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Differences of Procedural Systems in Cross-border Insolvency Proceedings

Theses of Doctoral Dissertation

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1 The topic selection of the dissertation and its hypotheses

The title of a book published in 1992 written by Gábor Török genuinely describes the presently chosen field of research with regard to the legal institution of company insolvency: "Bankruptcy as the frontier of legal economic science." It is obvious from the above thought that the complex appreciation of bankruptcy may not occur exclusively on a purely economic or legal basis, but the harmonised knowledge of these two fields of science is needed. The duality of legal and economic sciences therefore is going to permeate the whole of the dissertation, applying in several instances the less widespread approach of economics known as Legal Economics[1].

Hungary acceded to the European Union in 2004, thus the Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings entered into force in our country as well. The legal concept of cross-border insolvency proceedings is therefore a new element of domestic legislation. Whereas on the theoretical plane some doctoral dissertations have come to light in the matter (*dr Herédi Erika: A határokon átlépő fizetésképtelenségi eljárás megindítása az Európai Unióban, [2007] [Opening cross-border insolvency proceedings in the EU]; dr. Nagy, Adrienne: Az európai fizetésképtelenségi eljárás az alanyok nézőpontjából, [2010] [The European insolvency proceedings from the parties' viewpoints],* the Hungarian forerunners of Economics have not paid particular attention to examining the relationships within this topic. In national practice initiating proceedings that contain a foreign element[2] does not reach a great number, thus, the liquidator companies themselves mostly do not have a deep knowledge or routine in the proceedings.

Theoretical knowledge gained in cross-border insolvency proceedings and through practice an inquiry has been made as to what extent the "partial proceedings" within the framework of the original proceedings initiated in different Member States are in harmony to each other, and whether legal proceedings are able to adjust themselves to the basic economic objective (reorganisation or termination). During research made into the bankruptcy law of particular

[1] As it can be seen in the bibliography of the present paper, this field of Economics is mostly referred to as "Law and Economics." The dissertation is hereinafter going to apply "Legal Economics" to the former frontier science name, mutatis mutandis the work of Katalin Solt [Solt, Katalin 2004], regarding that, in my view, this notion defines the relation of the two fields of sciences to one another more conveniently.

[2] In line with Dr. Andrea Csőke's theory cross-border insolvency proceedings are different from other insolvency proceedings in that they contain a foreign element. [Csőke 2008]

Member States, the issue at stake continued to be more sophisticated when it became evident that Member States were solving the linking, fitting and permeability between reorganisation and winding-up proceedings. In this dissertation providing actual answers to the above questions is going to be attempted while searching for a solution alternative to the unfolded problems.

The hypotheses inferred from preliminary research are going to be set out according to the structure of this paper below.

In each market economy, it is of paramount importance to regulate the market entry and exit of undertakings. These processes occur relatively automatically, and for the sake of maintaining long-term equilibrium there exists a natural selection process in the economy as well. Having had the necessity of operation, sooner or later the less viable businesses will have to cope with repayment distress until they become insolvent in case of their inability to handle the crisis situation. In accordance with the gravity of the pending crisis, the undertakings fallen into depression are to be either secured or liquidated. In the matter of reorganisation and discontinuance of a business it is a prerequisite for legal proceedings to support the reasonably established objective.
There are a number of theories expounding upon the financial issues of companies gone bankrupt in an economic sense, more precisely the theoretically spurred optimal criteria of initiating proceedings to terminate an insolvent company. The question remains, though, as to whether there exist economic categories or other indicators on the basis of which the justifiability of certain proceedings may be determined at a particular time segment. Based on the above, the first hypothesis of this paper could be worded as follows:

H1.: It is possible to define economic indicators according to which the expediency of initiating proceedings of winding-up or reorganisational nature can be explained in a given situation.

The countries mostly determine to have state (legislative) intervention of market exit of insolvent debtors based on their political settings as well as their economic target systems. As a consequence, applying the most distinct regulatory methods may take place in order to handle situations correlated to insolvency. The bankruptcy legislation of no matter which country may be in question, what they all have in common is the fact that they are obliged to comply with the regulatory need to the extent of their payment difficulties. Proceedings must

enable undertakings in the phase of reversible crisis to have recourse to reorganisation, while the companies affected by incontrollable crisis could exit the market in the most efficient possible way, causing the least possible loss. Based on the above, reorganisation and liquidation related insolvency proceedings may be distinguished in various national legislations. The extent of passing among procedure forms enjoys prevalence in the bankruptcy law of Member States. Following this train of thought, the second hypothesis of the dissertation can be drawn.

H2.: Regularities are to be discerned between the modes of connectability of reorganisation and liquidation related proceedings and the modes of adjustment can be classified into fairly distinctive types.

Whereas within the framework of the closed economy (state, household, market) there is no great significance of the regulatory differences among certain countries, with the inclusion of the fourth macro-economic agent, i.e. "abroad" this statement cannot be held up anymore. In our more and more globalised world, with no further frontiers before economic relations and creating a great number of establishments in several countries, they have come to recognise the necessity of dealing with insolvency situations at a supranational level. This legislation requirement gave birth to (EC) Regulation No. 1346/2000 on cross-border insolvency proceedings.

The principles of universality and territoriality enjoy joint predominance in the Community source of law. Accordingly, main proceedings with universal scope in the Member State of the centre of main interest as well as national (regional) proceedings with local scope in the Member State(s) of the establishment(s) can be initiated. Thus, in such cross-border insolvency cases the proceedings of several Member States (may) meet. It is a basic requirement for the proceedings pending concurrently on the territory of several Member States to coordinate the objectives including efforts of reorganisation or liquidation. Intending to superimpose the bankruptcy laws of certain Member States, the Regulation seeks to have a supplementary function, differences in legislation among the countries will continue to exist following its entry into force. As a result of the differences, it may occur that due to the specific national procedural system of a particular Member State coordination is not possible. Based on the question of how deep the discrepancies are the following hypothesis may be worded.

H3.: In international insolvency proceedings the differences of certain modes of adjustment may hinder the prevalence of economic interests, i.e. the economically advisable conformity does not come to be effective in the main proceedings as well as the related national proceedings.

In order for the institution of cross-border insolvency proceedings to operate adequately, i.e. in the case of both the main proceedings and the national proceedings a decision could be made about initiating proceedings for reorganisation or termination of a business based on economic considerations, there is a need for some uniformisation. Keeping the sovereignty of the countries it is not about introducing the same bankruptcy law in each Member State, rather, it is advisable to seek the congruency of adjustment points between proceedings. The dilemma is to decide which mode of adjustment would serve the efficient handling of the problem most - either at national economy or EU level, taking into consideration the fact that a type would not provide a satisfying solution even above Member State level if that type does not serve economic interests at a closed economy level. With that, the fourth hypothesis of the dissertation can be drawn.

H4.: A closed economy, i.e. the predictability of uniform proceedings at a national level, ensures the enforcement of economic interests. Internationally speaking, namely, in the scope of application of EC Regulation No. 1346/2000, the interlocutory mode of adjustment ensures a convenient solution in the prevalence of economic interests.

2 Objective and layout of the dissertation

The dissertation lends itself to provide answer to the question whether the "partial proceedings" opened in different Member States contained in cross-border insolvency proceedings are in conformity with each other in every case and whether legal proceedings are able to adjust themselves to the main economic objective.

Chapter 2 following the Introduction thus attempts to approach the notion of insolvency from various points of view, with the aid of analysing specialist literature. The writing sets out from the premises that without crediting or the absence of creditor's claims the notion of insolvency cannot be practically construed. The emphasis regarding credit arrangement is not only placed on what credit the company should take, but it is also an equally important

question of "how much." Regarding the question of capital structure, the topic of bankruptcy costs will be presented. When a company is no longer able to satisfy its repayments as due, it will sooner or later fall into a bankrupt situation, the legally regulated treatment of which bankruptcy legislation is called for. Chapter 2 expounds upon why a procedure regulated by law may be a more efficient solution than an unregulated one.

Adjoining the viewpoint of insolvency proceedings, the dissertation examines in which cases the opening of proceedings of either reorganisational or liquidation nature is economically justified. (Later on, this question will be granted a central place.) In the meantime, it points out the importance of distinction between the notions of legal insolvency and economic insolvency.

