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European Insolvency Proceedings from the Point of View of the Subjects of the Proceedings

(Summary of Doctoral Dissertation)

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I. Summary of the research tasks and objectives of the research

It is always a difficult objective to research the insolvency law. The difficulty of the task derives from the complexity of this field of law, which necessitates an interdisciplinary approach. Moreover, the difficulties of the research increase when the research is carried out in international context. It is because not only the complexity of this field of law and the opposite national interests have to be faced with at international level but also the different national rules on insolvency or, in other words, the conflicts between the different insolvency cultures.

Having recognised the fact that the economic actors are not bound by the national borders and that the financial difficulties of the subjects who cross the border have impact on the proper functioning of the market of a region, there have been several attempts to approximate and harmonize the national insolvency rules at international level. Council Regulation (EC) No 1346/2000 on insolvency proceedings (hereinafter 'the Regulation') has been adopted as the result of these works carried out at European Union level.

According to statistics of 2008 the Regulation has been applied for more than 90 types of national insolvency proceedings in 26 Member States and it was applied for both natural and legal persons (acting as liquidator) having the most various legal status.

There is no doubt about that researching and elaborating the cross-border insolvency law is extremely current in the present financial crisis. Due to the free movement of goods, services, capital and persons the number of those economic actors whose activity cross the borders and are involved in international relations is increasing dynamically in the European Union. The financial crisis emerged in 2008 had the effect that many of these cross-border subjects became insolvent and therefore the Regulation has been applied in an increasing number in practice.

Furthermore, the importance of the research is also intensified by the fact that within the meaning of Article 46 of the Regulation the Commission has to present a report on the experience of the application of the Regulation by no later than 1 June 2010 and, where necessary, the Commission can propose the adaptation of the Regulation. Since this deadline for the review procedure is approaching, each research is considered to be current which has the aim of detecting the inconsistent provisions of the Regulation and which proposes suggestions for the improvement thereof.

Before outlining the aims of the thesis it is necessary to determine its research topic. Under the notion of European insolvency proceedings – as it is indicated in the title of the thesis – I mean all those bankruptcy and liquidation proceedings which have any international aspect within the meaning of the territory of the European Union and which necessitate the application of the Regulation. The notion of insolvency proceeding covers those bankruptcy and liquidation proceedings opened in the Member States, therefore including Hungary, which fall within the material scope of the Regulation. Taking into account these limitations the thesis does not deal with neither those insolvency proceedings which have solely internal aspects and nor with those cases which have international features outside the territory of the European Union.

The theme of the thesis has been further tightened since the elaboration of all the provisions of the Regulation would have exceeded the size limits of the thesis. The European Union law on insolvency proceedings is very similar to a matrix system in sense that the Union provisions are divergent and they refer to both other Union legal sources and the national insolvency laws of the Member States. In order to illustrate the complexity of this field of law the thesis touches upon these topics as well, however it must be noted that the analysis of these topics cannot be considered to be complete.

As regards the question of the opening of cross-border insolvency proceedings it can be remarked that the academic analysis of the classical procedural institutions included in the Regulation has been already carried out in the Hungarian legal literature. Therefore, it was not an aim of the thesis to deal with and resolve the problems relating to the question of the scope, the provisions governing jurisdiction and the recognition of judgements. The basic idea of my research was based on the hypothesis according to which the regulation of a field of law is never autotelic but, in procedural terms, it always tries to foster the thriving of the people concerned. Consequently, I have analysed the European Union law's provisions on cross-border insolvency proceedings from the point of view of the subjects concerned in order to be able to reach a conclusion as to whether the Union regulation facilitates the prosecution of the rights of the legal entities or not.

Prior to the designation of the main lines of my research I summarized the reasons for the adoption of the Regulation and the objectives thereof as the followings:

- in order to assure the proper functioning of the internal market the operation of cross-border insolvency proceedings should be provided in an efficient and effective manner;

- to coordinate the measures to be taken regarding the insolvent debtor's cross-border assets;
- to avoid *forum shopping* i.e. activity of the parties seeking to obtain a more favourable legal position;
- to achieve the protection of legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened.

On the basis of the analysis of the relation between the above objectives and the subjects of cross-border insolvency proceedings, the main objective of the research was to answer to the question as to whether in the light of the provisions in force and from the point of view of the subjects of cross-border insolvency proceedings have the objectives of the Regulation – i.e. the requirement of efficiency, predictability and legal certainty – been attained, and does the Union rule prevent the parties from taking advantage of *forum shopping.*

Having regard to the fact that with the adoption of the Regulation the Union legislator did not create a code containing uniform rules on European insolvency proceedings, besides analysing the provisions of the Regulation, I also examined the relevant Hungarian rules. As a secondary objective of the research I have been searching the answer to the question whether the Hungarian provisions on insolvency make possible and facilitate the application of the provisions of the Regulation from the point of view of the subjects of cross-border insolvency proceedings.

The structure of the thesis can be justified by the following reasons. The Regulation does not define *expressis verbis* the personal scope thereof. However, it follows from the detailed rules of the Regulation that the debtor, the creditor, the liquidator and the courts of the Member States fall under the scope of the notion of subjects of cross-border proceedings. The structure of the thesis follows this logic, thus after Chapter 1 which contains those general remarks which are necessary for the understanding of the later chapters, in the following four main parts of the thesis I analyse the European Union provisions and the fields of law closely linked to them specifically from the point of view of these different subjects of the European insolvency proceedings.

II. Methods and sources of the research

The method of the research used during the writing of the thesis is *mixed* in nature. The description of the relevant provisions of the Regulation is followed by the interpretation and analysis thereof in each chapter; moreover the technique of the Union regulation necessitated the use of legal comparative method, too. As a matter of fact, where the Union provision does not contain any substantive rule but refers to the national laws of the Member States, the question whether the Union provision is adequate or not can be answered only with the help of the analysis of the national solutions. Therefore, it is true for the whole thesis that the *descriptive-analytical* and *comparative methods* were used contemporaneously.

Concerning the comparison between the national solutions it must be noted that the thesis does not always deal with the national laws of the same Member States since I tried to illustrate and describe the extremist solutions of the Member States as for the regulation of the legal institutions in question. What is more, in some chapters of the thesis besides describing the national provisions of the chosen Member States I tried to outline the main international tendencies, that is to say I also used the *model formation method*.

In order to be able to answer to the questions relating to the second main objective of my research, it was necessary to expound and analyse the Hungarian insolvency law as for the relevant legal institutions. Nevertheless, concerning the analysis of the Hungarian rules, it must be emphasized that the complete and detailed elaboration of the legal institutions concerned was not amongst the aims of my research. Basically speaking, the Hungarian laws and judicial practice were described and analysed solely to the extent so as to render possible to evaluate whether the Hungarian insolvency law makes possible and foster the application of the provisions of the Regulation or not, and whether it complies with the requirements and tendencies of the European Union – having regard to the national solutions of the other Member States. Thus, I was dealing with the Hungarian Bankruptcy Act and the other relevant national provisions using a *critical legal analysis method*.

