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Rescue of Business in Insolvency Law



Background to the project

Since the global financial crisis, insolvency law has been at the forefront of law reform initiatives in Europe and beyond. The specific topic of business rescue appears to rank top on the insolvency law related agenda of the EU institutions; with the economic recession of the past few years Europe has faced a rapid growth of insolvencies, clearly highlighting the importance of effective business rescue. Indeed, in 2011 the European Parliament requested the European Commission to submit legislation to enhance the availability of business rescue tools as alternatives to liquidation. The Commission has taken up this idea in various publications and projects. Given the widespread and growing interest in insolvency law and particularly in business rescue, the ELI has resolved that it is an appropriate time for it to engage in a scholarly and detailed assessment of the subject within the European context, and the prospects for reform.

Aim of the project and expected outcomes

The issue of rescue of business lies at the core of this project. The ultimate aim of the project is to design (elements of) a legal framework that will enable the further development of coherent and functional rules for business rescue in Europe. This will include certain statutory procedures that could better enable parties to negotiate solutions when a business becomes financially distressed. Such a framework would include rules to determine in which procedures and under which conditions an enforceable solution can be imposed upon creditors and other stakeholders despite their lack of consent. The project has a broad scope, and will extend to consider frameworks that can be used by (non-financial) businesses out of court, and in a (pre-)insolvency context.

The project will have several outcomes. The first major outcome will be the production of inventory reports on national insolvency laws (of 13 EU countries) by expert national correspondents, and a complementary inventory report on international soft law frameworks for business rescue. Both outputs will be drafted in 2014/2015, and produced in a published volume. The compiled volume will form the basis for the second project outcome: the production by the project reporters of a legislative guide or legislative proposal.

Topics considered in the project

During the course of the project the following topics will be studied:

- 1** Governance and supervision of a rescue in court and out-of-court
- 2** Financing a rescue
- 3** Executory contracts
- 4** Ranking of claims; governance role of creditors
- 5** Labour, benefit and pension issues
- 6** Avoidance powers
- 7** Sale of substantially all of the debtor's assets on a going-concern basis
- 8** Rescue plan issues
- 9** Multiple enterprise/corporate group issues
- 10** Special arrangements for small and medium sized enterprises (SMEs)

Project reporters



Bob Wessels is an independent legal counsel and advisor with over 35 years of professional experience, and a professor of international insolvency law at the University of Leiden. He is Deputy Justice at the Court of Appeal in The Hague (since 1987) and a member of the Joint Board of Appeal of the three European Supervisory Authorities (ESMA, EBA and EIOPA). He served as consultant to the IMF and World Bank and is an advisor of the European Commission regarding the preparation of legislative texts for the revision of the EU Insolvency Regulation. He is a Fellow of the American College of Bankruptcy, and emeritus director of the International Insolvency Institute.



Stephan Madaus is a professor of civil law, civil procedure and insolvency law at the Martin Luther University Halle-Wittenberg (MLU). His main research interests are in German and international insolvency law and civil procedure, and in particular procedures aiming at rescuing failing companies. He is also a member of the International Insolvency Institute and the American Bankruptcy Institute's Advisory Committee on Comparative Law. He has published in prominent legal journals in Germany and beyond.



Kristin van Zwieten is the Clifford Chance Associate Professor of Law and Finance in the Law Faculty at the University of Oxford, and a Fellow of Harris Manchester College. At Oxford she convenes and teaches on the postgraduate Corporate Insolvency Law course, and convenes the Senior Practitioner Lectures in Law and Finance series. Her research interests include corporate insolvency law and financial development in emerging markets. She has been involved in insolvency law reform projects at the World Bank and is a member of the technical committee of the Insolvency Lawyers' Association in the UK.

Advisory Committee Members *(as of 13 March 2015)*

The reporters are supported by an expert Advisory Committee, which is comprised of:

- **Jan Adriaanse** (Professor, University of Leiden)
- **Catherine Bridge** (European Bank for Reconstruction and Development)
- **Horst Eidenmüller** (Professor, Munich University)
- **Damien Geradin** (Covington & Burling, Brussels / Professor, Tilburg University)
- **Robert Hodgkinson** (Institute of Chartered Accountants in England and Wales)
- **Francis Kessler** (Professor, Sorbonne Law School at University Paris I)
- **Chris Loughton** (Partner, Mercer & Hole, London)
- **Rimvydas Norkus** (Supreme Court of Lithuania)
- **Alberto Núñez-Lagos** (Partner, Uría Menéndez)
- **Paul Oberhammer** (Dean and Professor, Faculty of Law, University of Vienna)
- **Elizabeth Stong** (U.S. Bankruptcy Court Eastern District of New York)
- **Matthias Storme** (Professor, University of Leuven and University of Antwerp / Attorney)
- **Onofrio Troiano** (Professor, University of Foggia)
- **Heinz Vallender** (Cologne Bankruptcy Court / Professor, University of Cologne)

European Law Institute

The European Law Institute (ELI) is an independent non-profit organisation established to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal development. Building on the wealth of diverse legal traditions, its mission is the quest for better law-making in Europe and the enhancement of European legal integration. By its endeavours, the ELI seeks to contribute to the formation of a more vigorous European legal community, integrating the achievements of the various legal cultures, endorsing the value of comparative knowledge, and taking a genuinely pan-European perspective. As such its work covers all branches of the law: substantive and procedural; private and public.

All members of the ELI, regardless of how long they have been involved in the Institute, are welcome to participate in the project through the Members Consultative Committee.

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