Having fully elaborated on the characteristics of reorganisation and liquidation related proceedings from various starting points in Chapter 2, Chapter 3 of the dissertation presents the insolvency legislation of some EU Member States along the lines of how reorganisation and liquidation-type proceedings are linked together as well as clarifying questions of their transition to each other. Based on regularities discovered in this way, the dissertation lists the particular proceedings into categories according to their mode of adjustment.

Departing from the examination of insolvency proceedings at Member State level and arriving at EU level, Chapter 4 of the dissertation further examines the provisions of EC Regulation No. 1346/2000 on cross-border proceedings.

Chapter 5 is considered to be one of the key parts of this paper as it is in this section that the formerly written thoughts are joined together and logically met. This part of the dissertation may point out the problem that certain modes of adjustment - by way of the provisions of the EC Regulation - are not able to harmonise insolvency proceedings adequately with economic standards. Facing the problem is all the more paramount, as the dilemma has not been formulated by neither any specialist literature nor the Academic Wing of Insol Europe, the international professional association for European restructuring and insolvency specialists.

This paper thus raises a theoretical issue which cannot be confirmed with actual and currently known examples; however, the existence of the issue can easily be admitted by logical deduction. It is plausible that there have been proceedings in which the dilemma has stood out, they must have remained hidden and have not been disclosed. In case of mass appearance of the problem, presumably the specialist literature would have pointed it out as well.

Having expounded upon the problem, an attempt is made in Chapter 6 of the dissertation of its settlement by seeking the procedural system capable of answering the issues raised. The latter is achieved by presenting the data of the Hungarian system - showing them as the

typical data of a certain procedural system - acquired via the author's collection and research, promoting understanding in the meantime.

Perhaps some explanation is required as to why the notion of cross-border proceedings is so prominently included in the title of the dissertation, since it is firstly mentioned in Chapter 4. While certain insolvency proceedings are opened in a particular Member State, the difference in mode of association of reorganisation and liquidation-type proceedings in that Member State bears no significance. As EC Regulation No. 1346/2000 concerns regulating proceedings filed against one company at a time and on the territory of several Member States, it is this level that the problem of differences between modes of adjustment comes into question, making it the central dilemma of the dissertation. Highlighting the approach of cross-border proceedings thus renders the title adequately expressive. Following the dissertation, it can be seen that leaving the international level behind the problem could not be elucidated.

3 Research Methodology

The methods of research applied in the course of this dissertation are to be evaluated according to chapters as well as the answers provided for the hypotheses. The first part of the paper provides an overview of specialist literature, which on the one hand serves to clarify basic notions (such as loan, credit, credit arrangement and bankruptcy costs), and on the other hand, to explain the economic categories of continuation and termination. **Recycling specialist literature allows for rethinking and extending the statements made therein**, it provides an opportunity to determine the economic expediency of reorganisation and liquidation related proceedings.

The following part of this paper gives an insight into certain problems of bankruptcy legislation of some EU Member States' (namely, Germany, Austria, Italy, Slovakia, Romania and Hungary). This is achieved with the aid of concrete and fixed criteria, at a closed economy level in the background of which several years of research stands. Acquainting oneself and reviewing concerning regulations meant an excruciatingly complex task. I did not have an exquisite command for the languages of all the countries placed under examination, as I do not speak neither the Slovakian, the Romanian nor the Italian language. Apart from this, further difficulties arose in that the specificities of different bankruptcy law set-ups and

institutional systems of certain Member States would have been shown rather distorted due to bilingual translation. To bridge these problems, I have been searching for solutions on the one hand as member of INSOL Europe, the international organisation for insolvency experts, and, on the other hand, through the contact database of the Felszámolók Országos Egyesülete (Hungarian National Association of Liquidators). Beside the fact that I received help by telephone - on account of long distance - to certain not easily comprehensible questions of detail, I had a double occasion to make **interviews with foreign insolvency experts.**
In Nyitra, Slovakia during the autumn of 2009, I had a conversation with *dr. Ladislav Baráth PhD.*, insolvency expert, who is also a university professor. Moreover, in Timisoara, I had an interview with *Rolland Szabo*, Romanian insolvency expert in the spring of 2010. (While the Slovakian liquidators attend to their duties individually, the Romanian experts, as is the case in Hungary as well, do so in a corporate manner. Rolland Szabo works as a corporate expert for RAVA Casa de Insolventa, Managing Partner.)
In the legislation of the examined countries (concerning connection points of reorganisation and winding-up type proceedings) there are criteria which allow for **classification according to types.** The Hungarian and international specialist literature distinguishes two types of proceedings. Inferring from my own results, in my view, there may exist an intermediary type of proceedings, which, with the aid of **categorisation,** procedural systems can be more conveniently described.

The rest of the paper departs from the closed economy sphere and goes on to detail the EU legislation on cross-border insolvency also with the determining method of secondary research, namely, a detailed elaboration on the law concerned and specialist literature. Based on the above - using the typology of the above proceedings system as a starting point as well as making logical inferences, the dissertation points out problems which - to my knowledge - have not as yet been published in either the Hungarian or EU specialist literature.

The dissertation attempts to resolve the above-mentioned problem by proposing introduction of one of the classified procedural systems to each Member State. When making a choice, the starting point is if the system is not capable of realising the conformity of legal proceedings with economic practicability, albeit at a closed economy level and meeting the requirements of economic efficiency, that system cannot provide a convenient solution at EU level with all the Member States concerned.

It seems worth starting to test the procedural system which is the most flexible from the point of view of creating type conformity in cross-border proceedings - beside the fact that it may not give adequate answer to other problems. Although the rules to be clarified later on are derived from the particularities of a given system (two-tier procedural system), their phrasing is unimpeachable and unquestionable when they are supported by the data of at least one two-tier system (as illustration). In this sense the most obvious solution lends itself to be Hungary herself where a two-tier procedural system had been operating under the former Bankruptcy Law effective until 1st September 2009. It can easily be admitted that other Member State systems belonging to the same category based on their own attributes provide almost similar data. As a matter of fact, detailing the research serves as an illustration, as it depicts typical data arising from the specificities of a certain procedural system. Even having dispensed with it, the dissertation would still be seen as a whole.

In support of the above, primary research of the author is going to be used. I conducted research in the field of bankruptcy proceedings during the span of 2003 and 2008, which examined the outcome of bankruptcy proceedings as well as the ending of bankruptcy proceedings in winding-up. From the collected data inferences can be made as to the creditor's recovery. Considering the fact that only a few bankruptcy proceedings are initiated, the sampling of the research is 100%.

By doing further research, I collected data with a view to revealing the financial situation of winding-up proceedings from the docket of Győr-Moson-Sopron County Court. Other county courts that I applied to denied permission to conduct such research by reason of me acting as a liquidator being incompatible with a researcher's intentions. Having regard to the fact that there were two other researchers conducting data collection analysis, I was able to give a more accurate picture during secondary data analysis, supplementing it with my own data and making related comparisons.

Having data concerning bankruptcy proceedings and liquidation proceedings at my disposition, I succeeded in delineating a game theory model which highlights the absence of legal and economic conformity with a given type of proceedings at the level of a closed economy, which, as a result, could be excluded when choosing a certain type. Subsequent to exclusion, the appropriate choice is made with the help of comparison from the remaining categories. In the end, based on the results of the comparison I attempt to create a new and clear-cut structured procedural system which is capable of serving answer to every difficulty of type dependence.

4 Types of insolvency proceedings and their modes of adjustment

In accordance with the gravity of the crisis - following a timeline - the financial difficulties may require being dealt with differently. **The main question should be whether the crisis can be reversed.** Insofar as this proves to be impossible, the undertaking has to be exited from the market with the least possible costs or detriment to those having an interest in the business. A part of the crisis-smitten companies can be saved by a certain restructuring, while other parts can be liquidated. Dealing with these issues is given a great weight in both international and national specialist literature.

Co-authors **Haugen and Senbet** expressed their opinion [Haugen & Senbet 1978] that the ability to liquidate a company depends on the relation between the company's liquidation value and its going-concern market value[3]**.** Their statement was made independent from the amount of foreign source to be acquired, which leads to the consequence that the occurrence of liquidation is independent from the amount of company debt.

