

**DE GRUYTER**

**2018 · VOLUME 15**

ISSN 1613-2548 · e-ISSN 1613-2556

# **EUROPEAN COMPANY AND FINANCIAL LAW REVIEW**

ONDERNEMINGSRECHT · RDS · RPS-TRV · REV. SOCIÉTÉS · RIV. SOCIETÀ · SZW · ZGR



BRUYLANT · DOTT. A. GIUFFRÈ EDITORE · EDITIONS DALLOZ ·  
KLUWER · SCHULTHESS · THOMSON ARANZADI

[www.degruyter.com/ecfr](http://www.degruyter.com/ecfr)

**EUROPEAN COMPANY AND FINANCIAL LAW REVIEW (ECFR)**

EDITED BY THE EDITORS OF THE „ZEITSCHRIFT FÜR UNTERNEHMENS- UND GESELLSCHAFTSRECHT“ (ZGR)  
THE ZGR WAS FOUNDED BY MARCUS LUTTER AND HERBERT WIEDEMANN

**EDITORIAL BOARD**

- Pierre-Henri Conac, Professeur, Université du Luxembourg, pierre-henri.conac@uni.lu (Managing Editor)  
Paul Davies, Professor, London School of Economics and Political Science, paul.davies@law.ox.ac.uk  
Yves De Cordt, Professeur, Université catholique de Louvain, yves.decordt@uclouvain.be  
José M. Embid Irujo, Profesor, Universidad de Valencia, Jose.M.Embido@uv.es  
Luís Fernández de la Gándara, Profesor, Universidad de Alicante, Luis.f.delagandara@gmail.com  
Guido Ferrarini, Professore, Università di Genova, Guido.Ferrarini@unige.it  
Holger Fleischer, Professor, Max Planck Institute for Comparative and International Private Law, Hamburg (Managing Editor)  
Heribert Hirte, Professor, University of Hamburg, heribert.hirte@jura.uni-hamburg.de (Chief Managing Editor)  
Peter Hommelhoff, Professor, University of Heidelberg, Heidelberg  
Klaus J. Hopf, Professor, Max Planck Institute for Comparative and International Private Law, Hamburg  
Susanne Kals, Professorin, Wirtschaftsuniversität Wien, Susanne.Kals@wu.ac.at  
Maarten J. Kroese, Professor, Erasmus University Rotterdam, kroese@frg.eur.nl (Managing Editor)  
Hanno Merkt, Professor, University of Freiburg, Freiburg (Managing Editor)  
Christoph Teichmann, Professor, University of Würzburg, teichmann@jura.uni-wuerzburg.de (Chief Managing Editor)  
Isabelle Urbain-Parleani, Professeur, Université Paris V (René Descartes), isabelle.parleani@wanadoo.fr  
Hans Caspar von der Crane, Professor, University of Zurich, hancaspar.vondercrone@vondercrone.ch  
Marco Ventoruzzo, Professor, Bocconi University and Penn State School of Law,  
marco.ventoruzzo@unibocconi.it (Managing Editor)  
Marieke Wyckaert, Professor, University of Leuven, marieke.wyckaert@law.kuleuven.be

The journal is edited in co-operation with Ondernemingsrecht, Schweizerische Zeitschrift für Wirtschafts- und Finanzmarktrecht, Revista de Derecho de Sociedades, Revue des sociétés, Rivista delle società, Revue pratique des sociétés - Tijdschrift voor rechtspersoon en vennootschap and other European company law journals.

**CHIEF MANAGING EDITORS**

Prof. Dr. Heribert Hirte, University of Hamburg, Rothenbaumchaussee 33, D-20148 Hamburg

Prof. Dr. Christoph Teichmann, University of Würzburg, Domerschulstraße 16, 97070 Würzburg,  
Germany, Fax: +49/931/31-82980, Email: ecfr@jura.uni-wuerzburg.de

Please address manuscripts to Christoph Teichmann, who acts on behalf of the editorial board.

