
29.I.3	Obligations of courts and other authorities in the state where the debtor's establishment or immovable property is located841
29.II.	Ad Article 29(1) of Regulation 2015/848: obligatory registration
29.II.1	Requirements for invoking Article 29(1) of Regulation 2015/848842
29.II.2	Establishment843
29.II.3	Immovable property844
29.II.4	The register844
29.II.5	Dependence on the laws of the Member State in which the establishment or the immovable property is located845
29.II.6	Effects of registration845
	Ad Article 29(2) of Regulation 2015/848: optional registration846
	Achelo 32
[Costs]	848
30.1	Purpose of the provision848
30.2	Character and essence of the provision848
30.3	Costs (costs and expenses)850
	28.II.3 28.III. 28.III.1 28.III.1 28.III.2 28.IV. 28.V. 28.VI. 28.VII. rticle 29 [Registration 29.I. 29.I.1 29.I.2 29.I.3 29.II. 29.II.1 29.II.2 29.II.3 29.II.4 29.II.5 29.II.6 29.III. rticle 30 [Costs]

Vol. II

Article 31		
[Honouri	ng of an obligation to a debtor]	
31.I.	Historical antecedents, terminological interpretation and effects of the application of Article 31 of Regulation 2015/848	852
31.I.1	Historical antecedents	852
31.I.2	Performance	852
31.I.2.1	Autonomous nature of the concept of performance	852
31.I.2.2	Continuity with the autonomous interpretation of the concept of performance in EU law	853
31.I.2.3	Honouring of an obligation further to Regulation 1346/2000, and by analogy Regulation 2015/848, in the CJEU's Van Buggenhout judgment in Case C-251/12	857
31.I.3	Debtor	858
31.I.4	Effects of Article 31(1) of Regulation 2015/848 versus Article 31(2) of Regulation 2015/848	858
31.II.	Article 31(1) of the Regulation	859
31.II.1	Nature and purpose of Article 31 of the Regulation	859
31.II.2	Scope ratione materiae	859
31.II.3	Territorial scope	860
31.II.4	Ignorance of the bankrupt's debtor	862
31.III.	Article 31(2) of Regulation 2015/848	863
31.III.1	Rebuttable presumption of proper performance	863
31.III.2	Liability of the bankrupt's creditor: burden of proof and locus stand	li863
31.III.3	Reversal of the burden of proof	864
31.III.4	Classification of publication and relevance to the good faith of a debtor providing performance to the bankrupt	864
31.III.5	Place of publication	864
31.III.6 Article 32	Moment of publication and place of publication	
[Recognit	ion and enforceability of other judgments]	868
32.I.	Historical context, purpose, and principles of the provision	875
32.I.1	Historical context	875
32.I.2	Purpose and principles of Article 32 of Regulation 2015/848	
32.I.3 32.II.	Scope of applicability of Article 32 of Regulation 2015/848	877
32.II.1	Connection to the judgment opening insolvency proceedings and link to Article 19 of Regulation 2015/848	877
32.II.2	Court	879

32.II.2.1	Broader concept of court according to Article 2(6)(ii) of Regulation 2015/848	879
32.II.2.2	Jurisdiction of court pursuant to Article 32(1), first subparagraph, of Regulation 2015/848	879
32.II.2.3	"Another court" pursuant to Article 32(1), second subparagraph, of Regulation 2015/848	880
32.II.2.4	Court jurisdiction pursuant to Article 32(1), third subparagraph, of Regulation 2015/848	
32.II.3	Handing down of judgments	381
32.II.4	Refusal of recognition and enforcement	381
32.II.5	Scope ratione materiae of Article 32(1) of Regulation 2015/848	881
32.II.5.1	Judgment	881
32.II.5.2	Types of judgments according to the subject matter	882
32.II.5.3	Judgments opening the proceedings and judgments on the method of resolving insolvency	382
32.II.5.4	Judgments concerning the course of insolvency proceedings	
32.II.5.5	Judgments on appointment and removal of the insolvency practitioner	383
32.II.5.6	Judgments concerning the closure of insolvency proceedings	
32.II.5.7	Compositions approved by the court	884
32.II.5.8	Judgments deriving directly from the insolvency proceedings and that are closely linked with them	
32.II.5.9	Voidability	888
32.II.5.10	Reorganisation plan	889
32.II.5.11	Decisions concerning the insolvency practitioner	
32.II.6	Provisional and other protective measures	889
32.II.6.1	Discussion relating to provisional and other protective measures pursuant to Article 25 of Regulation 1346/2000	889
32.II.6.2	Provisional and other protective measures pursuant to Article 32(1) of Regulation 2015/848	390
32.II.6.2.1	Reference to the Brussels Ia Regulation	890
32.II.6.2.2	Provisional measures adopted by a court other than the court with jurisdiction to open insolvency proceedings pursuant to Article 3 of Regulation 2015/848	891
32.II.6.2.3	Provisional measures proposed by a temporary administrator (interim practitioner)	891
32.II.7	Enforcement of decisions the type (form) of which is un- known in the country where enforcement is sought	893
32.II.7.1	Adjustment to the enforcement mechanisms in the state where enforcement is sought	

32.II.7.2	Correcting factor of public policy under Article 33 of Regulation 2015/848
32.III.	Article 32(2) of Regulation 2015/848893
32.III.1	Recognition and enforcement pursuant to the Brussels I Regulation within the scope of applicability of the Brussels Ia Regulation
32.III.2	Judgment894
32.III.2.1	Definition of judgment
32.III.2.2	Subject matter of judgment895
32.III.3	Recognition and enforcement895
32.III.4	Proceedings relating to the special powers of the insolvency practitioner and proceedings relating to the insolvency practitioner's responsibility for the insolvency estate
32.III.5	Judgments regarding the debtor's claims from acts performed before or after the opening of proceedings and claims against shareholders (partners)
32.III.6 Article 33	Compensation for damage to the environment caused by the debtor898
[Public po	licy]901
33.1	Historical context909
33.2	Public policy exception as a universal concept of private international law
33.2.1	Public policy exception as an exceptional and, at the same time, standard concept and corrective factor of private international law
33.2.2	Meanings of the public policy exception912
33.2.2.1	Expression of the general security situation and foundations of the state system
33.2.2.2	A collection of special relationships that are subject to intensive protection
33.2.3	Classification and importance of public policy and public policy exception
33.2.3.1	Classification of public policy913
33.2.3.2	Public policy and insolvency proceedings
33.2.4	Public policy exception from the perspective of fundamental and constitutional rights and liberties916
33.2.5	Public policy, constitutional [fundamental] rights and constitutional laws
33.2.6	Distinction between the substantive and the procedural public policy exception

Index		Contents
33.2.7	The common basis of a public interest with a different intensity and mechanism of effects	922
33.2.8	EU public policy, domestic (national) public policy and international public policy	923
33.2.8.1	EU (conflict-of-laws) public policy	
33.2.8.2	National (domestic) public policy	
33.2.8.3	International public policy	
33.2.9	Procedural public policy exception	
33.2.9.1	Principles of applying the procedural public policy exception	925
33.2.9.2	Prohibition of révision au fond (prohibition of review on the me	erits)925
33.2.9.3 33.3	Examination of the effects of a particular decision Territorial scope of the decision	
33.4	Effects of the application of the public policy exception	927
33.5	Ordre public (public policy) and EU insolvency law	
33.5.1	Definition of public policy within the regime introduced by the EU Insolvency Regulation and the limitation consisting in the application of the law that forms part of the national legal systems	927
33.5.2	Categorisation of the public policy exception in EU insolvency proceedings: Procedural exception versus substantive (conflict-of-laws) exception	
33.5.3	Undermining the powers of the insolvency practitioner	
33.5.4	Public policy exception and the restructuring plan; importance of Annex A to Regulation 2015/848	
33.5.5	Fair trial	
33.5.5.1	Equal treatment of creditors	
33.5.5.2	Necessity of individualising the application of a particular concept of the lex fori concursus to a particular decision and	
	a particular case	
33.5.5.3	Participation in proceedings	931
33.5.6	Person or entity protected by public policy	932
33.5.7	Dismissal of the request to open insolvency proceedings	932
33.5.8	Close connection to the state where the exception is raised	932
33.5.9	Importance of the objective of insolvency proceedings	933
33.5.10	Distinguishing the effects of a decision rendered by a court of a foreign state from the effects of acts performed by a foreign insolvency practitioner	
33.6	Application of the public policy exception under Article 33 of Regulation 2015/848 by national courts	
33.6.1	Exclusive nature and subject-matter of the corrective factor of the public policy exception	934