Katits gave voice to his opinion [Katits 2000 p.57.] that in an ideal world *"the company is sustained provided that the going-concern value is superior to the value of the best winding-up strategy. In other cases, it can be wound up."*

Deliné took the view that [Deliné 2005] when the company's cost of capital permanently surpasses the profit from the operations of the assets, a state ensues when the value of company debt is superior to the value of the company. It is considered to be the ultimate, 3rd degree financial distress and the solution attached to the situation is the legal institution of winding-up (liquidation). She also expressed that winding-up proceedings are opened against the company if *"the cash-flow derived from the immediate selling of the company's assets, the company's liquidation value exceeds the present value of the cash-flow arising from the ongoing operation of the company, i.e. the market value of that company."*

Each of the answers given to the sustainability vs. termination set of questions examines the relation of the company's market value (V_M) (i.e. the present value of cash-flow arising from ongoing operation in the future) and liquidation value (V_L) (i.e. the cash-flow derived from the

[3] The notion of going-concern market value of a company is deemed universal in specialist literature. This is usually referred to as **continuous operations value,** which does not consider the total net value of single assets, but regards the company as a whole of the operating assets. Specialist literature regards the winding-up, i.e. liquidation value as the opposite of the value of continuous operation. "Liquidation value means the net amount the owner can realize if the business is terminated and the assets sold off in piecemeal." [Pratt 1992]

immediate sale of the company's assets) to each other. Opening proceedings with a view to terminating the company can only be reasonable if the company's value thus expressed exceeds the predictable company value in case of sustained operation. With this, the economic criterion for efficient bankruptcy can be formulated, which can be determined by the

$$V_L > V_M$$

formula [Deliné 2002]. This "basic theory" operating on an efficient market does not deal with the eventual information asymmetries of parties entitled to open proceedings for handling insolvency or the "principal-agent" problem or even with incidental transactional costs. While the model postulates that creditors and owners take in the situation of the business in an identical way, and that said decision is independent of the capital structure, the following inferences can be made.

$V_L < V_M$ **in which case the company continues its operation**

$V_L > V_M$ **in which case the company is wound up**

A version of the model based on resolving information asymmetry is presented by both Katits and Deliné. These models continue to scrutinize the eventuality of "liquidation" or "no liquidation" based on the dissent or consent of the owners. It can be seen from all this that the statement only applies to a given time segment. Naturally, the fact that there is "no winding-up", however, does not mean unambiguously that there is "no financial distress." **No scrutiny of the aforementioned models is necessary in certain cases where the $V_L < V_M$ condition necessarily requires reorganisation measures to avoid $V_L > V_M$ condition.**

Haugen and Senbet declare their statement in relation to whether there is a need for regulated bankruptcy proceedings. However, in this matter Katits and Deliné expounds upon the optimal requirement of bankruptcy opening[4] (i.e. the appropriate definition of bankruptcy in an economic sense). Given certain circumstances, no examination is conducted as to what type of legal proceedings (reorganisation or liquidation) are commenced subsequent to the occurrence of economic bankruptcy. Deliné points out bankruptcy eluding procedures to

[4] Bankruptcy opening signals the starting date of the winding-up proceedings.

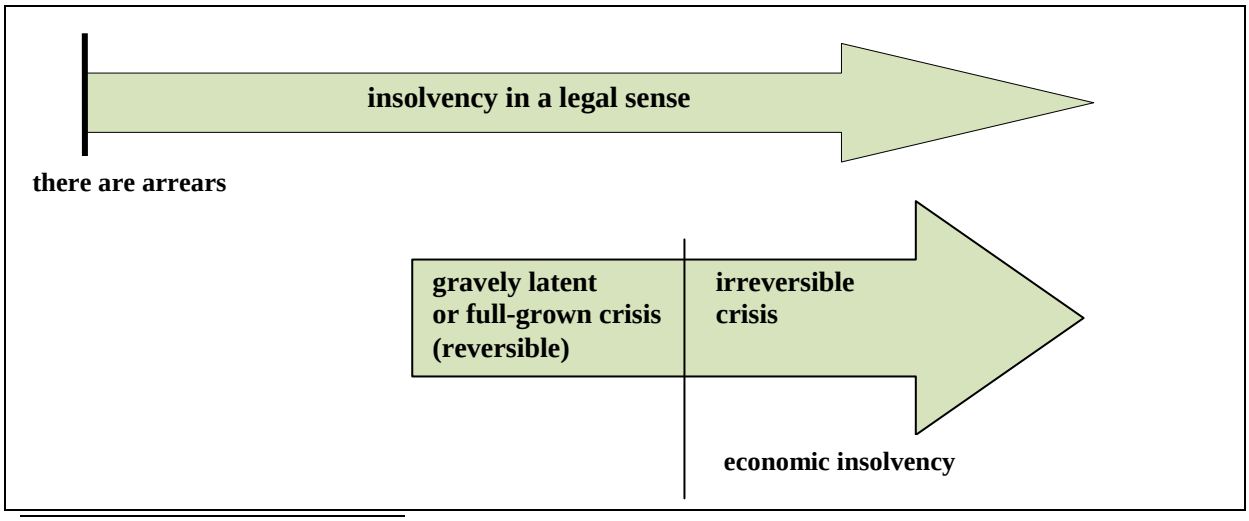
overcome 2nd degree financial distress[5]; however, she fails to elaborate on the eventual financial differences between regulated or unregulated procedures.

Neither of them means, however, that regulated proceedings could take several directions, for which, given certain circumstances, the correlations of liquidation and market value are true when making a choice among them. None of the authors state whatsoever that carrying out winding-up proceedings without regulation is unimaginable, the lack of which would obviously lead to legal economic anarchy. (It can easily be admitted that in a market economy the assets inferior to debt structure are unthinkable to be distributed among creditors without any unregulated order.)

The optimal requirement of bankruptcy opening mostly does not coincide with legal criteria. By nature, law reconstructs conditions of opening proceedings along the simplified form of solvency and indebtedness, not considering specific figures whatsoever. (*For instance, in Hungary it is sufficient for the occurrence of insolvency defined by bankruptcy law when the debtor has failed to settle a debt - regardless of its sum - within a settlement deadline ordered by court in a final judgment.*)

As a consequence, it can be stated that the law is not able to describe the economic categories accurately, thus, economically speaking, the opening of proceedings is not efficient. **The notion of legal insolvency may be a broader term, encompassing the phase of economically reversible and irreversible crisis.** Should the determination of legal insolvency be based on liquidity, it necessarily starts where the given undertaking has arrears.

Diagram No. 1: The relationship between legal and economic insolvency



[5] In her work published in the periodical entitled *Pénzügyi Ellenőrzés* (Financial Monitoring), the diagram on page 69 shows liquidation proceedings as an alternative solution only to bankruptcy avoidance proceedings (unregulated reorganisation) and economic bankruptcy; however, it fails to present bankruptcy proceedings as regulated reorganisation procedure.

Source: author

The fact that insolvency is present in a legal sense, economic difficulty should not necessarily ensue. **Consequently, insolvency in a legal sense - by extension of the above presented theories - may either occur the $V_L < V_M$, or as its $V_L > V_M$ state.** Based on its aforementioned functions, bankruptcy legislation is considered to have a dual purpose: the duty of accentuating reorganisation in the case of savable business organisations while in the case of doomed companies, the emphasis should be laid upon market exit with mitigated losses. Considering the above, if the conditions of initiating legal proceedings are ripe, having recourse to crisis phase, it is logically valid that in the relation of

$$V_L < V_M$$

the company is still in the phase of reversible crisis and there is a need to launch legal proceedings with a view to reorganisation,

whereas in the relation of

$$V_L > V_M$$

the economic organization has entered the phase of irreversible crisis and there is a need to initiate proceedings for termination.

Taking these criteria into consideration, satisfying ever greater creditors' claims could be ensured. In the following parts of the dissertation a condition is formulated that scrutinizes *ex post* whether, in an economic sense, an appropriate procedure is opened, owing to the occurrence of a legally relevant bankruptcy opening criterion by which a procedure (either reorganisation or winding-up nature proceedings) is commenced. Mutatis mutandis, the commencement of a legal procedure does not preclude the proceedings from being in progress in a manner ensuring the efficiency of market participants (with the aim of either reorganisation, i.e. continued operation, or liquidation, i.e. termination). The objective function is satisfying creditors' claims to the best in each case, meaning the most possible repayment of debt.

The insolvency proceedings thus serve a dual function in several countries around the world. Emphasis is laid upon the survival of businesses in the phase of reversible crisis having financial distress on the one hand, and allowing market exit for companies that can no longer be saved on the other hand. Having regard to these objectives of mainly winding-up and reorganisational nature, insolvency proceedings could be distinguished.