The prevailing legal acts of the European Union, the Hungarian laws, the national laws of the other Member States and the commentaries thereon were *the sources of the research* moreover I widely dealt with the case-law of the Court of the European Union, the Hungarian courts and the courts of the other Member States. It comes from the analytical-comparative method of the thesis and from the fact that there were only few academic legal writings in my research topic written in Hungarian, that the thesis is based on a large number of international

– mainly written in English and German – sources, a significant number of which appear and are analysed for the first time in my thesis in Hungary. The use of internet also facilitated the research of the national laws and jurisprudence of the Member States and of the European Union. Furthermore, my researches carried out in Germany, Austria and Italy also helped me with writing my thesis.

III. Summary of the results of the research and the possible utilization thereof

1. Summary of the results of the research

1.1. General remarks

The aim of the writing of my thesis was to create a comprehensive work which could be used by both those academic lawyers who research the field of European insolvency law and by those practical lawyers who applies the rules of this field of law. As it is indicated in the title of my thesis the provisions of the Council Regulation (EC) No 1346/2000 on insolvency proceedings were analysed from the point of view of the subjects concerned and the primary aim was to provide them with appropriate guidance to the 'regulatory matrix'.

Before answering to the questions outlined above as the concrete objectives of the research, the following general remarks should be noted in connection with the application of the Union legal act. From the point of view of the subjects of cross-border insolvency proceedings it can be stated that the adoption of the Regulation can be considered as a milestone and it has a significant effect on the international business activity and transactions. Nowadays the actors of the internal market of the European Union calculate in advance whether a given transaction has any effective or potential Union dimension. During the preparation of the procedures and transactions the concerned parties also take into account what kind of effects can the Regulation have and regarding the rules on the application of the Regulation they examine the applicable law of the Member States in order to evaluate in which Member States the conditions are more favourable. What is more, on the basis of the concept and the objectives of the Regulation the courts of the Member States which are involved in cross-border insolvency proceedings have the possibility to create such flexible and innovative interpretations which depart from their national law.

The years following the entry into force of the Regulation were not harmonious. That time the focus was on the definition of the notion of 'centre of main interests' in the context of the parent company/branch debtor constructions. This period can be described as the period of 'war and peace'. However, the difficulties relating to the questions of interpretation and the conflicts between the Member States cannot be considered as negative. In fact, it is natural that the general provisions which try to reconcile the different insolvency cultures of the Member States can easily become the subject of debates. Let's just think of the fact that only

one brief sentence of the Regulation deals with the question of jurisdiction as regards the main insolvency proceeding, consequently the appearance of different interpretations is inevitable. It must be added that the debtor and the other participants of the proceeding seek for different solutions and possibilities to obtain a more favourable insolvency environment. The legal conflicts and the *forum shopping* that have emerged on the side of the subjects of the proceedings caused several debates; nevertheless, these conflicts do not spoil the positive results reached with the adoption of the Regulation.

Due to the adoption of the Regulation several results can be pointed out also in the harmonisation of the laws of the Member States. The biggest achievement of the Union act is that it has introduced uniform rules to be applied to European insolvency cases. For example while in 2000 the question whether the asset of a Hungarian debtor and situated in Spain was part of the estate in bankruptcy could have been matter of disputes, nowadays the very same question does not arise in the context of the Member States of the European Union.

The provisions of the Regulation also served as models for the national legislators of the Member States in those cases where the national legislators adopted rules concerning questions relating to cross-border insolvency proceedings arising between the given Member State and third countries outside the European Union. For example the German legislator has implemented the rules of the Regulation in its national law on international insolvency proceedings in relation to third countries. The necessity of the regulation of the international insolvency law also became a central question with the adoption of the Regulation, and as a result, several Member States have adopted their own national special rules. It follows from the foregoing that it can be stated that the Regulation and the national laws of the Member States on insolvency proceedings in relation to third countries are in reciprocity and they develop in a parallel manner in Europe.

The Regulation has a unifying effect on the national insolvency laws of the Member States, too. To give an example, prior to joining the European Union the preservation measures did not exist in the liquidation proceeding in the Hungarian law and the institution of temporary administrator was inserted in the Hungarian Bankruptcy Act on the basis of the Regulation. Due to the researches carried out in order to examine the effects of the Regulation, the national insolvency laws of the Member States are subject to permanent monitoring. The monitoring highlights the extreme divergences, which also draw the attention of the national legislators to the importance of the given problems. For instance we can mention the attractive effect of the English national reorganisation proceedings which induced the migration of the legal entities to the United Kingdom in case of arise of financial

difficulties. This had influence on the national laws of several Member States to the effect that the some Member States' legislators have introduced such reorganisation proceedings which can compete with the English regulation. This period also brought the opportunity of renewal for the national insolvency laws of the Central and Eastern European Member States since they were obliged to elaborate such modern national insolvency laws which comply with the requirements established by the European Union.

To sum up the evaluation of the effects of the Regulation it can be concluded that several tendencies for harmonisation can be observed in the last years, just as at present. Obviously these tendencies are not that spectacular as the debates and conflicts raised in connection with the insolvent situation of groups of companies, and sometimes take the form of un-coordinated, small steps. However, there is no doubt that these tendencies move on towards the direction of a uniform European insolvency law, as to the achievement thereof we can be optimistic. But it goes without saying that the introduction of a uniform European insolvency cannot occur overnight. As a long-range aim it can be achieved only at the end of a long and rough road on which the European Union and its Member States have departed hands in hands.

1.2. Detailed description of the results of the research – suggestions *de lege ferenda*

In the introduction of the thesis I identified the primary aim of my research, that is to answer to the question whether – from the point of view of the subjects of cross-border insolvency proceedings and on the basis of the provisions in force – the objectives of the Regulation are attained or not. As it was mentioned above, these objectives are: compliance with the requirements of efficiency, predictability and legal certainty and to eliminate the possible use of *forum shopping*. In my opinion the answer to this question can be summarized as follows:

The Regulation on cross-border insolvency proceedings *facilitate* to attain the requirements laid down in the Preamble, namely the requirements of efficiency, predictability and legal certainty, and it *reduce to a minimal level but does not eliminate the possible use of forum shopping*. The creation of a uniform European insolvency law should be necessary in order to completely achieve the above-mentioned objectives. However, at the present situation of the European integration this cannot be reached, it could only be realized as the final result of further harmonisation work.

To sum up the answer to the secondary question of my research – as the second most important aim of my research – it can be concluded that *specific provisions* of the Hungarian

Bankruptcy Act *facilitate* the application of the Regulation in Hungary, but there are a lot of unregulated fields and several suggestions can be presented.
The following summarized statements and suggestions support my conclusions.

1.2.1. Conclusions and suggestions *de lege ferenda* relating to the rules concerning the debtors

Conclusions concerning the provisions of the Regulation:
1. In Chapter II, Subchapter 1 of the thesis I raised the question whether the method applied by the Regulation, according to which the Union legislator left for the national laws of the Member States both to define *who can be debtor* in cross-border insolvency proceedings, and to determine on which conditions can the proceeding be opened, facilitate or not the achievement of the objectives of the Regulation, namely the elimination of *forum shopping* and to ensure the proper functioning of the internal market, legal certainty and predictability.