IIIdex		HECHES
33.6.2	Obvious aberration from rules	.935
33.6.3	Subject-matter of the corrective factor	.935
33.6.4	Domestic interpretation of public policy versus limits of the application of the public policy exception under EU law	935
33.6.5	Infringement of public policy and absence of reasons in a decision under Article 4(1) of Regulation 2015/848	.937
33.6.6	Selected examples of infringements of public policy	.937
33.6.6.1	Other positive and negative examples of potential infringements of public policy from the procedural perspective	937
33.6.6.2	Other examples of potential infringements of public policy from the substantive-law perspective	
33.6.6.2.1	Absence of insolvency capacity	.938
33.6.6.2.2	Scope of the estate and voidability; exclusion of voidability	
33.6.6.2.3	Forum shopping and insolvency tourism	.940
33.6.6.2.4	Employment claims and claims for payment from social se- curity and pension insurance funds	941
33.6.7	Differences in the perception of public policy according to legal cultures (public policy versus ordre public)	942
CHAPTER SECONDA Article 34	RY INSOLVENCY PROCEEDINGS	957
[Opening	of proceedings]	.957
34.1	Structure of Chapter III	
34.2	Historical antecedents	
34.3	Relationship between the main and secondary insolvency proceedings	.962
34.4	Relationship between the main and secondary proceedings in terms of assets from which creditors' claims are to be satisfied	.963
34.5	Form of secondary insolvency proceedings stemming from the form of the main insolvency proceedings (link to Annex A to Regulation 2015/848)	.964
34.6	Principles of secondary insolvency proceedings	
34.6.1	Territorial restrictions	964
34.6.2	Restriction of the estate; international jurisdiction to decide on the extent of the estate in secondary proceedings	965
34.6.3	Autonomy of secondary proceedings	
34.6.4	Priority of secondary proceedings over the main proceedings	966
34.6.5	Existence of a cross-border dimension	966

34.6.6	Absence of a restriction of the method for handling bank- ruptcy (forms of insolvency proceedings) solely to wind-
34.7	ing-up proceedings (in contrast to Regulation 1346/2000)967 Purpose of secondary insolvency proceedings988
	al utilidad and anti-increasing the state of the terminal and the state of the stat
34.7.1	Protection of local creditors
34.7.2	Facilitation of the practitioner's access and simplification of the administration of assets in another state by the insolvency practitioner
34.8	Relationship between a parent and subsidiary company from the point of view of secondary insolvency proceedings969
34.8.1	Exclusion of the concept of group insolvency969
34.8.2	Methods for handling links between a parent and a subsidiary in the context of insolvency proceedings against the subsidiary's assets further to secondary insolvency proceedings970
34.8.3	Ownership interest (shareholdings, shares, other types of interest in a foreign legal person as an exceptional case constituting a debtor's establishment)
34.9	Recognition of the main insolvency proceedings and reasons for opening secondary insolvency proceedings971
34.9.1	Recognition of the main insolvency proceedings
34.9.2	Grounds for opening secondary insolvency proceedings972
34.10	Qualifications and conditions for the opening of secondary insolvency proceedings973
34.10.1	Qualifications for the opening of secondary insolvency proceedings.973
34.10.2	Conditions for the opening of secondary insolvency proceedings973
34.10.2.1	Insolvency of the debtor974
34.10.2.2	Opening of main insolvency proceedings with universal effect974
34.10.2.3	Existence of an establishment in the state of secondary insolvency proceedings
34.10.2.3.1	Existence of an establishment within the meaning inherent in Regulation 2015/848 (Article 2(10) of Regulation 2015/848)975
34.10.2.3.2	Link to Article 21 of Regulation 2015/848976
34.10.2.4	Insolvency capacity of the debtor in the state of secondary proceedings
34.10.2.5	Other conditions for the opening of secondary insolvency proceedings
34.10.2.6	Absence of conditions for secondary insolvency proceedings
24.55	to be opened
34.11	Obligation to open secondary insolvency proceedings; judicial discretion regarding a request for the opening of secondary insolvency proceedings

Article 35	
[Applicable	e law]
35.1	Historical antecedents985
35.2	Subject and principles of the provision; applicability, in time, of the law applicable to secondary proceedings985
35.2.1	Principle of the provision985
35.2.2	The moment of applicability of the law applicable to secondary proceedings
35.3	Scope ratione materiae986
35.3.1	Applicability to secondary proceedings under Article 3(2) of Regulation 2015/848
35.3.2 -dua	Applicability to territorial proceedings under Article 3(4) of Regulation 2015/848
35.4	Purpose of the provision in relation to the scope ratione materiae
35.4.1	Purpose of the provision in relation to the scope ratione materiae987
35.4.2	Purpose of the provision in relation to Article 7 of Regulation No 2015/848
35.4.3	Scope of Article 35 compared to Article 7 of Regulation 2015/848988
35.5	Special arrangements989
35.5.1	Special arrangements, not exceptions; context of Article 7 of Regulation 2015/848
35.5.2	General special provisions989
35.5.3	Specific special provisions
35.5.3.1	Article 15 of Regulation 2015/848: rights based on EU law990
35.5.3.2	Article 34 of Regulation 2015/848: irrebuttable presumption of insolvency
35.5.3.3	Article 37(1)(a) of Regulation 2015/848: locus standi of the practitioner in the main proceedings
35.5.3.4	Article 45 of Regulation 2015/848: creditors' right to lodge a claim 991
35.5.3.5	Article 49 of Regulation 2015/848: transfer of assets remaining in secondary proceedings to the main proceedings
35.5.3.6	Article 53 of Regulation 2015/848: creditors' right to lodge claims in other proceedings
35.5.3.7	Article 55 of Regulation 2015/848: form and content of a foreign creditor's lodgement
Article 36	
[Right to gi proceeding	ve an undertaking in order to avoid secondary insolvency [s]994
36.I.	Historical antecedents, purpose and principle of the provision998

Index	zalad Co	ntent
36.VI.3	Procedure for approving undertakings	1011
36.VI.4	Application of rules for the adoption of restructuring plans	1012
36.VI.5	Method for the dispatch of information. Use of distance	
	means of communication for voting	
36.VI.6	Binding of the practitioner by an undertaking pending approval of consent by local creditors	1012
00036.VII.	Article 36(6) of Regulation 2015/848: ramifications for the estate if secondary proceedings are opened pursuant to Arti-	
36.VIII.	cles 37 and 38 of Regulation 2015/848	
36.VIII.1	Purpose of providing information to local creditors and other addressees of such information	1013
36.VIII.2	Content of information	1014
36.VIII.3	Language, form, and manner in which local creditors are informed	1014
36.VIII.4	Measures against a practitioner who fails to comply with the information obligation	
36.VIII.5	Challenge to the method intended for the distribution of assets (proceeds) in the state of the main proceedings	
36.IX.	Article 36(8) of Regulation 2015/848: measures to comply with the terms of an undertaking via a court in the main proceedings	
36.X.	Article 36(9) of Regulation 2015/848: measures to comply with the terms of an undertaking via a court that could open secondary proceedings	017
36.XI.	Article 36(10) of Regulation 2015/848: insolvency practitioner's liability	
36.XII.	Article 36(11) of Regulation 2015/848: status of the authority guaranteeing the payment of employees' outstanding claims resulting from contracts of employment or employment relationships	018
36.XII.1	Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Directive 2008/94/EC)	1018
36.XII.2	Participation of a guarantee institution in the approval of an undertaking	1020
Article 37	Articlaria Bhargana and an ana an ana an an an an an an an an a	
[Right to re	equest the opening of secondary insolvency proceedings]1	023
37.I.	Historical antecedents1	025
37.II.	Article 37(1) of Regulation 2015/848: persons empowered to request the opening of secondary insolvency proceedings1	026
37 II 1	Material scope	1026

