

CONFERENCE ON EUROPEAN RESTRUCTURING AND INSOLVENCY LAW



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Date: 12 December 2018
Re: CERIL STATEMENT 2018-2 on
Cross-border Restructuring and Insolvency
post-Brexit

CERIL highlights the relationship between the EU and the UK after Brexit in the area of restructuring and insolvency law and seeks to formulate a position on the nature and content of a possible future instrument governing that relationship.

Initiated and chaired by Prof. Francisco Garcimartin (University Autónoma of Madrid and Linklaters), and Prof. Michael Veder (Radboud University Nijmegen and RESOR), a CERIL working group¹ investigated the possible consequences of Brexit on cross-border restructuring and insolvency in relation to the remaining EU.

CERIL Report 2018-2 presents the result of this study and seeks to formulate a position on the nature and content of a possible future instrument governing the relationships between the EU and the UK after Brexit in the area of restructuring and insolvency law.

The report focusses on the European Insolvency Regulation (EIR Recast) and how to fill the gap that will be left if, after Brexit, the EIR Recast will cease to apply as between the EU and the UK.

CERIL argues for the development of a bilateral agreement between the EU and the UK in the field of insolvency and restructuring. Such bilateral agreement would mirror, with certain safeguards, the structure and content of the EIR Recast. It would cover international jurisdiction of courts, applicable law, a mutual system of recognition and enforcement and rules on cooperation and communication between UK and EU insolvency practitioners and courts.

¹ The CERIL Working Party, assisted by Prof. Ángel Espiniella, University of Oviedo, Spain, as Research Associate to CERIL, discussing and contributing to the Report further consisted of: Stefania Bariatti (Italy), Reinhard Bork (Germany), Reinhard Dammann (France), Grégory Minne (Luxembourg), Paul Oberhammer (Austria), Anders Ørgaard (Denmark), Nick Segal (United Kingdom), Lorenzo Stanghellini (Italy), Annerose Tashiro (Germany), Adrian Thery (Spain), Melissa Vanmeenen (Belgium), Nora Wouters (Belgium). Other CERIL conferees contributed too, including Jean Luc Vallens (France) and Stephen Taylor (UK).

CERIL submits that a future agreement should be developed as a “parallel instrument”. The Lugano Convention, which basically extends the framework of the Brussels I Regulation vis à vis EFTA States, or the bilateral agreement extending the Brussels I Regulation to Denmark may be used as a model. In this way conflicting interpretations by courts in the UK and the EU can be prevented.

The full Report is available as Report 2018-2 on CERIL’s website www.ceril.eu. This site also contains information about the organisation of CERIL and its activities.

In the meantime, professor Reinout Vriesendorp, secretary of CERIL (info@ceril.eu), or the Reporters, Prof. Francisco Garcimartin [francisco.garcimartin@uam.es / francisco.garcimartin@linklaters.com] and Prof. Michael Veder [m.veder@jur.ru.nl / michael.veder@resor.nl], welcome the opportunity to further inform you about CERIL or the contents of Report 2018-2.

On behalf of the CERIL Executive,

Bob Wessels
Chair