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Kirkland Alert

Aggregate: German Court Refuses to Recognise UK Restructuring Plan

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At a Glance

The Frankfurt Regional Court refused recognition of the UK Part 26A restructuring plan (**RP**) for Aggregate/Project Lietzenburger, in a preliminary judgment.[1]

The judgment raises practical implications for European cross-border restructurings, especially those that seek to use a UK RP to compromise German law-governed debt, the obligations of German obligors or involve assets in Germany.

The Frankfurt court held that Aggregate's UK RP did not qualify for recognition under:

- the German Insolvency Code, as the RP lacked the requisite collective nature to qualify as an "insolvency proceeding";
- a pre-Brexit Convention, which was not "resurrected" on Brexit; or
- the German Code of Civil Procedure, owing to alleged inadmissibility of evidence regarding reciprocal recognition of German judgments in the UK.

However:

- this judgment is merely a preliminary ruling (subject to a further hearing) and is also being appealed by the defendant (i.e., the plan company);
- the judgment has no declaratory effect and is only an issue between the specific parties;
- there may be distinguishing factors and other potential avenues for recognition of future UK RPs (and schemes of arrangement) in Germany, as explored further below; and

- this ruling is German-specific; it should not impact the likelihood of recognition of UK RPs in other jurisdictions (at least, not directly).

Key Rulings

The court awarded the claimant a payment claim against the borrower and its guarantor, enforcing a senior loan claim under German law. It rejected recognition of the maturity extension (from November 2023 to 2025) pursuant to the UK RP, which was sanctioned by the English High Court in March 2024 after a shift of the guarantor's centre of main interests (COMI) to England; see our *Alert*.

The court explored the following routes to recognition of the RP in Germany:

- **The court rejected recognition as an insolvency proceeding (Sec. 343 InsO)**: The court found that the RP is not to be recognised as an insolvency proceeding within the meaning of the German Insolvency Code on the basis that the RP lacked collectivity, as it did not involve all creditors (in that it included financial creditors, but excluded other creditors such as trade creditors). The court did not address the COMI (shift) of the plan company, although we consider the "forum shopping" element of this case may have influenced the court's findings.
- **The court rejected recognition under 1968 Brussels Convention**: The court held this was superseded by the Brussels I Regulation (recast) and not revived post-Brexit, denying any residual applicability.
- **The court rejected recognition as a judgment (Sec. 328 ZPO)**: Recognition as a judgment under the German Code of Civil Procedure requires reciprocity (among other conditions) — i.e., the English courts would need to recognise equivalent German judgments. As a factual matter, the court found evidence regarding such reciprocal recognition inadmissible. As no evidence of English recognition of German restructurings was admitted, the requirement for reciprocity was rejected. Notably, the court did not (yet) discuss the "rule in *Gibbs*"[2] as a potential obstacle to recognition.

Noteworthy Aspects of the Judgment and Potential Limitations

For stakeholders considering UK RPs with a significant German angle, certain significant aspects should be taken into consideration, pending final resolution of this

issue by the German courts.

- **Nature of Frankfurt judgment**: This judgment was issued in a preliminary "documentary process" (*Urkundenprozess*), limiting evidence to documents only. The case will now advance to a full hearing allowing the parties to submit broader proof, including expert evidence. Additionally, the judgment is subject to appeal by the plan company.
- **Potential recognition as an insolvency proceeding**: Arguably, UK RPs ought to qualify as an insolvency proceeding — despite their (typical) lack of collectivity — because there are various European restructuring proceedings (e.g., StaRUG, WHOA) that also lack collectivity but are recognised as insolvency proceedings in Annex A of the European Insolvency Regulation. Additionally, Germany's Federal Court of Justice — the highest court — has given a broad meaning to "insolvency" (in the context of U.S. Chapter 11 proceedings).
- **Potential recognition as a judgment**: It can also be argued that, to satisfy the reciprocity condition, it is only necessary that some agreement in respect of recognition of judgments in civil and commercial matters be in place. This is the case between UK and Germany especially following the Hague Judgments Convention, which became effective between the EU and UK (among others) on 1 July 2025 (i.e., only after Aggregate's RP).