37.II.2	Article 37(1)(a) of Regulation 2015/848: authorisation of the practitioner in the main proceedings to request the opening of secondary proceedings
37.II.2.1	Locus standi of the practitioner in the main proceedings
37.II.2.1.2	The person of the practitioner and proof of his authority
37.II.2.1.3	Procedure followed by the practitioner in the main proceedings 1027
37.II.2.2	Interim practitioners and practitioners in proceedings other
	than the main proceedings
37.II.2.2.1	Interim practitioner
37.II.2.2.2	Other practitioners
37.II.2.3	Right – not the obligation – of the practitioner to request the opening of secondary proceedings
37.II.3	Article 37(1)(b) of Regulation 2015/848: authorisation of other persons to request the opening of secondary proceedings 1030
37.II.3.1	Any persons or authorities
37.II.3.1.1	Non-discrimination; private and public persons and authorities 1030
37.II.3.1.2	Persons who do not lodge claims in the main proceedings or are unsuccessful with their claims in the main proceedings
37.II.3.2	Authorisation of a bankrupt to request the opening of secondary insolvency proceedings
37.III.	Article 37(2) of Regulation 2015/848: request filed after an undertaking has been given pursuant to Article 36 of Regulation 2015/848
37.III.1	Compromise nature of Article 36 of Regulation 2015/848 and
	the manifestation thereof in Article 37(2) of Regulation 2015/848 1033
37.III.2	Locus standi
37.III.3	Time limit for requests
Article 38	
[Decision t	o open secondary insolvency proceedings]1037
38.I.	Historical antecedents and purpose and nature of the provision
38.I.1	Historical antecedents
38.I.2	Purpose and nature of the provision
38.II.	Article 38(1) of Regulation 2015/848: notification to, and hearing of, the practitioner in the main proceedings1039
38.II.1	Immediacy of information
38.II.2	Content of information
38.II.3	Form of information and method for the dispatch thereof 1040
38.II.4	Non-notification
38.II.5	Hearing of a practitioner appointed in the main proceedings or a debtor in possession

	ing III.88	Article 38(2) of Regulation 2015/848: non-opening of secondary insolvency proceedings if creditors are sufficiently protected by an undertaking from the practitioner 1041
	38.III.1	Purpose
	38.III.2	Subject of examination by a court
	38.III.3	Request from the practitioner in the main proceedings 1044
	38.III.4	General interests of local creditors
	38.III.5 38.IV.	Adequate protection of local creditors
	38.IV.1	Suspension of procedure to open secondary proceedings when negotiations are held with creditors
	38.IV.2	First paragraph of Article 38(3) of Regulation 2015/848: negotiations with creditors, suspension of the opening of secondary proceedings, and suitable measures to protect the interests of local creditors
	38.IV.2.1	Purpose of suspending the opening of secondary insolvency proceedings
	38.IV.2.2	Suspension (stay) of proceedings on creditors' individual claims 1047
	38.IV.2.3	Nature and quantity of claims against the debtor, individual proceedings
	38.IV.2.4	Form taken by a stay of the opening of secondary proceedings 1048
	38.IV.2.5	Duration of a stay of the opening of secondary proceedings 1048
	38.IV.2.6	Subject of examination by a court
	38.IV.2.6.1	Stay of individual proceedings
	38.IV.2.6.2	Suitable measures to protect local creditors
	38.IV.2.6.3	Prerequisites for the opening of secondary proceedings
	38.IV.2.6.4	Provision of room for the opening of secondary proceedings 1051
	38.IV.3	Second paragraph of Article 38(2) of Regulation 2015/848: negotiations with creditors, suspension of the opening of secondary proceedings, and suitable measures to protect the interests of local creditors
	38.IV.3.1	Third paragraph of Article 38(3) of Regulation 2015/848: lifting of a stay if negotiations with creditors are successful 1051
	38.IV.3.2	Fourth paragraph of Article 38(3) of Regulation 2015/848: cancellation of a decision on a stay without the creditors'
	38.V.	agreement
1	Manhaman R	type of secondary insolvency proceedings1053
A	rticle 39	
		view of the decision to open secondary insolvency proceedings]1055
	39.1	Historical antecedents and nature of the provision

20.0	T 1055
39.2	Locus standi
39.3	Grounds for review1056
39.3.1	Special grounds
39.3.2	General grounds1057
39.4	Formal prerequisites and procedure1058
39.5	Jurisdiction1058
rticle 40	
[Advance p	payment of costs and expenses]1060
40.1	Historical antecedents and nature of the provision1060
40.2	Significance of the provision1061
40.3	Material scope and conditions of application1061
40.3.1	Material scope
40.3.2	Personal scope
40.3.3	Conditions for the application of the provision1062
40.4	Reference to national law1062
40.5	Security1065
40.5.1	Optional nature of security
40.5.2	Form of security
40.5.3	Appropriateness of security1066
rticle 41	
[Cooperati	on and communication between insolvency practitioners]1068
41.I.	Historical context; character and principles of the provision1071
41.I.1	Historical context
41.I.1.1	Previous legislation
41.I.1.2	Assessment of the application of Regulation 1346/2000 and its influence on the design of Regulation 2015/848
41.I.2	Significance and system of cooperation in parallel proceed-
	ings against one and the same debtor1072
41.I.3	Hierarchy of main and secondary insolvency proceedings1073
41.I.4	Fundamental changes in Regulation 2015/848 compared to
	Regulation 1346/2000
41.I.4.1	Use of internationally recognized procedures; UNCITRAL standards
41.I.4.2	Form of secondary proceedings is no longer restricted 1074
41.I.4.3	Comparison of Preambles: Recital 20 of Regulation
PO L	1346/2000 versus Recital 48 of Regulation 2015/848 1075
41.I.4.4	The Collins & Aikman Case
41.I.4.5	The MG Rover case

41.I.5	Hierarchy of insolvency practitioners in the main and sec- ondary insolvency proceedings	1078
41.I.6	Importance of cooperation	1078
41.I.7	Nature of the relationship between the practitioner in the main insolvency proceedings and the practitioner in the secondary insolvency proceedings	
41.I.8	Liability; sanctions	1080
41.II.	Ad Article 31(1) of Regulation 2015/848: general rules governing the duty of cooperation	1081
41.II.1	Purpose and character of the provision	
41.II.1	Forms of cooperation. Agreements and protocols	1081
41.II.2	Methods and procedures warranting coordination on the level of national law; attempts to unify them on the international level	1083
41.II.3	Compatibility of cooperation with the rules applicable to the concrete proceedings. Restrictions of the communication of information and of cooperation	1083
41.II.3.1	Premises of Article 31 of Regulation 1346/2000	1083
41.II.3.2	Premises of Article 41 of Regulation 2015/848	1084
41.II.4 41.III.	Sanctions	
41.III.1	Ad Article 31(2)(a) of Regulation 2015/848: obligation to share information	
41.III.1.1	Purpose and content of the information	1085
41.III.1.2	Speed of communication	1085
41.III.1.3	Form and scope of communication	1086
41.III.2	Ad Article 31(2)(b) of Regulation 2015/848: other forms, and scope, of coordination (cooperation and communication). Significance of coordination with respect to the possibility of	1007
41.III.3	restructuring. Ad Article 41(2)(c) of Regulation 2015/848: coordination of the administration of the debtor's assets; realisation and distribution.	
41.III.3.1	Cooperation in the administration of assets as a directly applicable EU rule of law, and its limits pursuant to national jurisdictions	1088
41.III.3.2	Submission by the main practitioner of proposals as to the realisation or use of assets	
41.IV	Ad Article 41(3): Debtors in possession	
41.V	Costs incurred by the insolvency practitioner	1091

