

British-European Relations Post-Brexit: A Legal Kaleidoscope



21 September 2020

Commercial Dispute Resolution and Restructuring by Horst Eidenmüller

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Commercial Dispute Resolution and Restructuring

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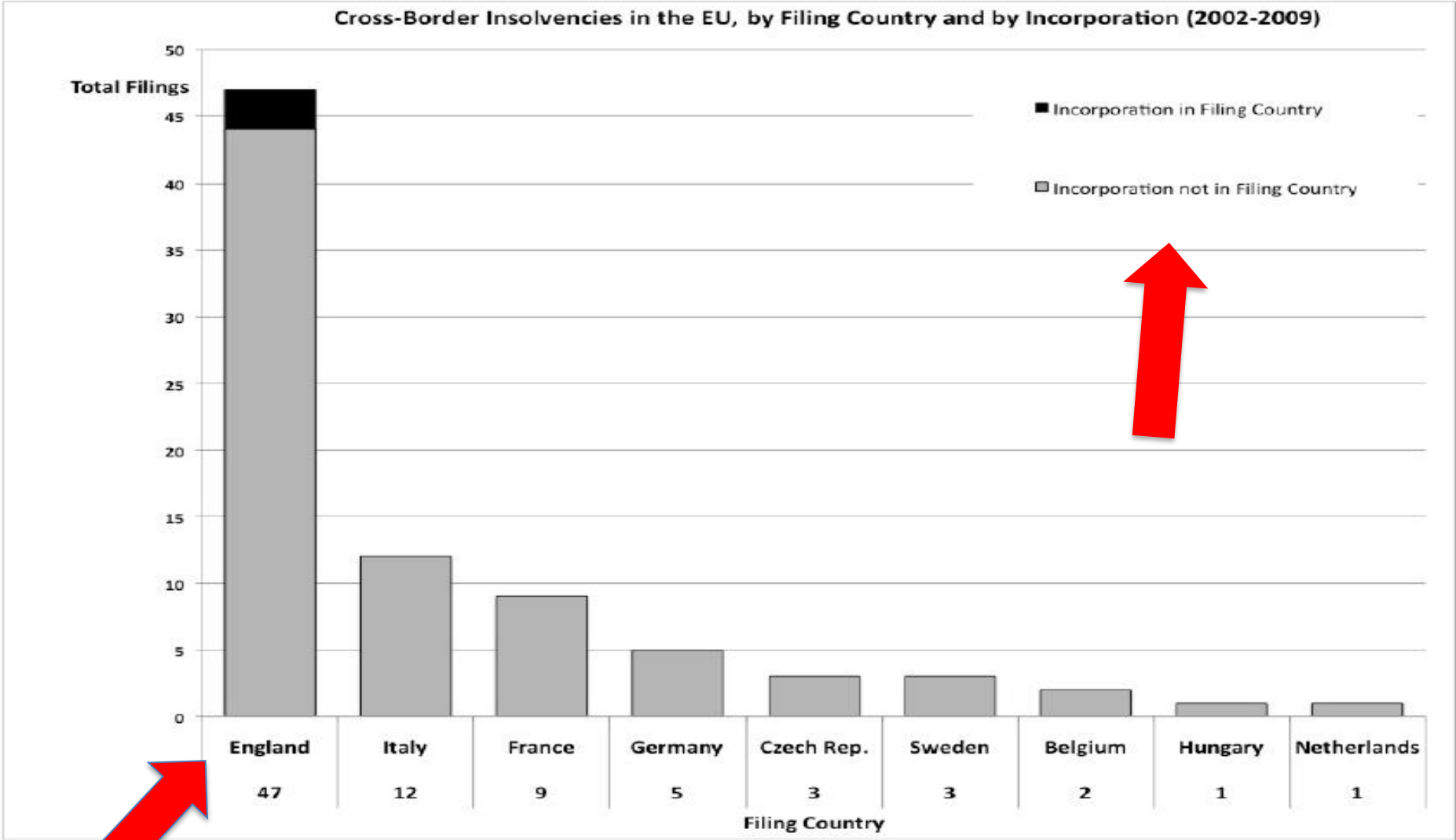
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Automatic Recognition and Regulatory Competition

- ¶ Status quo: UK as an important litigation and restructuring venue
 - Commercial Dispute Resolution (DR): Commercial Court, Arbitration (LCIA)
 - Restructuring: Scheme of Arrangement, Company Voluntary Arrangement
- ¶ Key motivator for choosing English law/London as a dispute resolution/restructuring venue: **automatic recognition** of decisions
 - Art. 36 Brussels Ia Regulation
 - Art. 19 European Insolvency Regulation
 - Arts. IV/V New York Convention (limited grounds for review)
- No similar mechanism in new partnership agreement (if concluded)