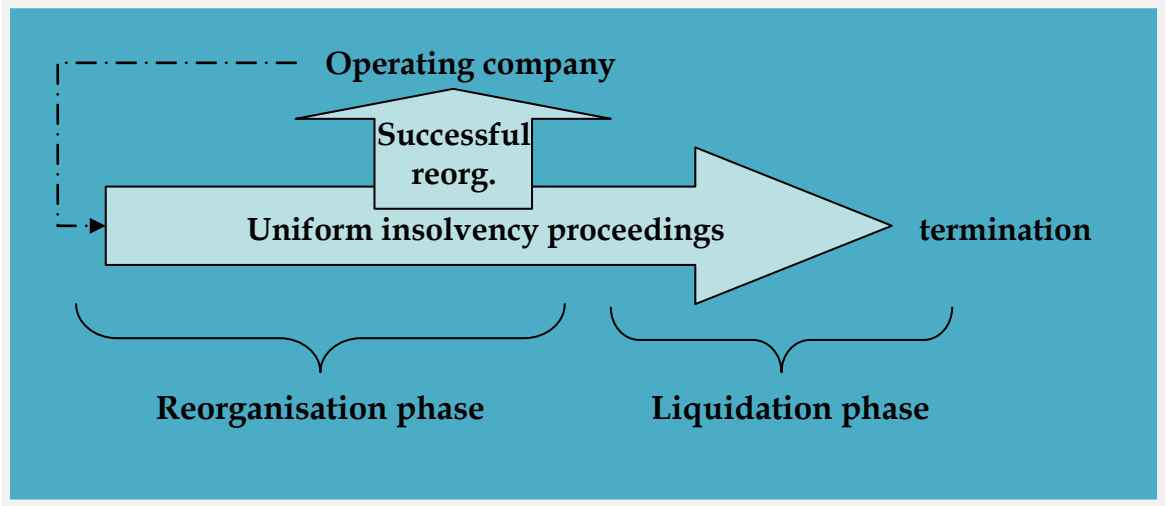
When examining a nation's system of insolvency proceedings, passing between reorganisation and winding-up nature proceedings is of the utmost importance, i.e. analysis of modes of connectability, during which answering the following questions is attempted.

- Which proceedings are reorganisational and which ones aim at liquidation?
- Who and under what conditions is entitled/obligated to initiate proceedings?
- Are reorganisation and the decision thereof prerequisites of the winding-up?
- Does failure to reorganise lead automatically to winding-up a business?

In the dissertation the examination by the above criteria is going to be made in the case of Germany, Austria, Italy, Slovakia, Romania and Hungary. In answer to the questions above, in the adjustment of proceedings of reorganisation and winding-up nature, there seem to be perceivable regularities with which procedural systems lend themselves to classification.

As the criterion of one-tier procedures formulated by Péter Miskolczi Bodnár, the most narrowly-tailored form of modes of connectability is the fact that it *"is well-adapted to the circumstances and the procedural phase can be activated at every time for the application of which the opportunities of the debtor company are present."* In these procedural systems it may never occur that the company in the state of reversible crisis is liquidated, nor can it happen that after an unsuccessful reorganisation a "time gap" opens until liquidation is started. [Miskolczi 2005 p.260.] Thus, an indispensable element of the single-tier (in other terms, uniform or single-input) procedural systems is the decision made about reorganisation, and only after a negative decision or an unsuccessful reorganisation is the winding-up phase initiated.

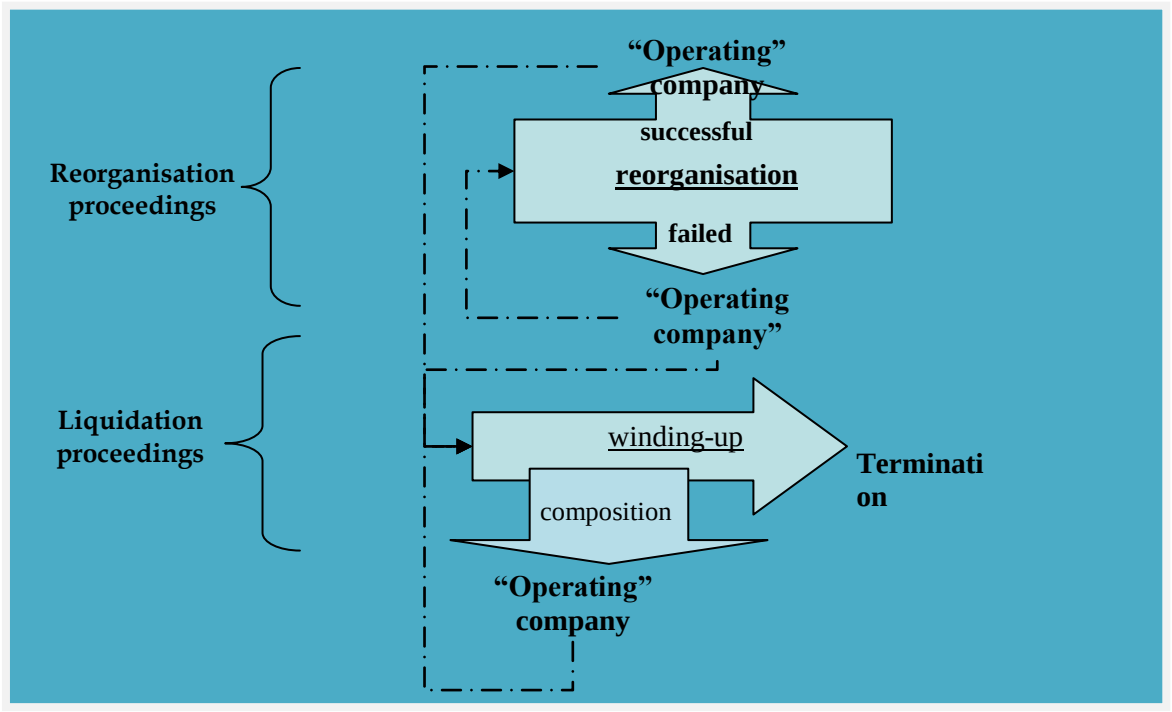
Diagram No. 2: Uniform insolvency proceedings



Source: author

On the other pole of the "strength" of adjustment can be found the reorganisational and winding-up proceedings which are independent of one another. Among the presented legislations, this procedural form appears in the earlier Hungarian and the present-day Austrian system. Péter Miskolczi Bodnár has named these insolvency-related systems two-tier proceedings. He states as a fundamental characteristic that "there is no direct link between the two proceedings: reorganisation proceedings are not a prerequisite of winding-up proceedings and failure to reorganise does not automatically result in winding-up proceedings." [Miskolczi 2005 p.257.] As an outcome of independence, it may occur in these procedures that an unsuccessful reorganisation does not result necessarily in termination and the reorganisation of a "savable" company does not come to pass because liquidation was commenced earlier.

Diagram No. 3: Model of the two-tier insolvency proceedings



Source: author

In the procedural system of a group of the examined Member States belonging to neither of the above-mentioned systems there is a common regularity in that the reorganisation decision does not necessarily figure in the process; however, there exists a point of connection between the proceedings. These systems are advisable to be referred to as "standardising" procedures, as specialist literature has not heretofore made any distinctions.

The following chart summarizes the typology of how the proceedings are linked presented in the dissertation.

Table No. 1 Typifying bankruptcy legislations by State

Name of the procedural system	Name of the applying State
uniform insolvency proceedings	Germany Romania
"standardising proceedings"	Slovakia Italy Hungary at present
two-tier insolvency proceedings	Austria Hungary earlier[6]

Source: author's compilation

5 Type dependence of EC Regulation No. 1346/2000

The Council of the European Union adopted **(EC) Regulation No. 1346/2000** on insolvency proceedings on 29th May 2000. The Regulation - by harmonising the principles of universality and territoriality - sets out rules at two levels in order to avoid an eventual conflict: parallel to the only insolvency **main proceedings** with universal scope it gives permission to **national (regional) proceedings** the scope of which applies to the assets in the Member State where the proceedings are commenced.