rticle 42		
[Cooperat	ion and communication between courts]109	4
42.I.	Historical context; character and principles of the provision109	6
42.I.1	Historical context	6
42.I.2	Assessment by the HLV Report on the lack of explicit rules in Regulation 1346/2000 as to the cooperation between courts 109	
42.I.3	Reflection on the practical application of Article 31 of Regulation 1346/2000 with respect to the communication and cooperation between courts	06
42.II.	Substantive scope: the court, and examples of communication and cooperation109	
42.III.	Differences to the provision of Article 57 of Regulation 2015/848	
42.III.1	Restrictions on the cooperation and communication between courts with respect to conflicts of interest	7
42.III.2	Coordination with respect to the administration and supervision of assets and affairs of the group members	18
Article 43	Article soft) of the Regulation; authorization of credit	
[Cooperat	tion and communication between insolvency practitioners s]110	0
43.I.	Historical context; character, purpose, and principles of the provision	1
43.I.1	Historical context	1
43.I.2	Assessment by the HLV Report of the lacking explicit rules in Regulation 1346/2000 as to the cooperation between courts 110)2
43.I.3	Reflection on the practical application of Article 31 of Regulation 1346/2000 also with respect to the communication and cooperation between courts among themselves, and between courts and insolvency practitioners	02
43.I.4.	Substantive scope: court and insolvency practitioner, subject	
	matter of cooperation)3
43.I.4.1	The court	
43.I.4.2	The insolvency practitioner)4
43.I.4.3	Debtors in possession)4
43.I.5	Purpose)4
43.I.6	Comparison to Article 58 of Regulation 2015/848 110)4
43.II.	Ad Article 43(1) of Regulation 2015/848: obligation of insolvency practitioners to communicate and cooperate with the courts)4
43.II.1	The obligation is limited to communication and cooperation by the insolvency practitioner in the direction of the courts,	
	but not vice versa)4

Index		Content
43.II.2	Alternative directions that the cooperation may take	1105
43.II.3	Subject matter of cooperation; limits to the cooperation	1105
43.III.	Ad Article 43(2) of Regulation 2015/848: forms of cooperation	n1105
Article 44		
[Costs of	cooperation and communication]	1107
44.1	Historical context	
44.2	Substantive scope	1107
44.3	Principles and contents of provision	1108
Article 45		
[Exercise	of creditors' rights]	1111
45.I.	Historical antecedents, nature and principles of the provision	
45.I.1	Historical antecedents	1112
45.I.2	Objectives and principles of Article 45 of Regulation 2015/848.	
45.I.2.1	basis talking a taliform of the second attention	
45.I.2.2	Principles	1113
45.II.	Article 45(1) of the Regulation: authorisation of creditors to lodge claims in parallel proceedings	
45.III.	Article 45(2) of the Regulation: lodgement of claims by practitioners in other proceedings	1115
45.III.1	Scope of Article 45(2) of Regulation 2015/848	1115
45.III.2	Conditions for the lodgement of claims by a practitioner in other proceedings	1115
45.III.3	Right of the creditor to oppose the lodgement of a claim by a practitioner in other proceedings	
45.III.4	Consideration of principles pertaining to the practitioner's activities	
45.III.5	Duplicate lodgement of the same claim in other proceedings	
45.III.6	Lodgement of claims by the practitioner in secondary proceedin	
45.III.7	Law applicable to the procedure under Article 45(2) of Regu-	1087
	lation 2015/848	
45.III.8	Duplicate examination of claims	1118
45.IV.	Article 32(3) of Regulation 2015/848: scope of authorisation of a practitioner lodging claims in other proceedings	1118
45.IV.1	Scope of authorisation of a practitioner lodging claims in	A.L.FRUSE
45.1 V.1	other proceedings	1118
45.IV.2	Multiplicity of lodgements by other practitioners	
Article 46	Ad Article 41(3): Debtops in poxy	
[Stay of th	ne process of the realisation of assets]	1122
46.I.	Historical antecedents, scope	

46.I.1	Historical antecedents
46.I.2	Scope
46.I.2.1	Process of realisation of assets
46.I.2.2	Stay of the process of the realisation of assets
46.I.2.3	Applicability to territorial proceedings and to the stage prior
And I I	to the opening of insolvency proceedings
46.II.	Article 46(1) of Regulation 2015/848: stay of the process of realisation at the request of the main practitioner1129
46.II.1	Purpose
46.II.2	Decision on a request to stay the process of realisation
46.II.3	Addressee of a stay of the process of realisation
46.II.4	Refusal of a request from a practitioner in the main proceedings 1131
46.II.4.1	Interests of creditors in the main proceedings
46.II.4.2	Discretion of the court
46.II.5	The main practitioner's control over secondary proceedings
	via Article 46 of Regulation 2015/848, and the limitations of
09,111,	such control
46.II.6	Grounds for a stay of the process of realisation
46.II.6.1	Significance of grounds for a request from a practitioner to stay the process of realisation
46.II.6.2	Optimisation of the realisation of a universal estate 1134
46.II.7	Effects of a stay of the process of realisation
46.II.7.1	A stay of the process of realisation versus a stay of secondary
46.II.7.2	proceedings
46.II.8	Form of a stay of the process of realisation
46.II.9	Practitioner's liability for the consequences of a stay of the
40.11.9	process of realisation
46.II.10	Costs of a stay of the process of realisation
46.II.11	Collins & Aikman Products GmbH judgment1137
46.III.	
	Article 46(2) of the Regulation: termination of the stay of the process of the realisation of assets
46.III.1	Locus standi to request the termination of the stay of the process of realisation
46.III.2	Assessment criteria for the termination of the stay of the process of realisation
46.III.2.1	Differences in criteria for the stay of the process of realisation and for the termination of the stay of the process of realisation 1140

46.III.2	a stay of the process of realisation and for the termination of
46.IV.	a stay of the process of realisation
46.IV.1	Differences in the rules under Article 46(1) and Article 46(2) of Regulation 2015/848
46.IV.2	Conflict of interests of creditors in the main and secondary insolvency proceedings
46.IV.2	2.1 Conflict of creditors' interests in terms of the objectives and purposes of Regulation 2015/848
46.IV.2	2.2 Conflict between creditors' interests from the standpoint of locus standi
46.IV.2	creditors
46.IV.3	
Article 47	r of the insolvency practitioner to propose restructuring plans]1146
47.I.	Historical antecedents, purpose, concept, and scope1147
47.I.1	Historical antecedents
47.I.2 47.II.	Purpose, concept and scope
47.II.1	Extension of the <i>locus standi</i> under the national rules of the state of secondary proceedings
47.II.2	Procedure under the national law of the state of the secondary insolvency proceedings
47.II.3 47.III.	Procedure followed by courts in secondary insolvency proceedings 1151 Article 47(2) of Regulation 2015/848: consent of creditors1151
47.III.	Protection of creditors' rights in relation to assets located in the state of proceedings
47.III.	Restriction of creditors' rights
47.III.4	Individualisation of consent
47.III.	Other assets
47.III.6	Relationship between Article 47(2) of Regulation 2015/848 and Article 20(2) of Regulation 2015/848
Article 48	
[Impa	ct of closure of insolvency proceedings]1156
48.I.	Historical antecedents, purpose, concept, and scope

Index		Contents
48.I.1	Historical antecedents	
48.I.2	Material scope	
48.II.	Article 48(1): closure of parallel proceedings	1157
48.III.	Article 48(2): preservation of the legal personality of the bankrupt, if a legal person, until the closure of all paralle proceedings	
48.III.1	Purpose and principle of the provision	1157
48.III.2	State of registered office	1158
48.IV.	Dissolution of a legal person or company	
48.IV.1	Closure of all insolvency proceedings	1159
48.IV.2	Consent of insolvency practitioners to the dissolution of a company or legal person	
rticle 49	Change in the form (types of to the content of the child high AC	
[Assets rem	aining in the secondary insolvency proceedings]	
49.I.	Historical antecedents	
49.II.	Purpose and principle	
49.III.	Remaining assets	1162
49.IV.	Assets remaining in the main insolvency proceedings	1163
49.IV.1	Differences between the main and secondary proceedings	1163
49.IV.2	Relationship to Article 23 of Regulation 2015/848	1163
49.V.	Nature of the responsibility of a practitioner in secondar proceedings	
49.VI.	Inconsistency between the closure of the main proceedings and the secondary proceedings	1165
49.VII.	Applicability to territorial proceedings under Article 3(4 of Regulation 2015/848	1165
49.VIII.	Immediate transfer	1165
rticle 50		
[Subsequen	t opening of the main insolvency proceedings]	1167
50.1	Historical antecedents	1167
50.2	Concept of the provision	1168
50.3	Material scope	1168
50.4	Purpose of the provision: change in the purpose of the provision compared to Regulation 1346/2000	1169
50.5	Suitability for the interests of local creditors	1170
50.6	Method and scope of application of Articles 41, 45 to 47, and 49 of Regulation 2015/848	1170
50.6.1	Direct application	1170
50.6.2	Significance of the current progress of secondary proceeding	