Insolvency Forum Shopping into the UK

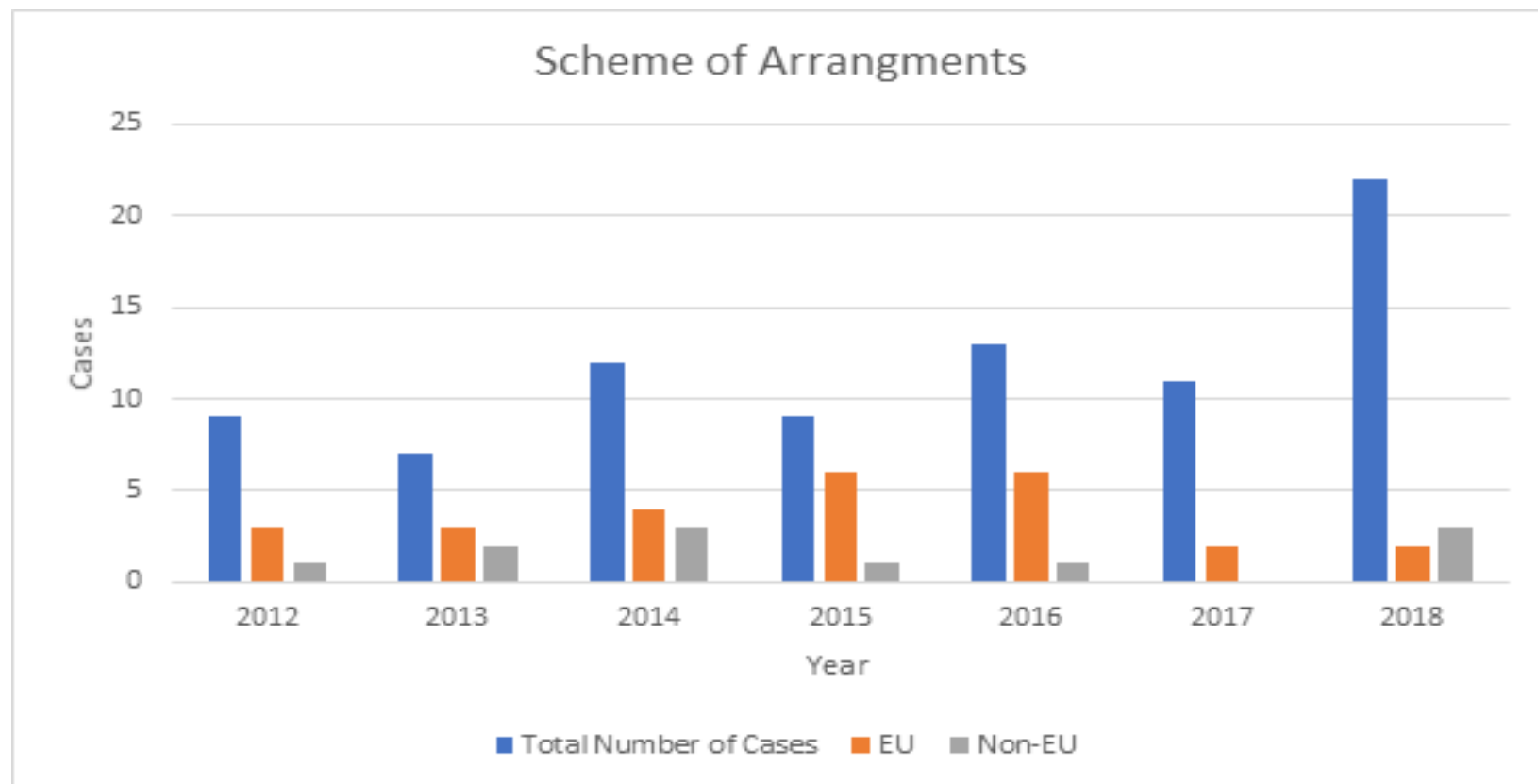
Figure 1.



Source: Maria Banda, Study (2011), <https://www.iiiglobal.org/node/53>

Popularity of the UK Scheme of Arrangement

Can be used pre-insolvency, no COMI shift necessary, recognition under the Brussels Ia Regulation (details disputed)



Source: Amit Zac, Westlaw UK search (2019)

Automatic Recognition and Regulatory Competition

- ¶ No adequate substitute mechanisms in place by 1 January 2021
 - Lugano Convention 2007 (effects similar to Brussels Ia)
 - UK applied to accede on 8 April 2020, consent of all contracting states needed
 - Insolvency proceedings not covered
 - Hague Convention on Choice of Court Agreements
 - Insolvency proceedings not covered
 - No automatic recognition (Arts. 9 and 10)
- ¶ UK will lose position as “market leader” in the European DR/restructuring market
 - Legal uncertainty wrt recognition of judgments
 - For evidence on Schemes of Arrangement see *Eidenmueller* 20 EBOR 547 (2019)
 - Arbitration will be largely unaffected (legal regime does not change)
 - Other jurisdictions are gearing up:
 - Irish Schemes of Arrangement
 - The Netherlands Commercial Court