In this respect I came to the conclusion that significant differences can be pointed out amongst the national solutions of the Member States. The debtors of insolvency proceedings vary from one Member State to another. Moreover, regarding the conditions for opening of a proceeding, on the one hand some Member States use the liquidation test which requires that the debtor cannot repay its debts at the time when they become due. On the other hand the other Member States examine the balance-sheet footing, i.e. whether the debts of the debtor exceed the assets at its disposal.

In my opinion the different conditions for the opening of proceedings are very unfavourable as for the application of the Regulation. This statement is supported by the increasing mobility of the legal entities in the sense that by transferring the centre of main interests the debtor can choose those Member States where the conditions for the opening of insolvency proceedings are the most favourable for him. The same statement is true for the creditors since by choosing the court they try to request the opening of proceeding in that Member State where the legal environment is the most favourable for them. Therefore, this solution does not eliminate but foster the use of *forum shopping*.

The other problem results from the regulation system established by the Regulation. Pursuant to Article 3 (1) of the Regulation main insolvency proceedings can be opened in the Member State where the centre of the debtor's main interests is situated. Pursuant to Article 4 (2) (a) it is the national law of this Member State which determines the conditions for the opening of proceedings and it also determines the rules on the question as to against which

debtors insolvency proceedings may be brought. On the basis of Article 3 (2) secondary insolvency proceedings can be opened in another Member State where the debtor possesses an establishment. In this case, pursuant to Article 27, the national law of the latter Member State is applicable however it must be emphasized that in this other Member State the debtor's insolvency cannot be examined. In the Member State of secondary insolvency proceedings the given organizational body does not face with the insolvency test and despite the fact that in such cases it can happen that the debtor would not be able to comply with the insolvency test, it is the national insolvency law of the Member State where the debtor possesses an establishment which is applicable.

Consequently the national insolvency criteria of the Member State of main proceedings have effect on the other Member State, thus, main proceedings and secondary proceedings are in close connection with each other. Due to the differences in the insolvency conditions it can happen that a main proceeding cannot be opened against a company just because in the Member State of the centre of its main interests it cannot deemed to be insolvent, however under the national law of the Member State where it has an establishment it is considered to be insolvent for a long time.

I take the view that in order to achieve the objectives laid down in the Regulation it would be necessary to define the conditions which are applicable to the debtor at Union level. These conditions should be determined at least to such extent that it should be declared in a uniform manner that the subjects of cross-border insolvency proceedings can be both natural and legal persons. On the other hand, adoption of uniform rules is needed also on the conditions for the opening of proceedings. With regard to the question of insolvency, since most of the Member States apply the liquidation test, in my opinion the Union rule to be established should follow this concept.

2. After comparing the provision on international jurisdiction laid down in Article 3 (1) of the Regulation, the freedom of establishment for companies and the relevant Hungarian rules, I draw the following conclusions.

The Union legislator was wise when it introduced the notion of centre of main interests in order to determine the Member State which has jurisdiction in the main insolvency proceedings. Concerning the freedom of establishment laid down in the EC-Treaty, it comes from the case-law and interpretation of the European Court of Justice that the place of the registered office of the debtor and the place where the debtor carries out its main activity can be situated in different Member States. In order to ensure that there is a real link between the Member State of the proceeding and the debtor, and in order to ensure that the ground of

international jurisdiction cannot be considered as exorbitant ground of international jurisdiction, it was inevitable to create a notion which takes into account those cases when the debtor does not carry out any activity in its Member State of the place of its registered office.

Under the prevailing provisions the debtor can influence the connecting criteria of the insolvency proceedings by transferring the place of its centre of main interests. However, it is not an easy task to transfer the centre of main interests into another Member State, thus it cannot be executed from one day to another. However if the Union legislator adopted a secondary Union act regulating the transfer of the place of the registered office between the Member States, the connecting criteria of the international jurisdiction – at present taking the form of a refutable presumption – could be changed more easily, and it could give the *forum shopping* a new impetus in the European insolvency proceedings.

3. In my opinion *the rules on international jurisdiction laid down in the Regulation* facilitate the achievement of the objectives of impeding or severely restricting those activities of the debtors which are carried out in bad faith in order to obtain a more favourable legal position. Concerning the notion of centre of main interests it can be observed that the ground of international jurisdiction is based on the concept of the existence of a genuine connecting factor. Therefore, in my view the contradiction between the Union legal act and the exercise of the fundamental freedoms is apparent.

The judgement of the European Court of Justice handed down in case *Susanne Staubitz-Schreiber* impose restrictions on the time limits for the use of *forum shopping* emerging on the side of the debtor, having regard to the fact that in the moment when the opening of an insolvency proceeding is requested, the circumstances which determine the international jurisdiction become fix. In other words the opportunity to find the most favourable legal environment is restricted to the period preceding the request for the opening of proceeding.

Nevertheless, in practice it is not always easy to change the place of the centre of main interests since the apparent transfer thereof can be detected during the examination of international jurisdiction. As a matter of fact it can happen that the activity of a debtor carried out in order to obtain a more favourable legal position results in the successful use of *forum shopping*. In this respect it can be noted that the legal literature draws the attention to the phenomenon of *insolvency planning*. This means that prior to the request for opening of an insolvency proceeding the debtor precisely analyses which national law would be the most favourable for him/it, and the debtor creates the circumstances which determine its centre of main interests in such a way that at the moment of the submission of a request for the opening

of proceeding the jurisdiction of the chosen Member State is already established. Obviously this requires a significant amount of money and time on the debtor's part, and in practice this phenomenon mainly occurs when planning reorganisation proceedings of the groups of companies and in case of insolvency of debtors being natural person.

Although the phenomenon of *insolvency planning* should not be underestimated, it is impossible to create such a system of rules on jurisdiction which could totally eliminate the possibility of *forum shopping*. This aim, i.e. the elimination of incentives of the debtors to seek to obtain a more favourable legal position, could be completely achieved only with the introduction of a uniform European insolvency regulation scheme.

4. In connection with *the insolvency of groups of companies* I have concluded in Chapter II, Subchapter 4 of the thesis that concerning the application of the Regulation most of the problems and debates occur when the provisions on international jurisdiction are invoked in order to create grounds for concerted insolvency of groups of companies. We can often read the opinion in academic legal writings that insolvency proceedings opened against groups of companies should be somehow regulated in order to improve legal certainty and the efficiency of the proceedings.

In the light of the above-mentioned suggestions and the counter-arguments thereof I am of the opinion that the solution cannot be the creation of such provisions under which – by setting aside the concept of 'one legal entity, one proceeding' and with the introduction of a new, special connection criteria for international jurisdiction – the single companies of a given group should be treated within one single proceeding. Provided that the economic dependency between the companies is very strong, it is already possible for the branches to overcome the presumption laid down in the second sentence of Article 3 (1) of the Regulation and to prove that the branch's centre of main interests is adjusted to the parent company's centre of main interests.