50.7	Effect of a change in the location of a COMI on territorially restricted (territorial) proceedings opened before the main proceedings	1171
Article 51		
[Conversi	on of secondary insolvency proceedings]	1173
51.I.	Historical antecedents	
51.II.	Article 51(1) of Regulation 2015/848: conversion of secondary proceedings at the request of the main practition	er1174
51.II.1	Material scope	1174
51.II.2	Effects	1175
51.II.3	Locus standi of the practitioner in the main insolvency proceedings	
51.II.4	Change in the form (type) of insolvency proceedings	1176
51.II.4.1	Interpretations limiting the change in the form (type) of proceedings to a conversion into winding-up proceedings	
51.II.4.2	Relationship to Article 47 of Regulation 2015/848	1177
51.II.4.3	Diversity of forms (types) of proceedings	1178
51.II.5	Conditions of conversion and the scope of discretion enjoyed by a judge in territorial proceedings	
51.II.5.1	Request from the practitioner in the main proceedings	1178
51.II.5.2	Compliance with conditions under the lex fori concursus secundarii	
51.II.5.3	Interests of local creditors	1178
51.II.5.4	Coherence between the main and secondary proceedings	1180
51.II.5.5	Protection of the good faith of third parties	
51.II.6	The importance of the time lag between the opening of secondary and territorial proceedings and a request under Article 51 of Regulation 2015/848	
51.II.7	Method and form of a decision on conversion	1182
51.III.	Article 51(2): information from insolvency practitioners	1182
Article 52		
[Preserva	tion measures]	
52.I.	Historical antecedents	
52.II.	Purpose	1185
52.III.	Assets as an object of protected interest and subject of a preservation measure	1185
52.III.1	Assets	1185
52.III.2	Establishment	
52.IV.	Preservation measures	
52.V.	Applicability in time	1188

Index		Contents
52.VI.	Scope	1189
52.VI.1	Subjective scope: temporary administrator	1189
52.VI.2	Material scope: limitations of a temporary administrator	1189
52.VII.	Liability of the temporary administrator	1190
52.VIII.	Obligation of the court addressed	1190
52.IX.	Law applicable to preservation measures	1191
52.X	Practitioner's choice of procedure	1192
CHAPTER	IV	1194
	N OF INFORMATION FOR CREDITORS AND OF THEIR CLAIMS	1194
Article 53		
[Right to l	odge claims]	
53.I.	Historical context	1195
53.II.	Substantive scope of Chapter IV of Regulation 2015/848	1196
53.III.	Purpose	1196
53.IV.	Substantive scope: Lodging of claims	1196
53.V.	Subjective scope: Persons eligible to lodge claims	
53.V.1	The creditor	1197
53.V.2	Foreign creditors; creditors from non-Member States	1197
53.V.3	Creditor with COMI in a Member State	1198
53.V.4	Tax authorities and social security authorities	1198
53.VI.	Interplay between Article 53 of Regulation 2015/848 and Article 45 of Regulation 2015/848	
53.VII.	Means for lodging claims; contents and form of the registration (claims form)	
53.VIII.	Legal representation	1200
Article 54		
[Duty to in	nform creditors]	1203
54.I.	Historical context of the provision and relation to the lex fori concursus	1207
54.II.	Article 54(1) of Regulation 2015/848: obligation to inform known foreign creditors as one of the pillars of European insolvency law	
54.II.1 Cha	aracter of the creditor's claim	1208
54.II.2	Known creditor	
54.II.3	Immediate information	
54.II.4	Foreign creditor	1210

54.II.4.1	Connecting factors	1210
54.II.4.2	Doubts as to creditor's domicile (status)	
54.II.4.3	Seat	
54.II.4.4	Differentiation between creditors who are domiciled in EU Member States and creditors from Denmark and non-EU Member States	
54.II.4.5	Conflict between the creditor's foreign domicile and its do-	
	mestic presence in the state of proceedings	1218
54.II.5	Manner in which to inform foreign creditors	1219
54.II.6	Consequences of a failure to fulfil the information duty vis- à-vis known foreign creditors	1220
54.III.	Ad Article 54(2) of Regulation 2015/848: scope of information to be included in the notice to foreign creditor	s1222
54.IV.	Ad Article 54(3) of Regulation 2015/848: form and language of the information contained in the notice to foreign creditors	1223
54.V.	Ad Article 54(4) of Regulation 2015/848: insolvent debtor – natural persons who are not engaged in independent business activities	1226
Article 55		
[Procedure	e for lodging claims]	1227
55.I.	Historical context of the provision	1231
55.II.	Ad Article 55(1) of Regulation 2015/848: lodgement of the claim	1232
55.II.1	Standard form	1232
55.II.2	Foreign creditor	1234
55.III.	Ad Article 55(2) and (3) of Regulation 2015/848 – Information included in the standard claims form	1235
55.III.1	Contents of the claims form	1235
55.III.2	Ad Article 55(2)(a) of Regulation 2015/848: name, postal address, e-mail address (if any), personal identification number (if any), and bank details of the foreign creditor referred to in para. (1)	1236
55.III.2.1	Name, business designation, business name - first and last nar	ne 1236
55.III.2.2	Personal identification number	1236
55.III.2.3	Postal address	1237
55.III.2.4	E-mail address	1238
55.III.2.5	Supplementary identification data	1238
55.III.3	Ad Article 55(2)(b) of Regulation 2015/848: amount of the claim, differentiating between the principal and the interest (if applicable), the date on which it arose and the date on which it became due, if different	
		1200

55.III.4	Ad Article 55(2)(c) of Regulation 2015/848: if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest
	is claimed, and the capitalised amount of interest;
55.III.5	Ad Article 55(2)(d) of Regulation 2015/848: if costs are claimed that were incurred in asserting the claim prior to the opening of proceedings: the amount and the details of those costs; 1239
55.III.6	Ad Article 55(2)(e) of Regulation 2015/848: Nature of the claim 1239
55.III.7	Ad Article 55(2)(f) of Regulation 2015/848: preferential rank of the claim, grounds for invoking such preferential status
55.III.8	Ad Article 55(2)(g) of Regulation 2015/848: security <i>in rem</i> or reservation of title
55.III.9	Ad Article 55(2)(h) of Regulation 2015/848: Set-offs 1242
55.III.10 55.IV.	Ad Article 55(4) of Regulation 2015/848: lodgement by means other than the standard form
55.V.	Ad Article 55(5) of Regulation 2015/848: language of the registration
55.VI.	Ad Article 55(6) of Regulation 2015/848: time limit for the lodgement of claims
55.VII.	Ad Article 55(7) of Regulation 2015/848: substantive-law doubts with respect to claims filed; option to supplement the lodgement. Prevention of incidental (adversarial) proceedings with respect to the claim
HAPTER	V
	ICY PROCEEDINGS OF MEMBERS OF A GROUP OF ES
SECTION	1
Cooperati	on and communication1249
rticle 56	
[Cooperat	ion and communication between insolvency practitioners]1249
56.I.	Rationale behind the implementation of a special set of rules for insolvency proceedings with respect to enterprise groups
56.II.	Ad Article 56 of Regulation 2015/848: character and purpose of the provision
56.III.	UNCITRAL standards; sources of non-State origin1258
56.IV.	Ad Article 56(1) of Regulation 2015/8481259
56. IV.1	Terminology1259
56. IV.1.1	Cooperation

