

A Baltic revolution in restructuring and insolvency: Riga

Paul Omar and Veronika Sajadova report on this year's EECC Conference in Latvia



PAUL OMAR
INSOL Europe
Technical Research Officer



VERONIKA SAJADOVA
INSOL Europe
Technical Committee Co-chair

Latvia's capital city, Riga, adorned with the beautiful architecture of the Art Nouveau period, played host for the first time to an EECC conference, the 14th in the series.

The one-day event, on Friday 1 June, was preceded by a welcome dinner on the eve of the conference, at the Gutenberg Restaurant. The restaurant terrace, in the heart of the Old City, offered an exceptional view over the landmarks of the city centre, rightly recognised by their inclusion on the UNESCO World Heritage Sites Register. Also welcoming the many attendees and guests was the warm weather, hitting a high of 26 C° in the week of the conference, quite exceptional for June in the Baltics.

Topping off the evening was a special presentation by Radu Lotrean (President of INSOL Europe; EECC Co-Chair) to Florica Sincu, who stepped down after 26 years of faithful service as French Office Co-ordinator and Secretary to the Eastern European Countries' Committee. Florica's presence will be missed by many at INSOL Europe events but she continues to be part of the team, working on Eurofenix.

Words of welcome and a moment's reflection

The conference was officially opened on Friday morning by Radu Lotrean. Before embarking on his speech, Radu led the conference in a minute's silence in



Florica Sincu received an award for 26 years service.

memory of INSOL Europe member and local practitioner, Martins Bunkus, who died tragically earlier in the week. In addressing the conference, Radu noted the increasingly important role played by the EECC event in increasing our awareness of not only European developments, but also reform initiatives at local and regional levels. To this end, he highlighted the recent establishment of the high-level course in insolvency, first held in Romania in 2017-2018, which put together academics, judges and various experts who delivered information on international best practice and also offered the participants the possibility of sharing local know-how with their peer group. Participation within INSOL Europe by members from emerging and developing jurisdictions also featured with

Radu talking of a new initiative to permit these countries with fewer than 30 members to be represented on Council. To these thoughts, Evert Verwey (EECC Co-Chair) added his own words of welcome before ceding way to the morning's guest of note.

The keynote speech, which preceded the substantive agenda of the day, was given by the Latvian Minister of Justice, Dzintars Rasnačs. Following a warm welcome to the assembly, the Minister placed emphasis on the happy coincidence in timing that the EECC event was occurring in Riga just as the cycle of local reforms, which had taken place over a 3-year period, had come to an end (the previous day, in fact). These reforms, which have already been positively evaluated by the European Commission and International





Latvian Minister of Justice, Dzintars Rasnačs, spoke about the recent cycle of local reforms in his keynote address

Monetary Fund, are not the end of the story, as further initiatives will be likely to materialise in the future, as the reforms begin to bed down in practice. Nonetheless, the Minister was confident that the current wave of reforms has left Latvian practitioners with better and improved legal frameworks for carrying out their activities. In appreciating INSOL Europe's timely decision to hold the EECC event in Latvia, the Minister felt it was an honour for the country and looked forward to increasing cooperation between local practitioners and the wider international community.

The Technical Sessions: Friday morning

The technical sessions proper began with the cutting-edge topic of the moment: the Proposal for a Directive on restructuring, insolvency and second chance ("Draft Directive"). The panel, moderated by Mathias Storme (KU Leuven, Belgium), opened with a presentation by Paulus Markovas (Cobalt Law Firm, Lithuania) comparing the

provisions of the Draft Directive to the Lithuanian Law on Business Restructuring. Delegates then had an exceptional opportunity to obtain an insider's view from Salla Saastamoinen (DG-Just, European Commission), who was able to provide an insight into the areas of the Draft Directive agreed upon by the Member States, including, inter alia, the qualification and training of insolvency practitioners, the appropriate discharge period, exceptions to discharge as well as the digitalisation of procedures.