Alternate Routes to Recognition in Differing Scenarios (Assuming Judgment Is Upheld at Both Full Hearing and on Appeal)

The following alternate routes to recognition may be available.

- **Where debt is governed by English law**: The Rome I Regulation ensures that the discharge of debt generally follows the governing law of the relevant debt.[3] Hence, to the extent the RP validly modifies English law-governed debt with substantive effect, this should arguably be recognised by German courts under Rome I. In addition, recognition under Sec. 328 ZPO may apply as the reciprocity requirement may be satisfied given English courts should recognise a StaRUG plan compromising German law debt (this is the corollary of the "rule in *Gibbs*"). This should extend to cases where the governing law of the debt is changed to English law (as in e.g., *Apcoa*).
- **Where specific relevant basis for recognition applies: Hague Judgments Convention**: The Frankfurt court's ruling that Aggregate's RP was not an insolvency

proceeding should aid arguments that UK RP judgments are not excluded from the scope of the Hague Judgments Convention (as "insolvency, composition or analogous matters") — and therefore may be eligible for recognition and enforcement under the convention. However, eligibility for recognition and enforcement must be grounded in a specific basis, such as where defendants consented to the jurisdiction of the English court or the judgment ruled on contractual obligations performable in England. Recognition and enforcement would not extend to a judgment that rules on rights *in rem* over non-UK immovables (e.g., German security).

- **"Fully-collective" UK RP**: The Frankfurt court refused recognition of Aggregate's RP under the German Insolvency Code because it was not fully collective, as noted. Accordingly, this could be distinguished in future cases by making an RP fully collective i.e., including all creditors (and providing the plan company's COMI is in England). Following the logic of the Frankfurt judgment, this would allow modifying German law debt but not impairing German-sited rights *in rem* or immovable contracts. This could be done in practice by adding classes with minimal compromise (e.g., light-touch for vendors, cramdown if needed). However, it is unclear if it suffices that the specific RP is made fully collective given that it is often argued that collectivity should be assessed by reference to the legal framework and not by reference to the specific RP in question.

Implications

The Frankfurt judgment has various implications for market participants.

- Overall, stakeholders should anticipate heightened scrutiny in cross-border cases, prompting earlier legal due diligence on reciprocity evidence and alternative pathways to facilitate international recognition. This is also necessary as part of providing the English court with evidence that there is a reasonable likelihood of international recognition, which the English court requires in order to exercise its discretion to sanction an RP; that exercise will necessarily be more challenging following this ruling.
- While the ruling is preliminary and appealable, it signals a potential shift toward requiring stronger procedural safeguards, which could increase costs and timelines for pan-European restructurings. Creditors of Aggregate/Project Lietzenburger and other post-RP borrowers with a German angle should assess in detail what the Frankfurt judgment would mean if upheld by the competent courts. This especially applies for the validity of collateral securing new money made available in the restructuring.

- As to future restructurings, we expect that especially for EU-based debtors the importance of StaRUG proceedings as an implementation tool will significantly increase, especially in combination with a RP as a parallel proceeding.

For tailored advice on your restructuring, contact our team.

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1. LG Frankfurt am Main, 2-12 O 239/24, dated August 22, 2025 ↩

2. The English law "rule in *Gibbs*" provides that, where a contract specifies that it is governed by a particular country's law, it cannot be compromised or discharged by insolvency proceedings under a different law (stemming from the case of *Antony Gibbs & sons v La Société Industrielle et Commerciale des Métaux* (1890)) — unless the affected parties have taken part in the proceedings or otherwise submitted to them (e.g., by voting) or were present in the foreign jurisdiction when the proceedings were commenced. This effect was illustrated in *OJSC International Bank of Azerbaijan* (2018), when certain creditors with debts governed by English law did not participate in the Azeri restructuring proceeding and — based on the "rule in *Gibbs*" — successfully opposed the granting of a permanent moratorium (which would have effectively amounted to a permanent compromise of their claims). ↩

3. Art. 12(d) Rome I, respecting the party's choice of law under Art. 3 Rome I ↩

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