In my point of view, concerning the insolvency of groups of companies, the Union legislator should take into account the following considerations during the review procedure of the Regulation. The Union legislator should maintain the concept of 'one legal entity, one proceeding' and it should determine within the provisions on international jurisdiction – at least in a general manner – those conditions under which it can be stated that the branch's centre of main interests situates in the territory of the Member State of the parent company's centre of main interests. In cases where these conditions are not fulfilled or the proof thereof was unsuccessful and provided that the main insolvency proceeding was opened against the branch in a Member State different from the Member State of the parent company, I do

consider that a legal framework should be adopted in order to coordinate the main insolvency proceedings opened against the companies of groups in different Member States. The adoption of such a legal framework would be necessary to make possible for the groups of the companies or the members thereof who face with financial difficulties to conduct a harmonized reorganisation or liquidation proceeding without difficulties.

Conclusions concerning the Hungarian rules:

The introduction of *insolvency proceedings against natural persons* would be desirable in Hungary. The Hungarian law is unique within the European Union in the meaning that it does not allow the opening of bankruptcy proceedings against natural persons. However, the institution of the individual bankruptcy is not foreign to the Hungarian or to the European evolution of law. Moreover, it has several advantages:

- the proceeding is subject to judicial control and strict conditions,
- in long terms it is beneficial for the creditors as well in those cases where the recovery of the outstanding debts would be hopeless even after a long and expensive enforcement procedure,
- it prevents the ’honest but unlucky debtor’ from suffering the consequences of his/her bankruptcy for a whole life and ensures the opportunity of recommencement for him/her.

There have been several attempts in Hungary to introduce the debt settlement proceeding with regard to natural persons. The last attempt was in 2009 when a proposition was submitted, however in the end it did not become a bill.

There is no doubt that the introduction of the debt settlement proceeding would be justified, although it is true that the creation of its legal system is not an easy task. It is also obvious that the Hungarian Bankruptcy Act is not adequate to include these provisions since the conception of the proceeding is adjusted to the functioning of the economic companies. In my point of view the debt settlement proceeding should be regulated in an independent piece of law.

The other important question is to decide on whether the proceeding should fall within the competence of the courts or administrative authorities. In my opinion the French solution could serve as a model in this regard: e.g. the coordination of the proceeding based on the arrangement of the debtor and creditors, just as providing professional assistance could fall within the competence of the Office of Justice, while in lack of assistance to be provided for

the creditors the court could approve the debt settlement plan, and also the court could decide in the question relating to the exemption of the debtor.

When dealing with the question of the determination of the debtor of the debt settlement proceeding, it should be borne in mind that it would be very important that the legislator harmonise the personal scope of the Bankruptcy Act and that of the new piece of law to the largest extent possible. I take the view that debt settlement proceedings should be made available not only for those natural persons who do not carry out economic activity but the sole traders should also fall within the scope of the law.

As a conclusion it can be stated that the adoption of an act on the natural persons' debt settlement proceedings is an urgent task of the Hungarian legislator. During the elaboration of the future proposal great emphasis will have to be put on a wide professional and public discussion.

1.2.2. Conclusions and suggestions relating to the rules concerning the creditors

Conclusions concerning the provisions of the Regulation:

1. The Regulation does not deal with *the notion of creditor*, not even at least to the extent as it deals with the notion of debtor. This definition is missing despite the fact that the Union act refers to the creditors in several provisions and, basically speaking, tries to eliminate the disadvantages resulting from the cross-border nature of the insolvency proceedings and from the fact that parallel proceedings can be opened against the debtor.

Pursuant to Article 4 (2) (h) of the Regulation it is the national law of the Member State of the opening of proceeding which is applicable to the rules governing the lodging, verification and admission of claims. Therefore in order to determine who can be creditor within the meaning of cross-border insolvency proceedings, the examination of the national solutions of the Member States is necessary.

It is common in the national solutions of the Member States that the lodgement of the claim is always required in order to obtain creditor status. In general the decision on opening of proceeding specifies the time limits for the lodgement of the creditors' claims, but the length of the time limits is different in the national laws of the Member States.

In cross-border insolvency proceedings the different rules on lodgement and registration of the creditors' claims are disadvantageous for the creditors situated in another Member State since the system favours essentially the local creditors. This affects indirectly the lending appetite in a disadvantageous manner in the European Union.

In order to improve legal certainty and to ensure equal treatment of creditors, the adoption of uniform rules would be necessary on the course of the lodgement and admission of creditors' claims, and especially on the time limit for the lodgement, on the legal consequences of the default of the time limit and on the information procedure for creditors.

2. Concerning *the rules on the protection of creditors* as laid down in Articles 41 and 42 of the Regulation I came to the conclusion that the Union legislator tries to help the creditors who are nationals of other Member States by laying down the provisions on the lodgement of claims. It is without doubt that this affects the position of the given creditors in a positive way but it does not completely eliminate the difficulties deriving from the feature of cross-border insolvency proceedings.

As regards creditors who are nationals of other Member States, the time limit for lodgement of claims is clearly shortened since the individual notice received from a court or liquidator of another Member State has to be translated, and – as the case may be – the content of the lodgement of their claims, just as the documentary evidence thereof have to be translated into the official language of the Member State of the opening of proceeding. Besides of the fact that the translation is time-consuming, it is also expensive. Thus, in the light of the legislation in force it can be declared that the position of the domestic creditor and the position of creditors who are nationals of other Member States are not equal.

3. As regards the *special provisions on conflicts of law* analysed in Chapter III, Subchapter 3 of the thesis I came to the following conclusions:

- It is a difficult task to evaluate the position of the creditors secured by pledge in cross-border proceedings within the meaning of the Regulation. The fundamental problem results from the general wording of the specific provision laid down in Article 5 and the differences among the national rules of the Member States. The national laws of the Member States regulate the position of pledgors differently, and the idea of unification is still not matured. The present situation obviously favours the pledgors, however, basically it is still an open question that what if there is a dispute between the main liquidator and the pledgor within the meaning of Article 5, that is whether the court having jurisdiction in this dispute should be determined under regulation Brussels I or not. Having regard to the fact that the position of the creditors secured by pledge requires outstanding attention in the national laws of the Member States and has a great importance in the credit management practice as well, the Union legislator should answer to this question in the course of the due review proceeding of the Regulation.

- Regarding the special rule on conflicts of law laid down in Article 10 of the Regulation it can be concluded that its introduction in the cross-border proceedings was reasonable since all European Union legal acts that have been adopted in the field of judicial cooperation in civil matters pay special attention to the position of employees, trying to protect them from the possible application of foreign laws. The system created by the Regulation, namely the following provisions on the applicable law, is in fact quite complicated, however reasonable from the point of view of the employees: in questions strictly linked to labour law the applicable law can be found on the basis of regulation Rome I, while the national law of the Member State of the opening of proceeding is applicable to the disputes connected with insolvency, and the national law of the Member State in which the employee habitually carries out his work is applicable as to the aids demandable from wage guarantee funds. Thanks to the manifold lawmaking of the European Union in the field of the applicable law to the employers' insolvency there are no essential differences amongst the national rules of the Member States.
- Regarding the rule on proceedings on lawsuits pending as established in Article 15 of the Regulation, the assessment on enforcement proceedings pending in another Member State than the Member State where an insolvency proceeding was opened, is questionable. The question is whether Article 4 (2) (f) or Article 15 of the Regulation should be applied for the effects on enforcement proceedings. It is a question because the text of the Regulation and the content of the *Virgós-Schmit Report* are not compatible in this aspect. Although this does not raises big problems in practice in the meaning that the national laws of all the Member States prohibit the individual assertion of claims in the course of universal insolvency proceedings, at the due review of the Regulation the text of the Regulation should be specified also in this regard in order to achieve legal certainty and uniform interpretation.