The main proceedings with universal scope can only be opened in the Member State where the debtor economic organization has its *centre of main interest* (hereinafter referred to as COMI). There is a reversible presumption with the fact that the COMI is the debtor's registered office. By the universality principle, the main proceedings apply to all the assets of the debtor and, as regards legal effects, the law of the Member State shall be applicable where the proceedings were initiated. [Csőke 2003]

National proceedings can only be initiated where the debtor has an establishment. Under section h) of Article 2 "establishment shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods." The national proceedings shall be restricted to the assets found on the territory of the involved Member State bound by the concerned region's legal provisions. [Csőke 2003] On certain conditions,

[6] Proceedings initiated before 1st September 2009

national proceedings may be opened primarily and independently prior to initiating the main proceedings. The expression "primarily" refers to priority in time. Some specialist literature refers to these proceedings as independent or fragmented, whereas in the relation of secondary proceedings they are called dependent national proceedings. [Siposné 2008]

The Regulation stipulates one provision concerning the types of proceedings. Section (3) of Article 3 provides for type dependence in the case of secondary national proceedings when it stipulates that the latter may only be proceedings of liquidation nature. In the background of this constraint an economic rationale lies, since there is no point in reorganising an establishment following the termination of the centre of main interest in the framework of proceedings of winding-up nature.

Article 36 of the EC Regulation provides the applicable rules of the primarily opened national proceedings. Based on this, if a main procedure was opened subsequently, *"Articles 31 to 35 shall apply to those opened first, insofar as the progress of those proceedings so permits."* These provisions do not restrict the scope of the type of primary national proceedings, consequently, provided the primary national proceedings turns secondary following the opening of the main proceedings, the stipulation for type dependence shall not apply.

Under Article 37 it is permitted that, upon request of the liquidator in the main proceedings, the primary reorganisational national proceedings be converted into winding-up proceedings. Since this type of conversion is entirely at the discretion of the liquidator in the main proceedings (i.e. it is non-obligatory), the rule seems contradictory in that the proceedings were opened as primary ones, and then the national proceedings were made secondary following the opening of the main proceedings the provision does not stipulate winding-up nature. Nevertheless, this could provoke the occurrence of such an event that the establishment subsequent to winding-up nature main proceedings would operate "of its own accord", namely, without any owners. Carrying out the primary national proceedings using a reorganisation rule set can only make sense if no main proceedings are opened until the closing of the former.

Type conversion can be mentioned in another case as well. It may be inferred indirectly from the provisions of the Regulation that in case of jurisdictional conflict between two main proceedings, the subsequently opened proceedings, when possible, have to be converted into national proceedings. In this case we talk about secondary national proceedings which can only be of winding-up type. Such conversion may also bear the signs of type conversion as well, as it may well occur that the main proceedings to be converted to national proceedings

are initiated as reorganisation proceedings. In these situations, however, type conversion may not be construed as a possibility but an obligation.

The various procedural systems are able to comply with the requirement of type conversion differently. Conversion may be carried out relatively easily in uniform insolvency proceedings, as in these instances the reorganisation and winding-up phases are decided in one procedure. Consequently, there is no need to terminate the reorganisation proceedings, what happens is that the proceedings - having "skipped" reorganisation - continue as liquidation proceedings.

Nevertheless, in the case of two-tier proceedings termination of the reorganisation proceedings and lodging a new claim is necessary in order for the type conversion to be carried out, i.e. for the winding-up proceedings to commence. Consequently, in these adjustment systems concerning national bankruptcy legislation the reason for ordering winding-up proceedings should be the claim for conversion filed by the liquidator in the main proceedings as well as ordering proceedings *ex officio* in case of obligation for type conversion. As regards standardising procedural systems, this could happen more automatically, still the need for the legal acts of dismissing one of the procedures and the opening of the other cannot be eluded.

Concerning the type dependence with secondary proceedings, it may cause difficulty even if the main proceedings are of reorganisation nature, the secondary national proceedings, however, are winding-up related (due to constraint). Naturally, it does not serve the economic participants' interests if an intrinsic part of the economic unit to be rebuilt by the main proceedings cease to exist only because it is established in another Member State, and the other parts continue to operate without it. From this point of view, the more establishments an undertaking disposes of, the greater the *hiatus* is between legal and economic efficiency. The more units are lost from the economic unit, the less sense it makes to reorganise the "centre" (i.e. the assets in the main proceedings).

In order to cope with the situation, Article 34 of the Regulation attempts to provide a solution when it empowers the liquidator in the main proceedings to propose measures of reorganisational nature in the winding-up type proceedings insofar as national legislation allows said measure.

The two-tier systems and "standardising" ones occasionally allow for the notion of composition within winding-up. As long as the procedural systems allow for another solution

alternative for the debtor to rescue the company in the winding-up proceedings, the objective set forth in Article 34 can easily be realised. However, when the legislation does not provide for such a rescue plan, for instance, in the case of Italy, or in Slovakia only a narrow time frame is allowed, the realisation of type conformity between the secondary proceedings and the main proceedings will fail.

Within the framework of purely uniform insolvency proceedings winding-up may only take place provided that reorganisation is no longer a possibility. Consequently, it would be unintelligible to open a new "rescue plan" for the indebted undertaking within the winding-up phase in the same proceedings. In my view, on the grounds of irreversibility, application of Article 34 is not possible in uniform insolvency proceedings. Table no. 2 summarizes the treatment possibilities in national proceedings initiated subsequently to the main proceedings of reorganisational nature.

Table No. 2 Realisation of compliance of national proceedings initiated after the main proceedings of reorganisation

Type of Main Proceedings	Mode of adjustment of secondary national proceedings initiated after the main proceedings	Realisation of compliance of national proceedings with the main proceedings
reorganisation	two-tier	presumably Art. 34 applicable, harmonisation complete[7]
reorganisation	one-tier	Art. 34 inapplicable, harmonisation cannot be realised

Source: author's compilation

What happens, however, if the primarily initiated national proceedings are of liquidation nature, whereas the subsequently initiated main proceedings are reorganisation-type? Conversion under Article 37 provides conversion from reorganisation to liquidation, namely, the possible reverse movement is omitted. Since the "reverse" conversion is not viable, it may occur that, as a result of legal determinations, the secondary proceedings are unable to support the main proceedings in an economic sense. The Regulation attempts to handle the situation by regarding the provisions of Articles 31 to 35 governing the primary national proceedings made secondary. Thus, in the above demonstrated cases there is a solution possibility. Chart

[7] Regardless of the case where there are no rescue plans within the liquidation proceedings in the two-tier system.

no. 3 shows some solution alternatives in case of national proceedings initiated before the reorganisation-type main proceedings.

Table No. 3 Realisation of compliance of national proceedings initiated before the main proceedings of reorganisation

Type of Main Proceedings	Type of primary national proceedings	Mode of adjustment of national proceedings subsequently made secondary initiated after the main proceedings	Realisation of compliance of national proceedings with the main proceedings
reorganisation	reorganisation	two-tier	conversion is negligible[8], in case of a conversion claim can be converted under Art. 37, harmonisation complete
reorganisation	reorganisation	one-tier	conversion is negligible; in case of a conversion claim can be converted under Art. 37, harmonisation complete
reorganisation	winding-up	two-tier	Art. 34 applicable, harmonisation complete[9]
reorganisation	winding-up	one-tier	Art. 34 inapplicable, harmonisation cannot be realised

Source: author's compilation

It is a theoretical requirement for the national (regional) proceedings - even by type - to be in accordance with the main proceedings. Projecting that to the economy, the conformity set out by law amounts to the maximum total takings of all economic agents. The main proceedings determine the direction the whole procedural system is taking as well as the economic objectives. It is justified from an economic point of view - though not in a legal sense - for the secondary proceedings to be adjusted to the main proceedings. Providing the main proceedings are of reorganisational nature, i.e. their objective is to rescue the debtor undertaking, then it may be expected that the secondary proceedings also serve this end and be of winding-up nature only where they are considered to be the "sick" units of the whole

[8] Insofar as national proceedings are initiated primarily, conversion of reorganisation proceedings to liquidation-type only remains a possibility, it is not obligatory.

[9] Regardless of the case where there are no rescue plans within the liquidation proceedings in the two-tier system.

concern. The above-presented type dependence, however, may divert economic objectives from the requirements defined by law.

