

Time to reflect, analyze and get ready for next year...

Alberto Núñez-Lagos summarises his year as President of INSOL Europe



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AT THE INSOL EUROPE ANNUAL CONGRESS 2016 WE WILL PROPOSE A FUTURE CORPORATE EU RESCUE ENVIRONMENT THROUGH THREE KEY TOOLS: PRE-INSOLVENCY, HARMONISATION AND FINANCING



The INSOL Europe Annual Congress 2016 has arrived – and with it my term as your President ends. It is time to analyze the year's events and get ready for the next year.

October 2015-September 2016 – Very difficult and interesting times

The economic environment during my presidency can be summarised as follows:

- Low growth in the Eurozone;
- Huge amount of liquidity with no boost effect on growth;
- No access to financing for businesses which need to restructure and are able to do so; and
- An EU insolvency framework analysis by the EU Commission in order to find out if and to what extent harmonisation is possible.

These circumstances are accompanied by a high volatility of the financial markets due to several factors which shall continue to exist, at least for the next month, such as:

- Brexit timing and effects;
- Italian late and incomplete restructuring of its banking system; and
- The German policy on (principally) Syrian refugees.

During my presidency INSOL Europe has actively participated and supported the EU Commission in its analysis of the harmonisation of the EU insolvency framework by

- actively participating as one of the appointed stakeholders in the EU Commission program for an insolvency initiative
- answering to the consultation organised by the EU Commission from March 23 to June 14 2016
- presenting INSOL Europe's survey on harmonisation of Insolvency Office Holders at the conference organised by the European Commission, "Insolvency in the EU: the way forward".

In addition, several INSOL Europe members have been appointed to the Commission Expert Group.

This commitment shown during my presidency by INSOL Europe, to contribute to build an efficient Insolvency framework, is a deeply rooted tradition of INSOL Europe. Only in the last years INSOL Europe has produced two very relevant research papers for EU institutions:

- INSOL Europe, Harmonisation of Insolvency Law at EU level, 2010; and
- Study on a new approach to business failure and insolvency – A comparative legal analysis of the Member States' relevant provisions and practices, INSOL Europe, December 2013.

Finally, INSOL Europe has been involved during my presidency in the different discussions which are currently conducted in the UNCITRAL Working Group V meetings, as it usually does.

EECC Conference and projects

The EECC Annual Conference this year was held in Cluj-Napoca. The success of the conference was indeed due to our Romanian members and specifically our Vice President Radu Lotrean and our EECC technical committee. The attendance was one of the most important ones in the history of the EECC conferences.

I have launched an educational project for the EECC on insolvency practices and ethics which will start next year under the presidency of Steffen Koch. The project consists of three seminars each year. Two of them will be hosted each year in a different country in Eastern Europe.

Annual Congress 2016, Cascais nr Lisbon

The Annual Congress in Cascais will try to find solutions to the main problems of EU corporate rescue. In addition, concerning pre-insolvency, out-of-court restructuring frameworks and harmonisation, both during panel discussions and separate group discussions, the problems of financing distressed businesses and enforcing or trading NPLs will be treated. UNCITRAL updates and several panels on the IOH profession will complete the panel discussions.

Financing

On financing, there will be several panels in addition to the Financial Institutions Group meeting.

Share your views!



The first panel will be on Global Credit Risk Management. It is well known that more certainty and more predictability lead to less risk and cheaper financing. A harmonised European insolvency framework would maximise the efficiency and predictability of insolvency procedures for the benefit of the wider economy by facilitating an effective credit system. The second panel in this area will discuss financing of companies in distress. Such financing is very difficult in Europe compared to the US and is one of the topics on which the EU Commission is seeking the opinions of all stakeholders.

The discussions on the subject of the harmonisation process are focused on, what I believe to be, the relevant issues, namely:

- Interim financing: the security it should benefit from, a safe harbor against future clawback actions and for lenders which provide such financing against lender liability for permitting the business to trade while insolvent; and
- New financing under a restructuring plan and the possibility of super priority security.

Another area very closely related to finance in a distressed environment is the enforcement and trading of NPLs and the *de facto* enforcement of security through credit bidding on the asset subject to security. Several panels will discuss these topics from different angles.

Pre-insolvency proceedings and harmonisation

This topic will be addressed in which a representative of the European Commission will also take part. As it stands now the discussions will be focusing on what has been identified as the key issues mainly:

- How to help businesses and specifically SME's to identify the need to restructure as early



Alberto Núñez-Lagos addressing the delegates of the EECC Conference in Cluj-Napoca, Romania

- as possible.
- The benefit of confidentiality.
- Stay of both individual enforcement actions (for all creditors, not only financial creditors) and the right to request opening of insolvency by creditors.
- Suspension of *ipso facto* and early termination clauses (for which a session on Saturday's program is scheduled).
- The possibility to cram down creditors, including secured creditors, to the extent that a vote in each creditors' class is taken.
- The possibility to cram down shareholders, for which also a specific session has been scheduled on Friday.

Conclusion

I am convinced that the 2016 Annual Congress will be a success not only in terms of attendance but also as a think tank venue out of which we all will have a clearer idea on which should be the route to follow to build an efficient European

restructuring framework.

I have to thank the technical committee of the Congress and also the panelists for their efforts and good work; and Caroline Taylor and her team for all the efforts and professional success they are having in the set up of this Congress.

Finally, I thank all the members for their support to me during this year. I am very honoured and proud for having had the opportunity to be your President. Thank you. ■

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