4. After the examination of the provisions which are to ensure equal treatment of creditors I came to the conclusion that the provision laid down in Article 20 (1) of the Regulation, which imposes the duty to return on the creditors, is a Union rule to be applied independently from the national laws of the Member States. By the way this Union rule is very similar to the solutions created by the national laws, the sole difference is that while in domestic insolvency proceedings the creditors can gather exact information about the fact whether an insolvency proceeding has been opened against the debtor, the opportunity to gather the same information is very limited in case of cross-border insolvency proceedings.

The provision which imposes the duty to return on the creditors could be considered correct as against the creditors if such a Union register was established which could keep up-to-date records of the insolvency proceedings ordered in the other Member States. By the way, academic legal writings call out for such a register already for a long time. The Council of the European Union has adopted an action plan on European e-Justice on 7 November 2008, an important aim of which is to enhance the creation of the European area of justice with the use of information and communication technologies. According to the original plan the European e-Justice Portal should have been created by the end of 2009. This portal should connect – amongst others – the registers kept by the Member States of insolvency proceedings. The portal does not function at the moment but its creation is expected for 2011.

As for the analysis of the order in which the creditors' claims are satisfied, I found that the national laws of the Member States are divergent to a large extent. In this respect I observed that in the period prior to the adoption of the Regulation this was one of the most important questions to which the Member States did not want to consent. Since the diversity was such big, the Convention on Insolvency Proceeding drawn up in 1995 could not been adopted. Nevertheless, since pursuant to the Regulation the Member States are prohibited from giving unjustified benefit to a given creditor, the national laws of the Member States are approximated to a certain extent. However, there is no real chance for the adoption of a uniform Union rule in this field.

Conclusions concerning the Hungarian rules:

1. On the basis of *the provisions of the Hungarian Bankruptcy Act* it can be stated that the provisions on *the creditors' right to lodge claims* laid down in Article 39 of the Regulation prevail in Hungary. The Hungarian law uses the notion of 'creditor' and in this respect it does not differentiate on the basis of the nationality of the creditors. What is more, as for the ranking of creditors the Hungarian law does not take into account the identity and the status of the creditor, which means that solely the nature and title of the claim are relevant. Consequently, if the claim of a creditor is tax or other social security claim, the claim of the tax authorities of the other Member States is to be qualified as preferential claim and it has the same status as the claim of the Hungarian tax authority.

2. *After analysing the content of the provision laid down in Article 40 of the Regulation and comparing it with the rules of the Hungarian Bankruptcy Act* I concluded that the provisions of the Hungarian bankruptcy law should be modified in order to provide the consistent application of the Regulation.

First of all that should be declared in the Hungarian act that – within the framework of the Regulation – who shall be duty bound to communicate information to those creditors who are nationals or other Member States. Taking into account the special features of the Hungarian bankruptcy rules according to my view this obligation should be imposed on the insolvency administrator or the liquidator.

As regards bankruptcy proceedings Article 12 (1) of the Hungarian Bankruptcy Act should be modified so as to obligate the debtor to transfer to the insolvency administrator within 5 working days of the publication of the order for opening of the bankruptcy proceeding the names and addresses of those known creditors who have their habitual residence, domicile or registered office in another Member State. This modification should be carried out in order to make possible for the insolvency administrator to comply with its obligation laid down in Article 40 of the Regulation. This modification would not impose huge burden on the debtor, since pursuant to Article 8 (2) (f) a list of the debtor's creditors has to be attached to the request for the opening of proceedings. Should the debtor fail to inform the insolvency administrator, the legal consequence thereof could be the payment of a fine.

It is much more difficult to find a solution in insolvency proceedings since the debtor's readiness to cooperate is very low in general. However, it should also be provided in Article 31 (1) of the Hungarian Bankruptcy Act that the manager of a company that is being liquidated must communicate to the liquidator the list of names and addresses of the known creditors who have their habitual residence, domicile or registered office in other Member States in order that the liquidator can fulfil its information obligation established in Article 40 of the Regulation. This list should be communicated to the liquidator within 5 working days of the publication of the order to wind up the company. The failure of this obligation should be punished with a fine, too.

In order to ensure equal treatment for creditors who are nationals of other Member States, Article 28 (2) (f) of the Hungarian Bankruptcy Act should be modified so as to provide that the time limit for the lodgement of claims of creditors who are nationals of other Member States, should be counted from the date of the delivery of the individual notice mentioned in Article 40 of the Regulation.

3. After comparing the rules on conflicts of law analysed in Subchapter 3 of the thesis and the rules of the Hungarian Bankruptcy Act I concluded that:

- Generally speaking, the development of the rules laid down in Article 49/D of the Hungarian Bankruptcy Act followed the international tendencies and in its present form it is considered to be compliant with the European Union law. As we have seen,

most of the Member States' insolvency laws try to properly guarantee the pledgee for the event of the debtor's insolvency. That is why the revenue from the sale of the pledge – after deduction of the given small costs – has to be fully used to satisfy the pledgee's claim. When the insolvency rules do not provide appropriate guarantee for the satisfaction of the pledgee's claim, it can significantly force the credit management practice back.

- After comparing Article 10 of the Regulation and the relevant Hungarian rules I concluded that the Hungarian law meets with the Union requirements and the implementation of the Regulation has been fully carried out in Hungary in this respect. The employees and the reimbursement of their wage demands are ensured in insolvency proceedings. After analysing the national laws of some Member States it can be observed that the Hungarian law is based on the principle of most favour since contracts of employment do not expire automatically with the opening of an insolvency proceeding, the coverage of the wages is secured by wage guarantee fund and the insolvency proceeding does not result in administrative or financial surplus burden.

1.2.3. Conclusions and suggestions relating to the rules concerning the liquidator

Conclusions and suggestions concerning the provisions of the Regulation:

1. Concerning *the Union notion of liquidator* it can be stated that, in fact, the solution chosen by the Regulation enhances the improvement of legal certainty in cross-border insolvency proceedings, although its regulatory technique could be improved. It is because Annex C of the Regulation specifies only the liquidators in respect to each Member State. However, the list does not lay down that in a given Member State which liquidator specified in Annex C is entitled to proceed in insolvency proceedings specified in Annex A. It is because the content of Annexes A and C has not been accorded. This is an essential deficiency since the liquidator proceeding in another Member State can use in that other Member State only the competence provided for in its own national law (e.g. under Hungarian law the rights and obligations of the liquidator and the insolvency administrator significantly differ).

2. As regards Articles 21 and 22 of the Regulation I concluded that these provisions are essentially important with view to the notification of those unknown creditors who are nationals of other Member States and the security of trade. The existence of these provisions

will be justified also after the creation of the e-Justice Portal since a uniform Union register will not be established, only the access to the Member States' registers will be easier.