A further coincidence in the timing of the conference was also remarked upon here, in that the prospective meeting of the Council (Justice and Home Affairs) on 4-5 June, which is anticipated will agree parts of the Draft Directive dealing with a second chance for entrepreneurs, effective measures and data collection. It is expected that the remainder of the Draft Directive, including the thornier question of the preventive restructuring framework, will be postponed till the Austrian presidency takes up



Delegates marked their respect with a moment of silence for Martins Bunkus

the baton this summer. The final presentation in this session focused on a new initiative arising out of the INSOL Europe 2011 Report on Harmonisation, with Alberto Nuñez-Lagos (Uria Menendez, Spain) outlining the contents of a proposed Model Law focusing on some of the common content of the Draft Directive.

The second panel of the morning focused on theoretical and practical aspects of the Recast European Insolvency Regulation ("Recast EIR"), especially now that it has reached the first anniversary of its implementation. Moderated by Evert Verwey, the panel discussed an instructive case-study, charting the course of the Air Berlin proceedings in Germany, which triggered proceedings in both Austria and Germany in respect of its subsidiary, Niki Air. The ensuing competition between courts was the subject of some debate between panellists Björn Laukemann (Max-Planck Institute, Luxembourg), Robert van Galen (NautaDutilh, the Netherlands) and Judge Miodrag Dordevic (Supreme Court of Slovenia) on how the anticipation of the changes in the framework of the Recast EIR has met the challenges in practice. In particular, Judge Dordevic said that the text offers useful tools for cooperation and communication, though the tension between the need to expedite proceedings and



IN APPRECIATING INSOL EUROPE'S TIMELY DECISION TO HOLD THE EECC EVENT IN LATVIA, THE MINISTER FELT IT WAS AN HONOUR FOR THE COUNTRY



“As a legal practitioner from Riga, I was particularly delighted not only to have attended my first INSOL Europe conference in my own hometown but also for the fact that the topic was being discussed to a large extent against the backdrop of the recent thorough shake-up of the Latvian regulation.

This allowed even the Latvian Justice minister in his opening remarks to venture the possibility of it now being “the best insolvency law in Europe”. Over the course of the conference, this upbeat notion was put to the test of the harsh reality and critical viewpoints, which culminated in an Austrian delegate referring to the Latvian regulation for selecting the administrator as “probably the least appropriate”.

This exchange of dissenting opinions and a forum where no truths of the insolvency law are held self-evident is of utmost practical and academic importance. Borrowing a thought or two from the neighbour can often lead to solutions of the most complicated legal impasses. I left the conference feeling enriched.”

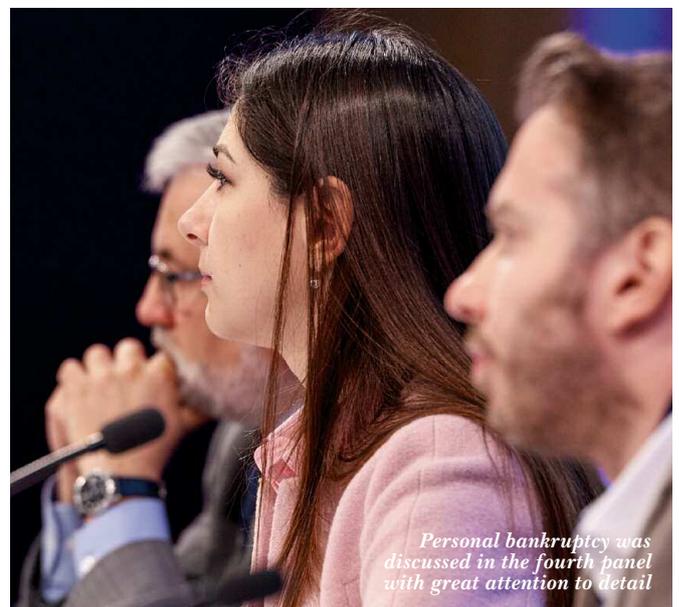
First time attendee Indulis Balmaks (Rödl and Partner, Riga)



The conference was attended by 100 delegates from across Europe



An instructive case-study charted the course of Air Berlin



Personal bankruptcy was discussed in the fourth panel with great attention to detail



THE PANEL SET OUT A STRONG CASE FOR ADOPTING THE LATVIAN APPROACH TO LEGISLATION

that of protecting national substantive and procedural rules can put the judges in an unenviable position.