Index	Contents
-------	----------

	56. IV.1.2	Coordination	1261
	56. IV.1.3	Communication	
	56. IV.1.4	Agreement and protocol	1266
	56. IV.1.4.1	Agreement	
	56. IV.1.4.2	Protocol	
	56. IV.1.4.3	Protocols, by degrees of binding power	1269
	56. IV.2	Common observations on agreements and protocols in terms	
		of their content and purpose	
	56.IV.2.1	Agreements	1270
	56. IV.2.2	Protocols	1273
	56. IV.2.3	Protocols across the jurisdictions of continental Europe	1276
	56.IV.2.4	Protocols within the framework of the UNCITRAL (UML)	
		standards	
	56.IV.2.5	Typical content of protocols	1281
	56. IV.2.6	The protocol in the matter of Lehman Brothers Holdings Inc	1282
	56.IV.2.7	Checklist protocol pursuant to Appendix 1 to the CoCo	
		Guidelines; significance of the application of protocols in	1205
	56. IV.3	Character of agreements and protocols, governing law of	1200
	56. IV.5	Character of agreements and protocols; governing law of agreements and protocols	1285
	56. IV.4	Additional powers	
	56. IV.5	Purpose and substance of Article 56(1) of Regulation	1207
	50,1,10	2015/848 within the context of Articles 25 through 27 UML	1288
	56.IV.6	Limits of practitioners' cooperation	
	56.V.	Ad Article 56(2) of Regulation 2015/848	
	56. V.1	General observations regarding Article 56(2) of Regulation	
		2015/848	1290
	56. V.2	Communication between insolvency practitioners in practice	1291
	56.V.3	Ad Article 56(2)(a) of Regulation 2015/848	1293
	56.V.4	Ad Article 56(2)(b) of Regulation 2015/848	1294
	56.V.5	Ad Article 56(2)(c) of Regulation 2015/848	1296
	56.V.5.1	Restructuring agreement	
	56.V.5.2	Restructuring versus reorganisation	1296
	56.V.5.3	Contents of the restructuring plan	1298
Aı	rticle 57	Ad Article and Regulation 2015/848r character and	
	[Cooperation	on and communication between courts]	1302
	57.I.	General observations regarding Article 57 of Regulation 2015/848: purpose and subject matter of the provision	1304
	57.II.	Ad Article 57(1) of Regulation 2015/848	1305
	57.II.1	Purpose of the provision	
	01.11.1	Larpose of the provision minimum minimum minimum minimum minimum minimum manager and minimum m	1000

Index		Contents
57.II.2	Effective administration of proceedings	1305
57.II.3	Compatibility with the law and the applicable rules	1309
57.II.4	Ruling out conflicts of interest	1310
57.II.5	Communication with the aid of third parties	1311
57.II.5.1	Status of an independent appointed person (independent body); delegation of tasks within the insolvency proceedings	1311
57.II.5.2	Independence of third parties; delegated communication	1312
57.II.6	Appropriateness of direct communication	1314
57.II.7	Compatibility of direct communication with the national jurisdiction	1314
57.III.	Ad Article 57(2) of Regulation 2015/848: direct communication; procedural rights of participants; confidentiality rules	1316
57.III.1	Means of communication	1316
57.III.2	Direct communication	
57.III.3	Guidelines on direct communication, as contained in the Annex to the Cross-Border Insolvency Court-to-Court Co-	
	operation Principles	
57.III.4	Need for communication; character of the transferred information	
57.III.5	Protection of the interests of participants; confidentiality of information	
57.III.6	Confidentiality	1321
57.IV.	Ad Article 57(3) of Regulation 2015/848: Means of cooperation	1322
57.IV.1	Non-exhaustive list	1322
57.IV.2	Forms of communication	1322
57.IV.3	Language of communication	1322
57.IV.4	Ad Article 57(3)(a) of Regulation 2015/848: coordination with respect to the appointment of insolvency practitioners	1323
57.IV.5	Ad Article 57(3)(b) of Regulation 2015/848: means of communicating the information	1324
57.IV.6	Ad Article 57(3)(c) of Regulation 2015/848: administration and supervision of the assets and affairs of the debtor	1325
57.IV.7	Ad Article 57(3)(d) of Regulation 2015/848: coordination of the course of hearings	1326
57.IV.8	Ad Article 57(3)(e) of Regulation 2015/848: protocols	
rticle 58	plan with a reasonable chance of surveys	
[Coopera	tion and communication between insolvency practitioners	1330
58.I.	Purpose of the provisions of Article 58 of Regulation 2015	5/848 . 1331

58.II.	Ad Article 58(a) of Regulation 2015/848: obligation to cooperate and communicate. Character of the cooperation obligation	
58.III.	UML (UNCITRAL Model Law)	1332
58.III.1	The standard of Article 26 UML	1332
58.III.2	Standards in certain non-Member States (or Member States with uncertain future regimes as to the adoption of UML)	1333
58.III.3 58.IV.	Influence of Article 26 UML on Article 58 of Regulation 2015/848 Ad Article 58(b) of Regulation 2015/848: practitioner's request for communication	
58.V.	Unequal status of insolvency practitioners; potential requirement of consent with the sharing of information	1335
58.VI.	Communication and cooperation cannot be enforced. Expedience and usefulness of communication and cooperation	1336
Article 59	Typical contests of protocols	II.VZ
	cooperation and communication in proceedings concerning of a group of companies]	
59.I.	Scope and manner of cost coverage	1339
59.II.	Significance of ethical standards	1340
59.III.	Costs of translations and interpreting	1340
59.IV.	Potential disproportionality of the obligation to bear costs; remedies and the reallocation of costs	1341
Article 60		
	of the insolvency practitioner in proceedings concerning of a group of companies]	1343
60.I.	Ad Article 60(1) of Regulation 2015/848:	1344
60.I.1	Consequences of non-fulfilment of the request	
60.I.2	Ad Article 60(1)(a) of Regulation 2015/848: the right to be heard in any proceedings	1345
60.I.3	Ad Article 60(1)(b) of Regulation 2015/848: request for a stay of the realisation of assets if a draft restructuring plan within the meaning of Article 56(2)(c) of Regulation 2015/848 was	1246
60.I.3.1	proposed Existence of a restructuring plan as a prerequisite	
60.I.3.2	Impact on group members who are not insolvent	
60.I.3.3	Ad Article 60(1)(b)(i) of Regulation 2015/848: restructuring plan with a reasonable chance of success	
60.I.3.4	Ad Article 60(1)(b)(ii) of Regulation 2015/848: necessity of the stay	
60.I.3.5	Ad Article 60(1)(b)(iii) of Regulation 2015/848: benefit for creditors in the proceedings for which the stay is requested	

Contents
Ad Article 60(1)(b)(iv) of Regulation 2015/848: affected proceedings are not subject to coordination
Ad Article 60(1)(c) of Regulation 2015/848: request for the opening of coordination proceedings
Ad Article 60(2) of Regulation 2015/848:1350
n
1352
open group coordination proceedings]1352
Ad Article 61 of Regulation 2015/848 in general: procedural coordination as opposed to substantive consolidation
Ad Article 61(1) of Regulation 2015/848: request for opening of coordination proceedings
edural coordination vs. COMI concentration
Jurisdiction of courts for a decision on the request to open coordination proceedings
Standing to bring the request: persons with the capacity to propose the opening of coordination proceedings
Contents of the request; alternative mechanisms for group members that do not participate in coordination proceedings 1359
Ad Article 61(2) of Regulation 2015/848: conditions for filing the request to open coordination proceedings
Ad Article 61(3) of Regulation 2015/848: schedules to the request to open coordination proceedings
le]1364
Priority principle
Concept for determining priority under Article 62 of Regulation 2015/848
Analogy to procedural priority found in other EU law provisions 1365
The moment of opening of coordination proceedings as the determining factor in finding <i>lis pendens</i>