As to the national rules on publication and registration it can be observed that the solutions of the Member States are rather different. In practice the biggest problem arises when a given Member State has not adopted any special national rules on the enforcement of the provisions of Articles 21 and 22 of the Regulation.

In this respect the Hungarian model can serve as a model for all other Member States. In my point of view the Union rules on information and registration should be modified in such a way that the Regulation would stipulate that each Member State shall communicate to the Commission the name, address and territorial jurisdiction of that body which is entitled to forward the requests of the liquidators appointed in another Member State. Besides these data the communication of the following data would also be useful: the obligatory content of the request and that what kind of annexes must be attached thereto. Moreover the rules on the payment of the eventual costs should also be communicated in details. The Commission should publish the information reported by the Member States on the official website of the European Union.

3. *The liquidators' right to lodge creditors' claims* as laid down in Article 33 of the Regulation clearly protects the creditors' interests. Nevertheless, practically speaking, for the time being this provision entitles the liquidators only with the right to represent – relating to the lodgement of the creditors' claims – in other insolvency proceedings and the right to participate in the creditors' meetings held in other Member States. The Union rule does not provide for more rights.

If a creditor's claim is lodged by the liquidator in the main proceeding, under the relevant national laws the lodgement of the claims is examined in the same way as it would have been lodged by the creditor itself. In my opinion in case where it is the liquidator who lodges the claim it should be declared that the creditors' claims are not to be examined under the national law in the main proceedings but they should be registered automatically in order to ensure the smoother settlement of parallel insolvency proceedings. Certainly the registration fee, as well as the fee for cancelling the examination, should be paid by the creditor. However the introduction of such a rule would be possible only if the rules on the course of the lodgement of the creditors' claims were uniformly established at European level.

4. The Union legislator tried to reconcile the insolvency proceedings run in parallel against the same debtor by establishing *the main liquidator's rights* in the secondary proceedings.

The above-mentioned rights are very cautious in nature and do not mean that the main liquidator could give orders to the liquidators of the secondary proceedings.

It is reasonable to empower the main liquidator with the right to request for the opening of a secondary proceeding having regard to the fact that if the debtor has more well-organised assets in another Member State, i.e. it has an establishment there, it is a big help for the liquidator if it is not him who has to act on the basis of the national law of the other Member State. In this case the request for the opening of a secondary proceeding is much more expedient.

The stay of liquidation of assets and the possibility to close liquidation proceedings by reorganisation proceedings in the secondary proceedings tries to compensate the rule according to which secondary proceedings must be liquidation proceedings in purpose independently from the nature of the main proceedings. In this way the full rehabilitation of the debtor is possible even if – in spite of the fact that a reorganisation main proceeding was opened – a secondary proceeding was ordered in another Member State. However, this statement is correct only on the understanding that where under the national rules on secondary proceedings there is no opportunity to take measures to restore the solvency in liquidation proceedings the establishment has to cease its business activity at the end of the secondary proceeding.

5. The Regulation's provision on *the duty to communicate information between liquidators* is indispensable to improve the coordination of parallel proceedings. In my opinion besides the establishment of the general rule on the duty to communicate there is no need to detail the additional obligations directly linked with this duty. In other words, a flexible rule is needed in order to guarantee that a given liquidator can be called upon to hand out the relevant information of a case in question. However, concerning the duty to inform I take the view that in some cases it would be necessary to fix the deadlines. For example, the Regulation should require that the liquidator in a secondary proceeding must contact the liquidator in the main proceeding immediately after the order to open a proceeding is handed out. The determination of the language to be used during the communication is also necessary. This should be laid down in such way that the certification of the translations would not arise as an obligation for the liquidator who has to effectuate the translation.

6. The Regulation's regulatory conception according to which cross-border insolvency cases are not proceeded in the framework of a single proceeding, but it establishes a system containing of one main proceeding and several secondary proceedings, cannot be successful in case of the failure to fulfil the duty to cooperate and communicate information.

The cooperation between liquidators who have been appointed in the parallel proceedings is desirable when it is not an autoletic activity but is conducted in order to satisfy the creditors' claims to the largest extent possible or to effectively sell the bankruptcy estate or to achieve the reorganisation of the debtor.

The advantages of the cooperation between liquidators have not yet been questioned in practice. It is because thanks to the cooperation insolvency experts can agree upon the management of the bankruptcy estate and can conduct the proceeding more effectively. If besides the cooperation, the duty to communicate information also works smoothly, the success of cross-border insolvency proceedings is almost guaranteed.

Although, as regards the evaluation of Article 31 of the Regulation the question arises whether the general duty to cooperate is appropriate in order to achieve the aim for which this duty was established. In fact, it can be noted that the present rule can serve only as a guiding thread the liquidator can cling thereto, but in the given complex cases does not offer any actual solution. In my point of view the answer is in the affirmative, i.e. the general provision on the duty to cooperate as it is laid down in the Regulation is appropriate since it ensures the necessary flexibility for the various cases. Moreover as for the determination of the concrete content of the cooperation the liquidator still has e.g. the possibility to conclude specific arrangements which, in the light of the previous practice, have solved the problems linked with the question of cooperation in a positive manner.

Conclusions concerning the Hungarian rules:

1. In my opinion the rule on *the list of liquidators* pursuant to which liquidation business in Hungary can be carried out only by limited liability companies and joint stock companies holding exclusively named shares, is already exploded. Therefore it would be justified to make possible for natural persons to be able to be registered in the list of liquidators, especially in such cases when the national legislator opens that list for the insolvency experts of other Member States.

The introduction of the rule which imposes increased professional requirements on the liquidators was a consistent legislative step. Let's just think about the fact that participating in a cross-border insolvency proceeding is a great professional challenge for the Hungarian liquidators, not to mention the dynamically changing Hungarian rules on insolvency.

As regards the list of liquidators I do consider that conducting new tendering procedures at specified intervals is a good idea, although in my point of view the award criteria applied to assess the tenders are not adequate. The fact that a company carries out

liquidation activity for a long time should be taken into account at the prioritisation of the tenders since in such a case that company has for sure more experience and professional knowledge than a start-up company. The provision on drawing lots between the candidates who have achieved the same score at the prioritisation is the worst legislative solution possible.

2. As to *the rules on the appointment of liquidators* it would be reasonable to deliberate the introduction of the solution existing in common law, i.e. the rule according to which in reorganisation proceedings the person who requests the opening of proceeding can propose the name of the insolvency expert. In my opinion the success of the Hungarian bankruptcy proceedings depends to a large extent on the personage, the ability to negotiate, the ability to argue convincingly and the creativity of insolvency administrators as regards the content of the reorganisation plan. Thus, the introduction of the provision according to which the person who requests the opening of proceeding can propose in its request the name of the insolvency administrator in bankruptcy proceedings, should be deliberated.

3. Concerning the provisions on *temporary insolvency administrators* of the Hungarian Bankruptcy Act I remarked that in my opinion the Hungarian legislator failed to comply with the obligations deriving from the Regulation. As for temporary liquidators and preservation measures, recital 16 of the Regulation clearly defines the obligations of the Member States: in Hungary the liquidator temporary appointed prior to the opening of the main insolvency proceeding must be empowered to request any preservation measures which are available under Hungarian law. However, after interpreting *stricti iuris* the relevant provisions of the Hungarian Bankruptcy Act, it can be stated that in Hungary there is no possibility to appoint a temporary insolvency administrator at the request of a foreign temporary liquidator.