6 A solution alternative: introduction of an identical procedural system

It has been demonstrated that under the provisions of the Regulation the difference in the procedural systems of Member States may create an obstacle of economic rationale in certain cases during cross-border insolvency proceedings. More manifestly, legislation provides a definitive answer to the question of reorganisation versus winding-up proceedings, which does not necessarily coincide with the economically correct answer. Even though opening reorganisation type secondary national proceedings linked to reorganisational main proceedings were economically justified, it would be just as futile if the latter can only be of liquidation nature due to legal provisions. As long as problems of less importance could be dealt with in that Member States introduce individual modes of treatment, the eventual type discordance between main proceedings and national proceedings can only be examined at EU level. Modification of legislation has become necessary to such an extent that would replace the inefficient "know-it-all" treatment of the problem[10] and ensure a long-term solution. Having regard to the above, Herédi sets forth the following principle: "coping with cross-border insolvency perforce requires harmonising national laws as well as the gradual breakdown of hindering factors." [Herédi 2007, p. 5.]

Beyond the economic union within the EU, as "one of the building blocks" of next stage of legal harmonisation there is a need for the Member States, guarding the national characteristics and centres of gravity of their own insolvency legislation, to apply one type of the aforementioned procedural systems: the uniform, the standardising or the two-tier system. **The question would be as to which one.**

The answer should first and foremost rest not on legal simplicity, but on economic reasonableness. Consequently, it could be determined that which procedural system does not provide an adequate solution at certain closed economy level, that system will not ensure economic efficiency at EU level, therefore, it can be excluded.

In the dissertation, based on data collected for research, a game theory model is set up aiming at scrutiny of the outcomes of bankruptcy proceedings as well as revealing the financial

[10] According to what has been mentioned above, for instance, those having an interest attempt to relate the problem by hindering the opening of the secondary proceedings.

stance of winding-up proceedings. The game theory model tested the various procedural systems on a closed market level.

In the two-tier system the participants do not show cooperation and are not presumed to give credit to the other's ability to cooperate, therefore, an inferior state ensues which ultimately provokes the inoperability of reorganisation proceedings. The possibilities permitted by law in two-tier proceedings are aimed at diverting legal insolvency from economic insolvency.

In the uniform and standardising insolvency proceedings, those entitled to make decisions opt for composition due to lack of enforcement of certain game rules. During these proceedings the requirement of economic reasonableness prevails by way of creditors' decisions, meaning that a higher total expenditure will take place.

Since the two-tier system does not provide an adequate solution at a closed economy level either, it is unsuitable for introduction into each Member State as applicable law, consequently, it is to be excluded from the three possible alternatives.

With regard to the ability of coping with problems of different procedural systems it has been stated that in the uniform system there is no point in creating - and due to the peculiarities of the system there can be no point of - yet another reorganisation within the winding-up phase. If by stipulations of the Regulation, due to formerly put down logical arguments, the secondary proceedings may only be of liquidation nature, it is no good elaborating far-fetched interpretations that switching to reorganisation be considered reorganisation "within liquidation", either. Based on all that, one-tier proceedings are not suitable to handle the logic anomaly of the Regulation deriving from this kind of logic.

The standardising systems - regardless of whether there exist reorganisation proceedings separated from winding-up proceedings - can be classified in two categories according to the structure of the liquidation proceedings. In one category there is an escape route even within the winding-up proceedings known as composition opportunity, whereas in the other category the proceedings end in termination due to absence of composition[11].

Type dependence is exclusively applicable to secondary proceedings. The secondary proceedings, by notion, are opened following the main proceedings connected thereto, knowing the starting objective structure of the main proceedings of either reorganisational or

[11] Hungary and Slovakia are included in the category of windings-up with a possibility of composition. In light of scrutiny, the difference between them is paramount in that while in Slovakia the possibility for composition is only open at the beginning of the proceedings and with a stay thereof, in Hungary during the composition negotiations held at any time during the proceedings the liquidation proceedings are still in progress.

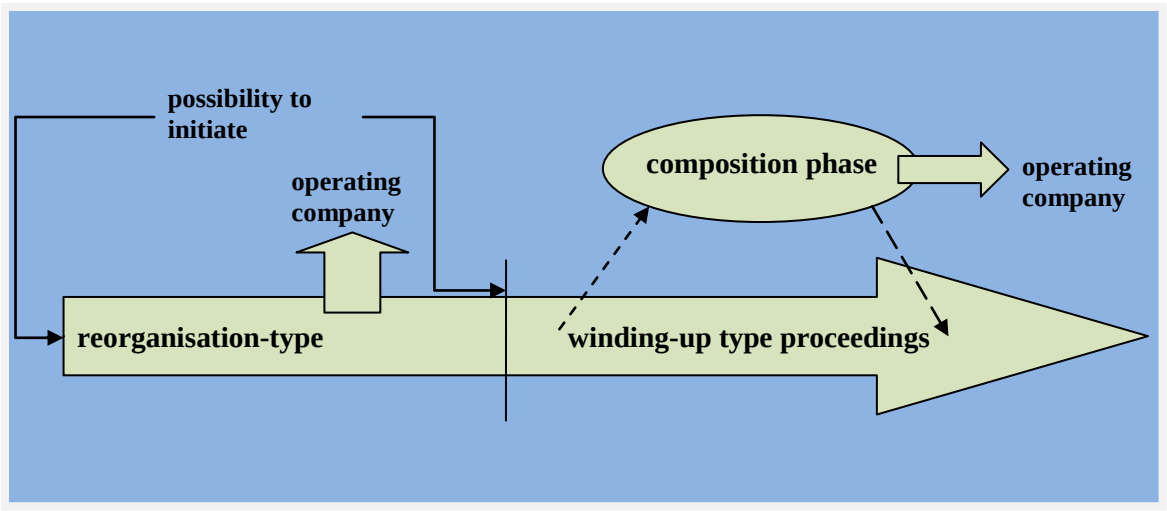
winding-up nature. It is theoretically possible to "adjust" the secondary proceedings to the main proceedings, i.e. the orientation of the secondary national proceedings may be ascertainable.

In my view, both the Hungarian and the Slovakian proceedings are able to treat this "coordination" requirement accordingly. Perhaps the latter may require some explanation in that based on former inferences in the case of Hungary, the situation seems straightforward on the grounds of a composition reached at any time. If reorganisation proceedings are initiated in a Member State, and then the *Konkurzné konanie* is opened in Slovakia, a change to the reorganisational phase may be obtained at the beginning of the proceedings. In my view, this claim would not be in contradiction with the provisions of the Regulation, according to which the secondary proceedings shall be of winding-up nature, since the proceedings were initiated as *Konkurzné konanie.*

A problem arises with the Slovakian system if, due to some factors, the statement of continuation objective is made in the main proceedings subsequently to the opening of the secondary proceedings. Take for example the case where the main proceedings are opened as winding-up in a Member State where the liquidation proceedings include a composition possibility and in the main proceedings an endeavour for composition is started later. Despite economic rationale, the reorganisational intention, however, cannot be realised in the Slovakian establishment still savable economically as this is not permissible in the later phases of the *Konkurzné konanie.* In my opinion, there is only a slight chance of this situation to ensue since the reversal of the objectives of the main proceedings can occur only in rather extreme cases. In spite of all that, it is still theoretically possible and thus necessary to be aware of it to formulate that the Slovakian procedural system cannot provide answer in every instance to the challenges presented by the provisions of the Regulation, albeit in a much stricter scope than the uniform proceedings or the standardising proceedings without composition.

It can be stated that the standardising procedural systems with a flexible composition possibility at the winding-up phase are capable of creating economic conformity of the main proceedings with the secondary proceedings. This procedural system is able to jointly realise legal and economic objectives in any main proceedings and national proceedings type variation, therefore the dissertation proposes the application of this procedural system in each Member State.

