

# American Bankruptcy Institute and INSOL Europe collaborate in London

*ABI and INSOL Europe held a joint International Insolvency and Restructuring Symposium on 28 and 29 October in London at The Biltmore Mayfair, attended by 124 delegates from 17 jurisdictions, reports Emmanuelle Inacio, Chief Technical Officer for INSOL Europe.*

## Geopolitical impacts

The first **INSOL Europe** panel explored *“Geopolitical Impacts on the Restructuring Market”*. Panel leader **Frank Tschentscher (Deloitte, Germany)** and panellists **Jasper Aerts (European Stability Mechanism/ESM)**, **Stelios Fragkos (AlixPartners, UK)** and **David H. Conaway (Shumaker, US)** identified and analysed geopolitical risks affecting the business environment in the European Union, UK & US.

If geopolitical risks are difficult to define, they nonetheless include potential political, economic, military and social hazards, arising from wars, terrorist action and tensions between states that disrupt the usual, peaceful conduct of international relations. More geopolitical risks are to be expected in years to come, especially in the context of the US elections and the global climate crisis. The panel emphasized that economic uncertainty in Europe has reached record highs since the start of the war in Ukraine. Moreover, geopolitical and macroeconomic shocks necessary question the limits of corporate restructuring and insolvency laws as the right tool to address its economic and financial consequences.

Over the past two decades, the euro area has deepened its financial ties with countries whose foreign policies are now increasingly at odds with Europe's own. An escalation of geopolitical tensions can trigger capital outflows from the euro area and strain its external financing. As geopolitical risks increase, financial shocks to the euro area become more frequent and intense. The euro

area's response should not, however, be isolation, as this would reinforce fragmentation. The euro area stands to lose if globalisation reverses and global financial markets become fragmented. Financing would become more scarce and costly. Instead of decoupling, a diversification of the euro area's global financial linkages can help mitigate financial shocks. Domestically, risk-sharing through the help of the ESM, Banking Union and Capital Markets Union would support the euro area's resilience in the face of present day and future increases in global volatility.

## EU harmonisation

The second **INSOL Europe** panel was devoted to *“The Next Wave of EU Harmonisation”*, chaired by **Barry Cahir (Beauchamps, Ireland)**. Together with panellists **Philip Janis (European Investment Bank)**, **Simon Whiting (Insolvency Service, UK)** and **David H. Conaway (Shumaker, US)**, the panel explored the European Commission's 7 December 2022 proposal for a directive harmonising certain aspects of insolvency law from the perspective of the EU, UK & US.

The very divergent insolvency regimes in the EU are often mentioned as a significant obstacle to the further development of the Capital Markets Union, which is a key plan designed to further financial and economic integration in the EU. They deliver different outcomes across Member States and, in particular, they have different degrees of efficiency in terms of the time it takes to liquidate a company and the value that can eventually be recovered. This proposal aims at



encouraging cross border investment within the single market through targeted harmonisation of insolvency proceedings. In particular, the proposal provides for minimum set of harmonised conditions for exercising avoidance actions; strengthening asset traceability through improved access by insolvency practitioners to asset registers, including in a cross-border setting; provisions to introduce “pre-packs”; provisions on a duty of directors to timely file for insolvency to avoid potential asset value losses for creditors; simplified liquidation procedure for insolvent microenterprises; requirements for improving the representation of creditors' interests in the proceedings through creditors' committees and enhanced transparency for creditors on the key features of national insolvency regimes.

There are doubts whether the proposals can fulfil the expectation of closing gaps in the capital markets union as a harmonised definition of insolvency and ranking of claims are missing. As regards harmonisation of insolvency law in the US, the Bankruptcy Code is a US federal law which applies in a uniform manner in every US state. However bankruptcy local rules of procedure and Practices vary greatly in different states/jurisdictions, while within the UK, there is not perfect harmonisation either which can be explained by the presence of four Insolvency Services.