The final panel of the morning dealt with transaction avoidance provisions, an indispensable tool for insolvency practice, with Hans Renman (Hamilton Advokatbyrå, Sweden) and Rolef de Weijts (Houthoff, the Netherlands; Riga Graduate School of Law) setting out a comparison between the legislation in Germany, Latvia, Sweden and the United Kingdom. With the assistance of an impromptu group of experts: Veronika Sajadova (Latvia), Anne

Bach (Germany) and Paul Omar (United Kingdom), the panel set out a strong case for adopting the Latvian approach to legislation as a template for possible harmonisation.

The Technical Sessions: Friday afternoon

Following a commodious lunch, delegates reassembled for the first of three further panels, this time on personal bankruptcy. Moderated by Veronika Sajadova, the panellists, including Jan-Ocko Heuer (Humboldt University, Germany) and Pawel Kuglarz (Kuglarz and Partners, Poland), addressed personal bankruptcy

and discharge issues from a European-wide comparative perspective, as well as the critical criterion of good faith set at the heart of the discharge principle. With the assistance of very detailed and useful slides mapping out the various waves of consumer law reform across Europe, the panel suggested that, though consensus had yet to be achieved, the principle of discharges being available only to honest and deserving debtors, as in Polish and other laws, might become the norm for any future harmonisation initiative. Returning to the corporate arena, the panel that followed,



Questions from the audience were ably answered by the panels

“When you participate in the annual EECC Conference from year to year, you may get used to the other participants and even become friends with some of them.

But this time, the conference surprised me with a big number of new delegates mainly coming from abroad. Although it is hard to guess the reason of the attraction, I assume that it was due to the special, carefully-designed programme and the eminent speakers: judges, academics, politicians, insolvency practitioners, attorneys and other professionals.

Indeed, it was my great pleasure and honour to help host the conference in Riga on behalf of the Association of the Latvian Commercial Banks and the Latvian Foreign Investors’ Council. I would like to thank all panellists for their effort and significant input in making the conference in Riga such an achievement and a delight.”

Veronika Sajadova, Swedbank Latvia and INSOL Europe Technical Committee Co-chair



Opportunities abound for networking with fellow delegates



Many of the panels focussed on hot topics and local issues

moderated by Ernst Giese (Giese and Partner, Czech Republic) and consisting of Peeter Viirsalu (TGS Baltic, Estonia) and Edvins Draba (Sorainen, Latvia) gave a regional and practical flavour to proceedings through a case study centred on the restructuring of the automotive supplier “Sedis”, operating in both countries.

The last panel of the day turned to the subject of the underlying insolvency framework supporting the law. With moderation provided by Laila Medin (Deputy State Secretary on Sectoral Policy, Ministry of Justice, Latvia), the panellists focused on recent topical issues.

Under this broad umbrella, Helmut Jauja (FICIL, Latvia) discussed the recent changes to the practice qualifications framework in Latvia, while Niculina Somlea (CITR, Romania) looked at how criminal law affected the conduct of insolvency proceedings in Romania. The final element of the panel was provided by Paul Omar (Technical Research Coordinator, INSOL Europe), who gave an overview of challenges facing the insolvency law reform environment in emerging and developing countries.

Closing remarks

Closing remarks were delivered by Evert Verwey (EECC Co-Chair), who confirmed the utility of the day in helping participants share expertise and experience and looked forward to the next occasion in 2019.

To round off a long day of interesting and thought-provoking presentations, there then followed a traditional networking and drinks hour for all participants.

Finally, the Young Members’ Group usual networking meeting took place in the Skyline Bar of the hotel, affording these delegates convivial company and spectacular views over the city. ■



More photos from the event can be viewed on our website:
www.insol-europe.org/gallery/2018-riga-latvia