Diagram No. 4: Standardising system containing winding-up composition

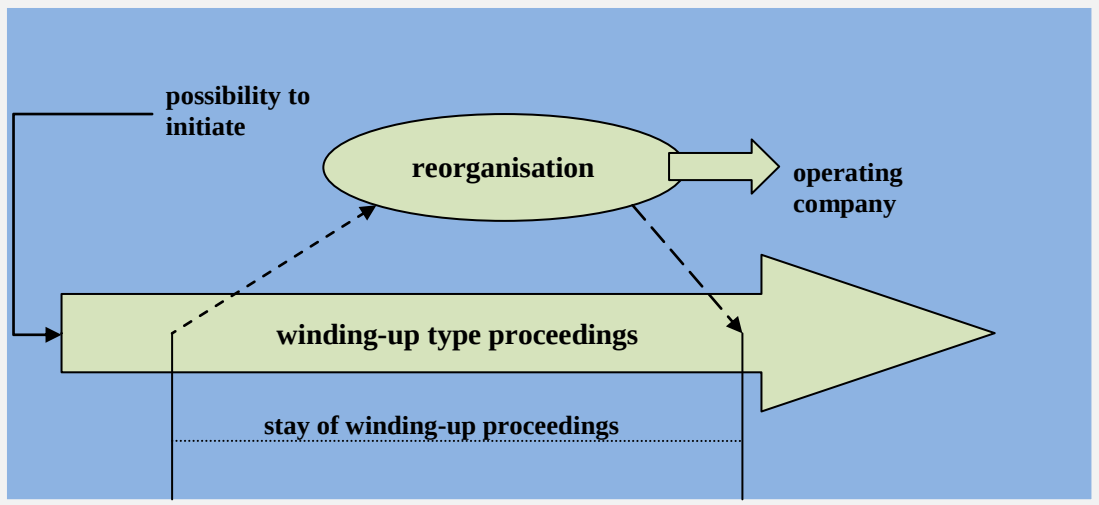


Source: author

It is obvious from the diagram that although "the standardising procedural system containing a timely and flexible composition possibility within liquidation" is capable of providing answer to all type variation, its structure as well as its wording is rather complex in nature. Having studied Diagram no. 13 it is advisable to examine the case where the reorganisation proceedings gets "subtracted" from this complex structure and the composition phase becomes the reorganisation proceedings itself within winding-up. As a result, a new procedural structure is formed non-identical to any one of the presented procedural systems in practice.

In this artificially created procedural system, the proceedings are basically opened as liquidation, however, any time there is an opportunity to switch to reorganisational proceedings once, and during the reorganisation proceedings the winding-up proceedings are put to a stay. Nevertheless, the decision regarding reorganisation or conversion to reorganisation is not a necessary element of the structure. Since the two proceedings are closely but not directly intertwined, it seems advisable to use the expression **interlocked procedural system** when referring to the structure. Diagram 5 depicts the structural build-up of the new structure.

Diagram No. 5: Interlocked proceedings structure



Source: author

To form a comprehensive image, placing emphasis on the differences of interlocked and the single-tier structure seems most opportune. While we talk about one procedure in the case of the latter, in the interlocked system there are two distinct procedures going on in a parallel way. Furthermore, it may be considered to be a difference that not only is it possible to have reorganisation, but also during the whole course of the proceedings. The specific feature of one-tier systems according to which the decision made about reorganisation is an absolute element of the system, does not enjoy prevalence with interlocked proceedings.

The elaboration of the interlocked structure and its introduction into Member States, they are able to provide a solution to each of the type issues arising from the provisions of the Regulation. With that the legal requirement is satisfied in that the secondary proceedings are opened as having winding-up nature, and at the same time they are capable of managing the reasonable reorganisational requirements of economic life, thus being able to create the possibility put down in Article 34. Nevertheless, its advantage to be of a clear and simple structure cannot be understated.

7 Evaluation of hypotheses

The research result written down in the dissertation serve answer on the one hand to the global problem, on the other hand to testing the hypotheses.

There exist views in specialist literature that do not infer the occurrence of liquidation from the amount of company debt, but from the relation between the company's liquidation value and its going-concern market value. Both Haugen-Senbet and Katits-Deliné co-authors have inferred that the economic criterion of economically relevant effective bankruptcy can be expressed by $V_L > V_M$ relation. The optimal requirement of bankruptcy opening mostly does not coincide with legal criteria. The legal establishment of insolvency is carried out on a liquidity basis in many cases (such as in Hungary), consequently, the legal insolvency is donned a much broader scope expanding to the phase of reversible and irreversible crisis.
Insolvency proceedings serve a dual purpose: firstly, they shall provide for reorganisation in the case of debtors that can still be rescued; secondly, the businesses suffering from an unmanageable distress should be arranged their soonest possible market exit. Based on the part acted by them, proceedings of reorganisation and liquidation nature can be distinguished everywhere around the world. Logically and comparing the concepts of legal and economic insolvency, the rapport of market value and liquidation value could be extended to justify economically the reorganisational and winding-up type proceedings. The explanation of the justifiability based on the comparison of market value and liquidation value is theoretically valid, however, its practical application is cumbersome, especially on the grounds of the adequate choice of the discount factor.

The first hypothesis (H1) of the dissertation stating that *"it is possible to define economic indicators according to which the expediency of initiating proceedings of winding-up or reorganisational nature can be explained in a given situation"* **is theoretically acceptable, however, strong reservations have to be made concerning its practicability.**

With the broadening scope of cross-border economic relations, transferring economic activities and assets to a number of Member States, the necessity of supranational legislation of insolvency seems all the more opportune. These legislation processes had already begun in more developed market economies by the beginning of the 20th century. At a relatively high degree of integration, the EU is expected to answer the challenges of a modern age, therefore the Member States have adopted the (EC) Regulation No. 1346/2000 on insolvency proceedings. In the applying Member States only one insolvency procedure may be opened in the State of the business's centre of main interest is located, whereas in Member States where a business has establishment only national proceedings can be initiated.

It can easily occur that one or more national proceedings are connected to the main proceedings, thus it meeting the requirements of the Regulation and the different domestic legislations of Member States becomes essential. The national legislation systems of the particular Member States, however, may present a colourful picture.

I have conducted research along the lines of adjustment of proceedings of reorganisation and winding-up nature regarding the domestic legislation of several Member States (Germany, Austria, Italy, Slovakia, Romania and Hungary). Based on the above, the procedural systems could be listed into three adjustment categories.

The procedural systems in which the reorganisational proceedings are entirely independent of a winding-up proceedings, i.e. reorganisation is not a prerequisite of winding-up, and winding-up is not initiated automatically in case of an unsuccessful reorganisation, are to be regarded as two-tier insolvency proceedings. Systems where the proceedings are opened with a decision of reorganisation the unsuccessful outcome of which directly leads to winding-up proceedings, are referred to as uniform insolvency proceedings. I have categorised "standardising" proceedings the procedural system wedged between the two types at the end of the continuum where reorganisation is not a sine qua non of liquidation, but the unsuccessful outcome of which automatically results in winding-up.

The second hypothesis (H2) establishing that *"regularities are to be discerned between the modes of connectability of reorganisation and liquidation related proceedings and the modes of adjustment can be classified into fairly distinctive types"* **is hereby accepted.**

The Regulation provides for type dependence in the case of secondary national proceedings when it stipulates that the latter may only be liquidation-type proceedings. Consequently, there may occur cases where the reorganisation-type proceedings have to be converted to liquidation-type proceedings. The various procedural systems are able to comply with this technical requirement differently. Impairment of creditors' rights to decide about reorganisation set aside, while this conversion can easily happen in uniform insolvency proceedings, that cannot really be the case in two-tier and standardising proceedings since the reorganisational proceedings must be terminated and liquidation shall be initiated in new proceedings.

Concerning the type dependence with secondary proceedings, it may cause difficulty even if the main proceedings are of reorganisational nature, the secondary national proceedings, however, will have to be winding-up related. In order to cope with the situation, the

Regulation attempts to provide a solution when it empowers the liquidator in the main proceedings to propose measures of reorganisational nature in the winding-up type proceedings insofar as national legislation allows said measure. The two-tier and "standardising" systems mostly allow for the notion of composition within winding-up; however, we have seen demonstrated systems that are capable of living up to this challenge only in a restricted way (Slovakia) or not at all (Italy). On the other hand, when the secondary national proceedings are single-tier, there are no loopholes to be found pending liquidation.
The problematic points of different proceedings categories are further complicated by the fact that while the secondary (i.e. following the opening of the main proceedings) national proceedings are bound by type dependence, the primary (prior to the opening of the main proceedings) national proceedings are not. In these circumstances type conversion is later the right of the liquidator of the main proceedings, not their obligation. Although there is justification enough to differentiate logically (or legally) primary and secondary insolvency proceedings as above, in many cases this logic itself may prove to be the obstacle of the prevalence of economic interests.