Therefore the modification of Article 24/A of the Hungarian Bankruptcy Act is crucial. On the other hand, a provision on the requirements for requests submitted by foreign temporary liquidators who act on the basis of the Regulation, should be laid down in a separate paragraph. For example the demonstration of the temporary liquidator quality, just as the demonstration or rendering probable of the fact that the debtor has assets in Hungary and the demonstration of why the preservation of the assets is needed, should be laid down as special requirements.

The most delicate question is linked to the adoption of rules on the advance payment of the temporary insolvency administrators' remunerations. In my opinion there are several solutions in this aspect:

- Just like creditors, foreign temporary liquidators who act on behalf of the debtors are under the obligation to advance the remuneration. This rule would not afflict the foreign temporary liquidator since the amount of the remuneration would be paid from the debtor's assets, and it would be considered as a cost emerged in connection with the main proceeding.
- The request submitted by foreign temporary liquidators could be granted with eligibility for the registration of expenses, i.e. the remunerations would be advanced by the state and then the state could enforce this right against the debtors.
- The remuneration of temporary insolvency administrators would not be advanced but the exact amount thereof would be determined by the courts on the basis of Article 24/A (11) of the Hungarian Bankruptcy Act, and in case of opening of secondary proceeding temporary insolvency administrators could enforce it against the debtors as privileged creditors' claims. Where the opening of a secondary proceeding was not ordered later on, the claim could be submitted in the main proceeding as a claim based on final and enforceable judicial decision. Should even the main proceeding not be ordered later on, the temporary insolvency administrator could turn against the debtor on the basis of the final and enforceable decision.

1.2.4. Conclusions from the point of view of the courts

Conclusions concerning the provisions of the Regulation:

1. Apart from the exceptions existing in the national law of United Kingdom, in all other Member States the national courts are empowered to order and open insolvency proceedings. The rules on territorial jurisdiction and competence of national courts vary from one Member State to another falling into line with the special features of the jurisdictional system of the given Member State. However, in practice there are no problems emerging from the differences of these rules.

In my point of view, *the notion and solution used by the Regulation*, namely the provision according to which rules on territorial jurisdiction and competence must be established by the national laws of the Member States, should not be modified and there is no need for the creation of uniform Union rules on national courts who are involved in European insolvency proceedings and on territorial jurisdiction and competence thereof.

2. The national laws of the Member States are very different as to *the tasks of the courts* in the different insolvency proceedings. For example the judicial competence is divided between the

bankruptcy judge and the court in the Polish law. Under the German law the competence of the courts is very restricted, i.e. it is restricted to the appointment of liquidators and to the judicial supervision of their activity. Under the French law the courts – after taking into account the results of the hearings – are free to decide whether to open reorganisation or liquidation proceeding and during a proceeding a bankruptcy judge and other insolvency experts are appointed.

On the basis of the national laws of the Member States the role of the national courts is so different that the creation of a uniform Union law in this field seems to be impossible at present. It does not even seem to be possible to establish models and tendencies in this regard.

3. Regarding the question of *cooperation and communication between national courts* which I analysed in Chapter V, Subchapter 4 of the thesis I came to the conclusion that with regard to the application of the Regulation it is useful and necessary, however it is not without frontiers in the present legal environment in the sense that the courts' cooperation opportunities are restricted by the national laws of the Member States.

I raised the question whether the duty to cooperate between courts of the Member States should be specified or not in the Regulation, and if the answer is in the affirmative, whether it should be laid down in the form of a general clause or the content of which should be determined in a detailed manner. After summarizing the different views existing in the international legal literature concerning this question I set down that in my point of view it is not possible to adopt such a rule which would specify in details the national courts' part obligations to cooperate. On the basis of the evaluation of the positive and negative characteristics of the cooperation between courts of the Member States, generally speaking it can be noted that cooperation in a given case always depends on the personage, willingness and professional aptitude of the presiding judge. In fact, due to the difficulties described in Chapter V, Subchapter 4 of the thesis the cooperation requires fantasy and creativity. Nevertheless, even if the content of the duty to cooperate was detailed and imposed on by a piece of law, the cooperation would not be more successful since a kind of uncoordinated cooperation would result in opposite effects.

Conclusions concerning the Hungarian rules:

Concerning *the Hungarian Act CXXXII of 1997 on the Hungarian Branches and Commercial Representative Offices of Companies Registered Abroad* an interesting legislative mishap can be pointed out. As regards the applicability of this act we can find an interpretation in the Hungarian academic writings according to which the provisions of this act are applicable only

in cases where the centre of main interests of a company registered abroad is not located in the territory of the European Union but in a third country. Nevertheless, in spite of this statement the text of the act in question expressly refers to the Regulation.

Pursuant to Article 19 (3) of the above-mentioned act where the opening of a main insolvency proceeding was requested against a company registered abroad in another Member State and the Regulation applies to the proceeding, the competent county court of the place of registration of the branch *ex officio* orders the liquidation of the branch on the basis of a notification by a foreign liquidator – presumably in the framework of secondary proceeding. On the one hand this Hungarian rule is in contradiction with the Regulation's rule on international jurisdiction laid down in Article 3 (2) thereof since a secondary proceeding can be ordered in a Member State different from the Member State of main proceeding only if the debtor's branch is qualified as an establishment within the meaning of the Regulation. On the other hand, the rule on the territorial jurisdiction of the county court conflicts with the exclusive territorial jurisdiction as it is laid down in Article 6 (2) of the Hungarian bankruptcy act.

Pursuant to Article 2 (4) of the Hungarian Bankruptcy Act the provisions on insolvency proceedings thereof are applied to Hungarian branches and commercial representative offices of companies registered abroad, unless Act CXXXII of 1997 provides otherwise. The Act CXXXII of 1997 does not contain any exhaustive rule according to which the provisions thereof cannot be applied if the foreign company's centre of main interests is located in the European Union. Moreover – contrary to the above-mentioned opposite provision – Article 38/A of the Hungarian Bankruptcy Act expressly states that the provisions of the Act is compatible with the Regulation. However, on the basis of the principle of primacy of Union law the following interpretation can be clearly deduced: if the opening of a main insolvency proceeding was requested against such a company registered abroad whose centre of main interests is located in another Member State, the secondary proceeding can be ordered against the branch situated in Hungary only provided that the company registered abroad has an establishment in Hungary within the meaning of the notions of the Regulation. Moreover secondary proceedings cannot be ordered *ex officio*, but pursuant to Article 29 of the Regulation at the request of the persons determined therein.

As regards the rules on territorial jurisdiction the controversy between the Hungarian Bankruptcy Act and the Act CXXXII of 1997 has been removed by the case-law when it set out that if a company registered in the European Union has a branch in Hungary, in case of insolvency the territorial proceeding will be opened not against the branch but against the

parent company for which the Municipal Court of Budapest has exclusive territorial jurisdiction.

