



INSOL
EUROPE



Academic Conference
AMSTERDAM
11-12 October 2023

MAIN SPONSOR

EdwinCoellp
LAW FIRM

ESG Opportunities in Pre-bankruptcy and Corporate Restructuring: A comparative study of the US and the EU approaches'

Christoph Henkel, PhD in Law, professor at the Mississippi College, School of Law, USA

Lidija Šimunović, PhD in Law, Assistant professor at the Faculty of Law in Osijek, Croatia, Department
for Commercial Law



Academic Conference
AMSTERDAM
11-12 October 2023

MAIN SPONSOR



1. Acronyms and Terminology

- Financial vs. non-financial sustainability
- ESG vs. sustainability (ESG vs. CSR)?

2. ESG in pre-bankruptcy and restructuring

Can we include ESG issues in pre-bankruptcy and restructuring and what would be a consequence?

Environmental issues	Social issues	Governance issues
climate change and carbon emissions	customer satisfaction	board composition
air and water pollution	data protection and privacy	audit committee structure
biodiversity	gender and diversity	bribery and corruption
deforestation	employee engagement	executive compensation
energy efficiency	community relations	lobbying
waste management	human rights	political contributions
water scarcity	labor standards	whistleblower schemes

Source: Environmental, Social, and Governance issues in investing. A Guide for Investment Professionals, p. 4



INSOL
EUROPE



Academic Conference
AMSTERDAM
11-12 October 2023

MAIN SPONSOR



3. Relevant framework, soft law tools and related international trends

United States



- SEC Proposed Rules to Enhance and Standardize Climate-Related Disclosure for Investors,
- FSOC, FED, FDIC, OCC Climate Risk Principles

European Union



- EU legislation (Art. 3, 11, 181 TFEU; secondary legislation),
- The efforts of the European Banking Authority

4. ESG may be introduced in pre-bankruptcy and restructuring...

- There is no specific provisions how to promote and proceed ESG issues in pre-bankruptcy and restructuring.
- ESG may be relevant for the choice between
 - i) bankruptcy vs. restructuring;
 - ii) viability test vs. best interest of creditor test
 - iii) ...



Academic Conference
AMSTERDAM
11-12 October 2023

MAIN SPONSOR



5. Opportunitieas vs. risks

- New fundings, products, consumers, value,
vs.
- Greenwashing, pluralism of interests reputational and litigation risks, lack of ESG related products...



Academic Conference
AMSTERDAM
11-12 October 2023

MAIN SPONSOR



6. Instead of conclusion

- ESG is changing the way that business is conducted around the world.
- ESG IS becoming a crucial in deal-making, decision making, due diligence, monitoring, potential liability, etc.



INSOL
EUROPE



Academic Conference
AMSTERDAM
11-12 October 2023

MAIN SPONSOR



Thank you for your attention!