Virtual Workshop

British-European Relations Post-Brexit: A Legal Kaleidoscope

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Commercial Dispute Resolution and Restructuring

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Commercial Dispute Resolution and Restructuring

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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.

Cross-Border Insolvencies in the EU, by Filing Country and by Incorporation (2002-2009)

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)
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- 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