In my point of view the Hungarian legislator should remove the controversy between the Regulation, the Hungarian Bankruptcy Act and the Act CXXXII of 1997. This could happen e.g. in such manner that the Act CXXXII of 1997 could state that the provisions laid down in Articles 19-22 thereof cannot be applied if the provisions of Council Regulation (EC) No 1346/2000 must be applied.

2. Possible utilization of the results of the research

In Hungary the complex elaboration and critical analysis of the rules and correlations of Council Regulation (EC) No 1346/2000 on insolvency proceedings has not yet been carried out in Hungarian language. Hitherto two only important works, namely the doctoral thesis of SIPOSNÉ Dr. Herédi Erika and the handbook of dr. Andrea CSŐKE have been published in Hungary, which can be considered as very insignificant comparing it with the German and English legal literature. The present doctoral thesis enriches the Hungarian legal literature since it analyses the rules of the Regulation with help of new analytical methods, i.e. it examines the relevant rules explicitly from the point of view of the subjects of cross-border insolvency proceedings. Therefore, it undoubtly enhances and enriches the internal development of the science of European Civil Procedure Law with new knowledge.

The representants of legal practice and jurisprudence can directly make use of the analysis and results of the thesis during their work. The critical remarks on the provisions of the Regulation and my suggestions *de lege ferenda* can serve as a compass for the legislators during the review of the Regulation due in 2010 as to the proposals seeking to improve the Union law. My critical comments on the provisions of the Hungarian Bankruptcy Act could be exploited in a future lawmaking procedure.

The results of the thesis can also be used at the Faculty of Law of the University of Miskolc to a large extent regarding the teaching tasks linked to European civil procedure law. This is true both for the graduate and postgraduate education and trainings organised by the Faculty and for the elective courses as well.

IV. List of publications written in the topic of the thesis

1. Remarks on the Union Regulation on Insolvency Proceedings (‘*Megjegyzések a fizetésképtelenségi eljárásról szóló uniós rendelethez*’)
In: Doktoranduszok Fóruma Miskolc 2004. november 4., Állam- és Jogtudományi Kar szekciókiadánya; Miskolci Egyetem, pp. 189-195

2. European Insolvency Proceedings (‘*Az európai fizetésképtelenségi eljárás*’)
In: Collega 2005. április IX. évfolyam 2. szám, pp. 162-165

3. Distinction Between the Notion of Insolvency Cases and the Category of Civil and Commercial Cases in the European Union Law (‘*A fizetésképtelenséggel kapcsolatos ügyek fogalmának elhatárolása a polgári és kereskedelmi ügyek kategóriájától az Európai Unió jogában’*)
In: Doktoranduszok Fóruma, Állam- és Jogtudományi Kar szekciókiadványa, Miskolci Egyetem kiadványa, Miskolc 2005. november 9., pp. 179-182

4. Recognition of Decisions in European Insolvency Proceedings in the Member States of the European Union (‘*Az európai fizetésképtelenségi eljárások során hozott határozatok elismerése az Európai Unió tagállamaiban*’)
In: Collega 2005. december IX. évf. 5. szám, pp. 26-33

5. *European Insolvency Proceedings – Examination of Jurisdiction in Cross-Border Insolvency Proceedings*
In: Lehoczky László – Kalmár László (eds.): 5th International Conference of PhD Students, Law; a Miskolci Egyetem kiadványa 2005, pp. 91-95

6. Some Procedural Questions Related to Cross-border Insolvency Proceedings in European Union Law (‘*A határokon átívelő fizetésképtelenségi eljárások egyes eljárási kérdései az Európai Unió jogában*’)
Magyar Jog 2006/1. szám, pp. 36-41

7. Remarks on the Compliance between European Civil Procedure Law and the Hungarian Rules (‘*Megjegyzések az európai polgári eljárásjog és a magyar szabályok összhangjáról*’)
Collega X. évfolyam 2006. évi 2-3. szám, pp. 153-157.

8. Council Regulation (EC) No 1346/2000 on Insolvency Proceedings (‘*A Tanács 1346/2000/EK rendelete a fizetésképtelenségi eljárásról*’)
In: Wopera Zsuzsa – Wallacher Lajos (eds.): Polgári eljárásjogi szabályok az Európai Unió jogában; CompLex Kiadó, Budapest 2006, pp. 255-332.

9. The Position of Employees in Cross-border Insolvency Proceedings (‘*A munkavállalók helyzete a határokon átívelő fizetésképtelenségi eljárásokban*’)
In: a Magyar Tudományos Akadémia Szabolcs-Szatmár-Bereg Megyei Tudományos Testülete Jogi Szekciójának ülésén elhangzott előadás anyagának elektronikus megjelentetése; Nyíregyháza 2006. ISBN-13: 978-963-8048-32-5

10. Remarks on the Modifications of the Hungarian Bankruptcy Act Effectuated as Result of the Adoption of Council Regulation (EC) No 1346/2000 on Insolvency Proceedings (‘*Megjegyzések a magyar Csődtörvényben a fizetésképtelenségi eljárásról szóló 1346/2000/EK tanácsi rendelet hatására bekövetkezett változásokról*’)
In: Sectio Juridica et Politica, Tomus XXIV., Miskolc University Press 2006., pp. 413-426.

11. Council Regulation (EC) No 1346/2000 on Insolvency Proceedings (‘*A Tanács 1346/2000/EK rendelete a fizetésképtelenségi eljárásról’*)
In: Wopera Zsuzsa (ed.): Az Európai Unió polgári eljárásjoga; CompLex Kiadó, Budapest 2007, pp. 127-144

12. Criteria for Insolvency in the German, Autrian and English Law in the Light of Council Regulation (EC) No 1345/2000 (‘*A fizetésképtelenség kritériuma a német, az osztrák és az angol nemzeti jogban az 1346/2000/EK tanácsi rendelet tükrében*’)
In: Acta Conventus de Iure Civili, Tomus VII., a Szegedi Tudományegyetem Állam- és Jogtudományi Kara Polgári Jogi és Polgári Eljárásjogi Tanszékének kiadványa, Lectum Kiadó, Szeged 2007, pp. 119-131

13. Economic Constructions Exluded from the Scope of the Regulation on Insolvency Proceedings (‘*A fizetésképtelenségi rendelet hatálya alól kizárt gazdasági konstrukciók*’)
In: Egységesülő polgári eljárásjog Európában, (eds.: Wopera Zsuzsa és Asztalos Zsófia), HVG-ORAC Kiadó, Budapest, 2009, pp. 83-91

14. The Most Important Rules of the Regulation on Insolvency Proceedings concerning the Position of Liquidators (‘*A fizetésképtelenségi rendelet felszámolókat érintő legfontosabb szabályai*’)
In: Kihívások és lehetőségek napjaink magánjogában (ed.: Szikora Veronika), Center Print Kft., Debrecen 2009, pp. 291-304

15. *Hungary* (társszerző: Wopera Zsuzsa)
In: BELTRÁN, Emilio – SEBASTIÁN, Rafael: European Insolvency Regulations. Application of the European Regulation on Insolvency Proceedings; Aranzadi Thomson Reuters 2010, pp. 269-294