

# Gränsöverskridande insolvens

En studie av den internationella domsrätten  
för insolvensförfaranden inom EU



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## Abstract

Warberg, Anna (2017). *Insolvency crossing borders: A study of international jurisdiction regarding insolvency proceedings within the EU*. Published by: Juridiska Institutionens Skriftserie, University of Gothenburg. Printed by: Ineko AB, Gothenburg, Sweden, 2017. ISBN: 978-91-87869-04-4

Questions regarding cross-border insolvency have become the subject of increasing interest in recent years. This is partly due to the ever ongoing globalization as well as the economic crisis in 2008. The thesis investigates how international jurisdiction regarding insolvency proceedings is regulated within the EU, specifically in the revised EU Insolvency Regulation. The rules of jurisdiction are analyzed with examples from Swedish material insolvency law.

The thesis argues that the rules of international jurisdiction in the EU Insolvency Regulation make it possible, in practice, for debtors, creditors and insolvency practitioners to influence in which Member State insolvency proceedings can be opened within the EU. The thesis argues that the Insolvency Regulation aims to avoid giving interested parties incentives to engage in forum shopping or abuse of law, but as long as there are major differences between the material insolvency laws of the Member States, such incentives will likely prevail.

The thesis does show, however, that the rules of jurisdiction in the EU Insolvency Regulation limit the possible number of proceedings opened at the same time in different Member States by linking jurisdiction to Member States where the debtor has its centre of main interests or an establishment. This fact, as well as the rules regarding immediate recognition of judgement concerning the opening of insolvency proceedings, limits the possibility to influence where a proceeding can be opened, but the thesis argues that these rules also increase the impact of forum shopping in the EU.

The thesis concludes that it would be possible to decrease incentives to engage in forum shopping by harmonizing the material insolvency laws of the Member States. The diversity can however also be acknowledged as a sign of cultural and political differences between Member States, in which case forum shopping should perhaps instead be accepted in accordance with the principle of mutual trust between Member States. The study points out that such a mutual trust, especially when faced by forum shopping, would be easier to maintain if the material insolvency laws were more similar. The thesis concludes that the Insolvency Regulation could be amended to combat forum shopping and abuse of law by adding a possibility to open insolvency proceedings in more Member States, for instance where the debtor has assets and regarding main proceedings an establishment, or be revised to include a prohibition of forum shopping or abuse of law. With no such revision, debtors and creditors will likely have to get used to, and be prepared for, a certain amount of uncertainty as to where insolvency proceedings will be opened within the EU.

**Keywords:** EU Insolvency Regulation, international private- and procedural law, international jurisdiction, insolvency law, creditor, debtor, harmonization, Europeanization, freedom of establishment.

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