The third hypothesis (H3) stating that *"in international insolvency proceedings the differences of certain modes of adjustment may hinder the prevalence of economic interests, i.e. the economically advisable conformity does not come to be effective in the main proceedings as well as the related national proceedings"* **can only be accepted in part.**

In the scope of applicability of the Regulation the answer provided to economic problems could be the following: each Member State should adopt the same procedural system, which is capable of coping with all sorts of difficulties arising from type dependence. This procedural system should bear the characteristics of such that is able to coordinate legislation and economic standards even at a closed economy level. The dissertation - with the aid of an author inspired game theory - sheds light upon the fact that while the two-tier procedural system cannot live up to that expectation, the uniform and the standardising structure can. Consequently, the two-tier model could be excluded from the procedural systems to be introduced.
The uniform procedural system "falls flat" even at the level of the application of the Regulation, i.e. at an open market level when in the secondary national proceedings it is not capable of honouring composition claims. While comparing systems it became necessary to further categorise the standardising proceedings, based on which it grew apparent that one

category - the standardising proceedings containing a flexible and timely composition opportunity during liquidation - is able to cope with the present difficulties of applying the Regulation. As it can be seen from the name of the group, these proceedings possess a rather complex structure. Altering the structure of the procedural system in question a procedural system may be created which has not presented itself in the demonstrated Member State examples, yet it is of a lucidly arranged structure and is capable of creating the conformity of legal and economic interests in the case of any type variation. I have distinguished this procedural system and named it interlocked procedural system having no knowledge whatsoever of its current application of the term.

The fourth hypothesis (H4) of the dissertation establishing that *"closed economy, meaning the predictability of uniform proceedings at a national level ensures the enforcement of economic interests. Internationally speaking, namely in the scope of application of EC Regulation No. 1346/2000, the interlocutory mode of adjustment ensures a convenient solution in the prevalence of economic interests"* **has been confirmed, but it still needs correction and amplification.**

8 Theses of Doctoral Dissertation

The hypotheses of the dissertation can be drawn in line with the evaluation of based on the research results of the hypotheses.

T1.: The economic justifiability of opening reorganisation and liquidation related proceedings can be determined by comparing the market value of the continued operation of the debtor undertaking to the liquidation value of the termination of its operation. In the $V_L < V_M$ relation the company is still in the phase of reversible crisis and there is a need to launch legal proceedings with a view to reorganisation, whereas in the $V_L > V_M$ relation the company is in the irreversible crisis phase and the initiation of legal proceedings is justified.

T2.: In the adjustment of insolvency proceedings of reorganisation and winding-up nature, there seem to be perceivable regularities with which procedural systems lend themselves to classification. The procedural system of each of the examined countries can be listed under either the single-tier, standardising or the two-tier procedural system.

T3.: Owing to the rules set out in EC Regulation No. 1346/2000, certain procedural systems are not able to ensure the economic type-conformity of the main proceedings and the secondary proceedings. Concordance is not achieved in the cases where reorganisation would be justified in the secondary proceedings, however, the procedural system in effect in the Member State of the national proceedings is either having a single-tier, a two-tier or a standardising structure where Article 34 is not applicable, i.e. there is no composition within liquidation.

T4.: The type conformity problems between the main proceedings and secondary proceedings can be removable - even applying the present form of the Regulation - within the standardising procedural systems in every Member State when introducing a form that contains a flexible and timely composition opportunity within the winding-up proceedings.

T5.: The interlocked procedural system created by the author of the dissertation, not yet applied in any of the Member States to present knowledge - presumably due to lack of empirical data - is capable of providing an even better answer to any type variation of the Regulation based on its structural clarity.

9 New and novel approaches of the dissertation and further possible direction of research

Having made recourse to specialist literature the dissertation demonstrated that by comparing the company's market and liquidation values it can be ascertained whether the company continues its operation or it is liquidated. By a novel rethinking of the specialist literature the paper demonstrates that the theory can also be extended to the economically rational decision between reorganisation or winding-up related proceedings with crisis-smitten companies.

Highlighting a weak point in both Hungarian and international specialist literature is the fact that the number of writings regarding procedural systems is rather small. Those discernable mostly present the fundamental attributes of the one-tier and two-tier proceedings. However, based on the research making up one of the key points of the dissertation, it can be demonstrated that there exists an intermediary form between the two polarised procedural system form. Recognising the existence of an interlocutory procedural system signifies a new achievement of this paper, thus the author herself names it "standardising" procedural system.

The question raised of how individual procedural systems are capable of coping with certain provisions of EC Regulation No. 1346/2000 can be considered to be a new approach. To my knowledge, examining the Regulation in this way has not been done yet. Being able to provide answer to the question shows the presentation of difficulties and anomalies. Perhaps it can be considered to be the greatest result of this dissertation to recognise the problems arising from adjustment differences as well as the nature and profoundness thereof. Based on the above, it can be generally stated that with cross-border proceedings, survival is not possible in certain procedural systems in spite of the fact that reorganisation would be justified from an economic point of view.

Pointing out the generator phenomenon of the type-conformity problem (i.e. the case of "acquiring COMI") **is deemed to be a novelty.** The dissertation demonstrated that in practice in the event of insolvency of groups of enterprises (i.e. an economic operator disposing of more separate legal personalities) all the proceedings are opened in one Member State[12]due to efficiency (mostly reorganisational) objectives. Since this can only be realised by "COMI acquisition", initiating merely winding-up related secondary proceedings are possible in the Member State of the operating production units. This fact bears special significance because dealing with the insolvency of groups of enterprises (i.e. several proceedings pending against several companies) in one Member State would serve economic rationality.

Having demonstrated the problem, the dissertation attempts to realise its solution by selecting the procedural system which - regarding present legislation - could provide answer to every type conformity difficulty arising in cross-border proceedings. Concerning selection, testing individual procedural systems with the aid of the prisoner-dilemma known from the game theory **can be construed as a new method of scrutiny.**

Forming a brand new, heretofore not revealed, procedural system could be regarded as a new finding - which I have separated and named "interlocked" procedural system as well as the proposal of introducing it into Member States.

At the beginning of my research the problems were regarded as a matter of principle hardships concerning the applicability of the Regulation. In my view the realisation of cases related to my hypotheses has all the potential, however, the application of EU legislation may not have reached the standard in which the need for coordinating legal and economic

[12] The Member State of all the main proceedings will usually be the Member State of the COMI of the parent company.

efficiency appears. My first writings elaborating on the exposure of the problem had already been published when in 2010 *Marek Pozycki*, a university teacher at the Department of Economic Policy, Kraków Jagiellonian University made an account in one of his articles that in the case of a company with registered office in Poland[13] by disproving the COMI-presumption, the main proceedings were opened in France, thus reorganisation of the establishment (production unit) was made impossible in the secondary Polish proceedings. To my knowledge, beyond this point neither any situation analyses - even projected to a given procedure - nor any comprehensive and theoretical writings have ever come to light so far.

Thus, it is apparent that pointing out problem in the dissertation as well as their treatment places the European way of thinking on a unique and new level about insolvency proceedings.

The most obvious scope of benefiting from what has been set out in this dissertation in practice is EU legislation. Regarding the matter, it is a great advantage what has been written down in the dissertation points out that there is no need for the total uniformisation of insolvency law, the problem can be removed at the present level of law harmonisation by the proposed introduction of the most suitable procedural system. Leaving the law harmonisation level, it is the well-intended interest of Member State economies that undertakings operating on their territories should continue to exist in the event of reorganisational objectives and avoid the termination of a savable company due to the "weakness" of their procedural system just because their EU membership they are obligated to apply the provisions of EC Regulation No. 1346/2000. If there is no obligation by the EU for the introduction, it is worth it for the Member States to consider applying the "interlocked" and flexible procedural system.

As is the case with all research, the question may arise as to where it is worth continuing in order to reach a more exact and higher level of findings and whether there are potentials to be discovered in the topic.

As regards the analysis of specialist literature, beyond the comparison of market value and liquidation value it would be interesting to find factors, based on which the justifiability of reorganisational or winding-up proceedings could be explained in a given (crisis-smitten) situation. Further research could be made into such explanation of the end values of aggregate indexes used in bankruptcy prediction models.

[13] The subsidiary of the Polish company Belvedere is concerned here.

In my view the extension of research into the connection of proceedings to even more EU Member State would result in further findings since, based on that, there may exist special procedural systems with the aid of which the thread of this dissertation could be woven even further. Perhaps more solutions would be outlined, the EU-level and uniform application of which would ensure handling such problems in an even more efficient way.

A further direction of research, perhaps the theme of another dissertation can be the reversal of the objectives of the main proceedings, which this dissertation has only touched on.

10 The author's publications and conference lectures given on the topic

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