A restructuring plan sanctioned in England and Wales that modifies debt subject to German law has no effect in Germany

Recognition of UK restructuring plans remains a contentious issue in the European Union. This decision by the Frankfurt am Main Regional Court is controversial, but it raises questions about the consequences of the application of the rule in Gibbs by the courts of England and Wales in this context.

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The enforceability of UK restructuring plans outside the UK remains a highly debated issue. Following Brexit, recognition cannot be granted under Regulation (EU) 848/2015 on insolvency proceedings, which means that, within the EU, each Member State must apply its own domestic law (including applicable international conventions, if any).

In a decision dated 5 July 2025[1], the Frankfurt am Main Regional Court *(Landgericht Frankfurt am Main)* refused to recognise a restructuring

[1] ECLI:DE:LGFFM:2025:0705.2.12O239.24.00.

plan adopted under Part 26A of the UK Companies Act and sanctioned by the High Court of England and Wales. As a result, the German creditor, who had opposed the plan and was claiming a €50,000 debt in Germany, can enforce its claim in Germany, even though the plan had established a two-year moratorium (from November 2023 to November 2025). The claim arose from a German law-governed syndicated loan to a Luxembourg company. The loan agreement provided that the lenders could claim their share of the loan if there were grounds for disregarding a majority vote, which the court understood to be the case because the other creditors had violated the principle of unanimity for important decisions by voting in favour of the plan against the German creditor's opinion. The Frankfurt court's decision is not final.

The German court's arguments for not recognising the UK plan were essentially the following:

1. That from the perspective of German law, sanctioning of the plan could not be considered an insolvency-related decision because it did not affect all of the debtor's creditors, but only some of them. That being the case, the rule on recognition in insolvency matters, set out in Article 343(1) of the German Insolvency Code, did not apply, but rather Article 328 of the Civil Procedure, which is the general rule on the recognition of foreign judgments and requires reciprocity. The application of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters is ruled out because it was first replaced by Council Regulation (EC) No 44/2001 and then by Regulation (EU) No 1215/2012, which are only applicable in the Member States of the European Union, and Brexit has not "revived" the old Convention.

2. That the reciprocity required by German law requires proving to the court that, in a similar situation, England and Wales would have recognised the effects on its territory of a restructuring plan sanctioned by a German judge, and such proof has not been provided.

This decision has given rise to much commentary in scholarly writings and praxis dealing with cross-border insolvencies and restructurings. From the perspective of characterisation — as insolvency-related or otherwise — of the UK restructuring plan, the rigidity of the German judges is striking. English and Welsh case law has characterised its restructuring plans as an insolvency matter; furthermore, through its participation in Regulation (EU) 848/2015, Germany accepts the characterisation of restructuring plans to which not all creditors consent as an insolvency matter and regulates such pre-insolvency arrangements in its national legal system. The German court's interpretation of its rule on recognition in insolvency matters does not take into account the changing context in which it must be applied. Article 343(1) of the German Insolvency Code was drafted at a time when pre-insolvency had not been regulated in Germany and, as a result, only formal insolvency proceedings were considered for recognition. Once the former were regulated, the rule on recognition was not correspondingly amended, which has led to a lack of coordination between the substantive and private international law spheres, a failure that the court has not deemed it appropriate to overcome by way of interpretation.

Furthermore, it does not appear that the proof of reciprocity required by the provision

applied would have been possible, given the application by English and Welsh courts of 'the rule in Gibbs'. According to this rule, debt subject to UK law can only be varied or modified by a restructuring plan sanctioned in England and Wales and subject to UK law, so that foreign pre-insolvency arrangements seeking to modify such debt cannot be enforced. In this case, the High Court alters the terms of a debt governed by German law, but if, conversely, a German court were to modify debt governed by UK law, the effects in England and Wales would not be recognised.