62.II.1 -0	Assessment of <i>lis pendens</i> according to other sources and their potential impact on the application of Article 62 of Regulation 2015/848	1366
62.II.2	Determining the moment of opening of coordination proceedings based on the <i>legis fori</i> of the court seised	
Article 63	Standards in certain non Alexander Status	
[Notice by	y the court seised]	1370
63.I.	Ad Article 63(1) of Regulation 2015/848: notice by the court to the other insolvency practitioners; <i>prima facie</i> reasons that rule out any obligation to give notice	1371
63.I.1	Court seised of a request to open coordination proceedings	1371
63.I.2	Recipients of the communication by the court	1371
63.I.3	Exceptions on grounds of non-fulfilment of Article 63(1)(a) through (c) of Regulation 2015/848	
63.I.3.1	Ad Article 63(1)(a) of Regulation 2015/848: coordination proceedings are inappropriate	1372
63.I.3.2	Ad Article 63(1)(b) of Regulation 2015/848: financial advantages for all creditors	
63.I.3.3	Ad Article 63(1)(c) of Regulation 2015/848: inappropriate choice of coordinator	1373
63.II.	Ad Art 63 (2) of Regulation 2015/848: contents of the court notice to other practitioners	1374
63.III.	Ad Article 63(3) of Regulation 2015/848: manner of service of the (notice of) request (registered mail with advice of receipt)	1375
63.IV	Ad Article 63(4) of Regulation 2015/848: right of involved practitioners to be heard	1376
Article 64		
[Objection	ns by insolvency practitioners]	1380
64.I.	Ad Article 64(1) of Regulation 2015/848: objections	1380
64.I.1	Course of actions to be taken by the court after the request for the opening of coordination proceedings were filed and objections were lodged	1380
64.I.2	Standing to lodge objections	
64.I.3	Preventative approach in accordance with Article 61 of Regulation 2015/848	
64.I.4	Ad Article 63(1)(a) of Regulation 2015/848: objections against the opening of coordination proceedings; against	1202
6415	participation in the coordination proceedings	1382
64.I.5	Ad Article 63(1)(b) of Regulation 2015/848: objections against the person proposed as a coordinator	1382
64.II	Ad Article 63(2) of Regulation 2015/848: manner in which objections are lodged	

Index	Contents
64.II.1	Formal requirements
64.II.2	Time limit for bringing objections
64.III	Ad Article 63(3) of Regulation 2015/848: authority of the insolvency practitioner to lodge objections
Article 65	
[Consequ	ences of objection to the inclusion in group coordination]1386
65.I.	Ad Article 65(1) of Regulation 2015/848: effect of the objection as per Article 64 (1) (a) of Regulation 2015/8481386
65.II.	Ad Article 65(2) of Regulation 2015/848: powers of court and coordinator; costs of coordination1387
65.II.1	No effects of the coordination on insolvency proceedings
	that do not partake in it
65.II.2	Effects on the general rules of cooperation and communication 1387
Article 66	
[Choice o	f court for group coordination proceedings]1389
66.I.	Ad Article 66(1) of Regulation 2015/848: choice-of-court agreement (prorogation agreement)1390
66.II.	Ad Article 66(2) of Regulation 2015/848: form of the agreement; cut-off date for the consensus choice
66.II.1	Character of the choice-of-court agreement
66.II.2	Qualified majority
66.II.3	Form of the choice-of-court agreement
66.III.	Ad Article 66(3) of Regulation 2015/848: the court declining jurisdiction
66.IV.	Ad Article 66(4) of Regulation 2015/848: submission of the request for the opening of group coordination proceedings with the competent court
Article 67	
[Consequ	ences of objections to the proposed coordinator]1399
Article 68	
[Decision	to open group coordination proceedings]1401
68.I.	Ad Article 68(1) of Regulation 2015/848: opening of coordination proceedings1401
68.I.1	Formal requirements for the opening of coordination proceedings 1401
68.I.2	Substantive requirements for the opening of coordination proceedings
68.I.3	Content of the decision on the opening of coordination proceedings
68.I.3.1	Ad Article 68(1)(a) of Regulation 2015/848: appointment of
a del Marian	the coordinator

68.I.3.2	Ad Article 68(1)(b) of Regulation 2015/848: outline of the coordination
68.I.3.3	Ad Article 68(1)(b) of Regulation 2015/848: estimation of costs and of the shares to be paid by individual group members 1405
68.I.4	Character of the decision pursuant to Article 68(1) of Regulation 2015/848 in terms of content
68.II.	Ad Article 68(2) of Regulation 2015/848: service of process1406
68.II.1	Service of the decision on the opening of coordination proceedings
68.II.2	Exclusivity / non-exclusivity of the circle of recipients. Available remedy against the decision on the opening of coordination proceedings
68.II.3	Service of a decision to the effect that coordination proceedings will <i>not</i> be opened
Article 69	
[Subseque	ent opt-in by insolvency practitioners]1409
69.I.	Ad Article 69(1) of Regulation 2015/848: opt-in request1410
68.I.1	Inclusion of new participant in the coordination proceedings 1410
69.I.2	Standing to request inclusion; discretion of the practitioner asking for such subsequent inclusion in pending coordination proceedings
69.I.3	Request for inclusion pursuant to Article 69(1)(a) of Regulation 2015/848: opt-in after an objection pursuant to Article 69(1)(a) of Regulation 2015/848
69.I.4	Request for inclusion pursuant to Article 69(1)(b) of Regulation 2015/848: opt-in by insolvency proceedings that were only opened after the decision to open coordination proceedings pursuant to Article 68 of Regulation 2015/848
69.I.5	Form of the request
68.I.6	Compliance with the requirements of the <i>lex fori concursus</i> applicable to the activities of the insolvency practitioner
69.II.	Ad Article 69(2) of Regulation 2015/848: coordinator's decision on the request1413
69.II.1	Authority to decide on the request
69.II.2	Ad Article 69(2)(a) of Regulation 2015/848: evaluation criteria 1413
69.II.3	Ad Article 69(2)(b) of Regulation 2015/848: consent of all involved insolvency practitioners
69.II.4	Form of the decision. Time limit for issuing the decision
68.II.4.1	Form of the decision
69.II.4.2	Time limit for the decision
69.II.5	Effect of the decision

Index		Contents
69.II.6	Other mandatory content of the decision	1416
69.III.	Ad Article 69(3) of Regulation 2015/848: notification of	1416
73.1.	involved practitioners and coordinating court	
69.III.1	Recipients	
69.III.2	Form of notification	1417
69.IV.	Ad Article 69(4) of Regulation 2015/848: notification of involved practitioners and coordinating court	1417
69.IV.1	Recourse to remedies. Standing to bring remedies	1417
69.IV.2	Type of remedy	1417
Article 70		
[Recomm	endations and group coordination plan]	1419
70.I.	Coordination versus autonomy of individual insolvency proceedings	1419
70.II.	Ad Article 70(1) of Regulation 2015/848: reflection	
	of coordinator's recommendations; original concept	
	of Regulation 2015/848 with respect to coordination concerning groups of companies	1419
70.III.	Ad Article 70(2) of Regulation 2015/848: primacy of <i>lex</i>	
1441	fori concursus of individual proceedings; justification for	
	deviations	1421
70.III.1	Ad Article 70(2) first sub-section of Regulation 2015/848:	
	primacy of lex fori concursus of individual proceedings	1421
70.III.2	Ad Article 70(2) second sub-section of Regulation 2015/848:	MEN SALVE
	justification for deviations	1421
Subsection	12	1424
General pr	ovisions	1424
Article 71		
[The Coor	rdinator]	1424
71.I.	Eligibility of the coordinator	1424
71.I.1	Authority to act as an insolvency practitioner	1424
71.I.2	Coordinator's domicile	1425
71.I.3	Qualification criteria and suitability criteria	
71.I.4	Manner of determining the coordinator	1427
71.II.	Ruling out conflict of interest on the part of the coordinat	
71.II.1	Exclusion of insolvency practitioners from proceedings	
	against a member of the group of undertakings	1427
71.II.2	Conflict of interest	1427
71.II.3	Law and mechanisms applicable to the solution of conflicts	
	of interest	1429

[Tasks of	the coordinator]1431
72.I.	Purpose of Article 72(1) of Regulation 2015/848 in comparison to Article 72(2) of Regulation 2015/848:1432
72.II.	Ad Article 72(1) of Regulation 2015/848: obligations of the coordinator
72.II.1	Ad Article 72(1)(a) of Regulation 2015/848: recommendations for the coordinated conduct of insolvency proceedings 1434
72.II.2	Ad Article 72(1)(b) of Regulation 2015/848: group coordination plan
72.III.	Ad Article 72(2) of Regulation 2015/848: other steps and measures available to the coordinator; means for the coordinator to discharge their duties
72.III.1	Ad Article 72(2)(a) of Regulation 2015/848: participation at hearings within the individual insolvency proceedings
72.III.2	Ad Article 72(2)(b) of Regulation 2015/848: mediation of disputes between practitioners
72.III.3	Ad Article 72(2)(c) of Regulation 2015/848: presenting and explaining the coordination plan
72.III.4	Ad Article 72(2)(d) of Regulation 2015/848: obtaining information from the insolvency practitioner
72.III.5	Ad Article 72(2)(e) of Regulation 2015/848: request for a stay 1444
72.IV.	Ad Article 72(3) of Regulation 2015/848: ban on consolidation of proceedings or estates1445
72.V.	Ad Article 72(4) of Regulation 2015/848: binding power only toward participating group members1446
72.VI.	Ad Article 72(5) of Regulation 2015/848: impartiality and due care on the part of the coordinator1446
72.VII.	Ad Article 72(6) of Regulation 2015/848: increase of coordination costs
Article 73	
[Languag	es]1449
73.I.	Ad Article 73(1) of Regulation 2015/848: language of communication between insolvency practitioners and coordinator
73.I.1	Significance of the language of communication; impact on the choice of coordinator
73.I.2	Agreement on the language of communication
73.I.3	Absence of agreement on the language of communication
73.II.	Ad Article 73(2) of Regulation 2015/848: language of communication between the coordinator and the courts1451

ion between insolvency practitioners and the coordinator]1454
Substantive scope1454
Ad Article 74(1) of Regulation 2015/848: mutual cooperation among insolvency practitioners and coordinator .1454
Ad Article 74(2) of Regulation 2015/848: communication from insolvency practitioners to coordinator1456
on of the appointment of the coordinator]1457
Oversight of the coordinating court over the coordinator's activities1457
Standing to seek revocation. Decision <i>ex officio</i> by the coordinating court
Reasons for recalling the coordinator1458
Duty of the court to recall the coordinator; duty to assess the circumstances
Ad Article 75(a) of Regulation 2015/848: actions to the detriment of creditors of a participating group member
Ad Article 75(b) of Regulation 2015/848: failure to comply with coordinator's obligations
Formal aspects of the revocation of appointment1461
Appointment of a new coordinator1462
possession]
distribution]1465
Spirit and purpose of the provision1465
Ad Article 77(1): adequacy of coordinator's remuneration1466
Ad Article 77(2): final statement of costs1468
Ad Article 77(3): confirmation of coordinator's statement of costs
Ad Article 77(4): decision by the coordinating court on the objections by insolvency practitioners to the final statement of costs
Ad Article 77(5): legal remedy against the court's decision on the objections brought by insolvency practitioners1470
Closing of coordination proceedings and enforceability of the decision on the costs of the coordination proceedings1471
Closing of coordination proceedings

77.VII.2	Enforceability of the decision on the costs of the coordina-
Article 78	tion proceedings
	tection]1473
78.I.	Purpose of the provision; relationship to data protection
00	rules within EU law1474
78.II.	Personal data
78.III.	Processing [of personal data]1477
78.IV.	Processing [of personal data] in the Member States1478
78.V.	Processing [of personal data] by the Commission1478
Article 79	
[Responsi personal o	bilities of Member States regarding the processing of data in national insolvency registers]1480
79.I.	Ad Article 79 of Regulation 2015/848 in general and Article 79(1) of Regulation 2015/848 specifically1481
79.II.	Ad Article 79(2) and (3) of Regulation 2015/8481482
79.III.	Ad Article 79(4) of Regulation 2015/8481483
79.IV.	Ad Article 79(5) of Regulation 2015/8481483
Article 80	
[Informat	ion obligations]1484
80.I.	Ad Article 80(1) of Regulation 2015/848: the Commission as controller
80.II.	Ad Article 80(2) of Regulation 2015/848: defining policies and technical solutions1486
80.III.	Ad Article 80(3) of Regulation 2015/848: security of transmissions and technical measures1486
80.IV.	Ad Article 80(4) of Regulation 2015/848: obligations of the Commission versus the responsibilities of Member States and other bodies
Article 81	
[Informat	ion obligations]1488
81.I.	Data subject; purpose of the provision and purpose of the processing
81.II.	Specific information to be communicated to the data subject1489
Article 82	
[Storage o	of personal data]1492
Article 83	
[Time lim	it for access to personal data]1494

CHAPTER	VII	. 1496
TRANSITI	ONAL AND FINAL PROVISIONS	. 1496
Article 84		
Applicab	ility in time]	1496
84.I.	Article 84(1) of Regulation 2015/848: applicability of the Regulation	
84.I.1	Time of the opening of insolvency proceedings	1498
84.I.2	Opening of parallel proceedings against the same debtor under different regulations	
84.I.3	Applicability to coordination proceedings against different debtors in the same group of companies	1499
84.I.4	Acts committed by the debtor before the date on which Regulation 2015/848 took effect	1499
84.II.	Article 84(2) of Regulation 2015/848: link to the repeal of Regulation 1346/2000	1500
Article 85		
[Relations	ship to Conventions]	1502
85.I.	Historical context, purpose and subject matter of the provision	1506
85.II.	Conventions from the perspective of international law and conflicts of conventions	1507
85.II.1	Resolving potential conflicts of conventions according to the principles of (public) international law	1507
85.II.2	The concept of successive treaties	
85.II.2.1	Ratione temporis as a qualifying factor	1509
85.II.2.2	Identical subject matter of a convention (treaty) as an act of public international law	1510
85.II.2.3	Presumptions in Article 30 of the VCLT	1510
85.II.2.4	Competing conventions (treaties) from the perspective of international law	1512
85.III.	EU legal framework in connection with international law	1512
85.III.1	Legal framework of the European Union	1512
85.III.2	EU law in connection with international law	1513
85.III.3 85.IV.	Conventions (treaties) entered into by the European Union Article 84(1) of Regulation 2015/848: priority of the application of EU law	
85.V.	Article 84(3) of Regulation 2015/848	1515
85.VI.	Relationship between Regulation 2015/848 and national law	s1516

D.	ANNEXES
Annexes I.:	Annexes to regulation 2015/848
Annex I.A:	Insolvency proceedings referenced in point (4) of Article 2 of Regulation 2015/8481544
Annex I.B:	Insolvency practitioners referenced in point (5) of Article 2 of Regulation 2015/8481547
Annex I.C:	Repealed Regulation with a list of the successive amendments thereto
Annex I.D:	Correlation table (provisions of Regulation 1346/2000 compared to the provisions of Regulation 2015/848)1551
Annexes II.:	Forms referenced in articles 27(4), 54, 55 and 64(2) of regulation 2015/848 [see Article 88 of Regulation 2015/848]1554
Annex II.1	Request for access to mandatory information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, in the system of interconnection of insolvency registers - Article 27(4) of Regulation 2015/848 [in conjunction with Article 27(3) of Regulation 2015/848]
Annex II.2	Standard notice form to be used to inform known foreign creditors of the opening of insolvency proceedings in an EU Member State - Article 54 of Regulation 2015/848
Annex II.3	Standard claims form that may be used by foreign creditors for the lodgement of claims (bearing the heading "Lodgement of claims") - Article 55 of Regulation 2015/848
Annex II.4	Objections of insolvency practitioners to (a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which they have been appointed, or to the person proposed as coordinator - Article 64(2) of Regulation 2015/848

E.	BIBLIOGRAPHY
	I. Monographs1580
	II. Articles in periodicals and anthologies1616
	III. Published literature available online1776
F.	INDEXES AND TABLES
	Overview of indexes and tables1783
F01	Index [arranged by key words]1784
F02	EU and international case-law index
	I. Case-law of the Court of Justice (ECJ and CJ EU)1856
	II. Case-law of the European Court of Human Rights1862
F03	Table of EU laws and laws of international origin
	I. Table of EU laws1863
	II. International treaties, conventions and agreements (sources of international origin), including those which have not entered into force or remained at the stage of a proposal
	III. Internationally applicable / recognized non-binding rules (regulations) or rules of other than state (public) origin
	IV. UNCITRAL Model Law on Cross-Border Insolvency (UML) and UNCITRAL standards1879
F04	Table of national (domestic) laws
	I. EU Member States
	II. Third countries (non-EU Member States)
F05	Table of references to states