**JOURNAL MANAGER** Jana Kuchta, De Gruyter, Genthiner Straße 13, 10785 Berlin, Germany,  
Tel.: +49 (0)30 260 05 – 228, Fax: +49 (0)30 260 05 – 250, Email: jana.kuchta@degruyter.com

**RESPONSIBLE FOR ADVERTISEMENTS** Claudia Neumann, De Gruyter, Genthiner Straße 13,  
10785 Berlin, Germany, Tel.: +49 (0)30 260 05-226, Fax: +49 (0)30 260 05-264,  
Email: anzeigen@degruyter.com

All rights reserved, including those of translation into foreign languages. No part of this journal  
may be reproduced or transmitted in any form or by any means, electronic or mechanical, including  
photocopy, recording, or any information storage or retrieval system, without permission in writing  
from the publisher.

ISSN 1613-2548 · e-ISSN 1613-2556

All information regarding notes for contributors, subscriptions, Open access, back volumes and  
orders is available online at [www.degruyter.com/ecfr](http://www.degruyter.com/ecfr).

© 2018 Walter de Gruyter GmbH, Berlin/Boston

**SATZ** jürgen ullrich typosatz, Nördlingen

**PRINTING** Franz X. Stückle Druck und Verlag e.K., Ettenheim



## Table of Contents

BORK, REINHARD: Debt Restructuring in Germany . . . . .	503
CEBRIÁ, LUIS HERNANDO: The Spanish and the European Codification of the Business Judgment Rule . . . . .	41
DE WEIJS, R.J.: Harmonization of European Insolvency Law: Preventing Insolvency Law from Turning against Creditors by Upholding the Debt–Equity Divide . . . . .	403
HABERSACK, MATHIAS: Non-frustration Rule and Mandatory Bid Rule – Cornerstones of European Takeover Law? . . . . .	1
HACKER, PHILIPP and THOMALE, CHRIS: Crypto-Securities Regulation: ICOs, Token Sales and Cryptocurrencies under EU Financial Law .	645
HALLEMEESCH, NICK: Self-Dealing by Controlling Shareholders: Im- proving Minority Protection in Light of Article 9c SRD . . . . .	197
HOWELL, ELIZABETH: An Analysis of the Prospectus Regime: The EU Reforms and the 'Brexit' Factor . . . . .	69
KINANDER, MORTEN: The Norwegian Model for Access to the European Financial Markets: The Principles and Practicalities of the EEA States' Solution to the Passporting Issue in Light of Brexit . . . . .	236
MANGANO, RENATO: Path Dependence and Paradox in Harmonizing Out-of-court Procedures across Europe. The Evidence from Italy .	615
MIKALONIENE, LINA: Small Partnership Company Form as a Vehicle for Small and Medium-sized Businesses in Lithuania: Is the Theoretical Model Effective in Practice? . . . . .	101
MINTO, ANDREA: Banking Crisis Management, Recovery and Resolution Planning, and "New Governance" Theory: Approaching "Living Wills" as a Public-Private Collaborative Form of Regulation .	772
MUCHA, ARIEL and OPLUSTIL, KRZYSZTOF: Redefining the Freedom of Establishment under EU Law as the Freedom to Choose the Applicable Company Law: A Discussion after the Judgment of the Court of Justice (Grand Chamber) of 25 October 2017 in Case C-106/16, Pol- bud . . . . .	270
MUKWIRI, JONATHAN: Protectionism and the EU Market for Corporate Control: Is It Possible to Get the Best of Both Worlds? . . . . .	308
MOSCA, CHIARA: Director–Shareholder Dialogues Behind the Scenes: Searching for a Balance Between Freedom of Expression and Market Fairness . . . . .	805
PATERSON, SARAH: Reflections on English Law Schemes of Arrangement in Distress and Proposals for Reform . . . . .	472

PAYNE, JENNIFER: Debt Restructuring in the UK . . . . .	449
PICCIAU, CHIARA: The Evolution of the Liability of Credit Rating Agencies in the United States and in the European Union: Regulation after the Crisis . . . . .	339
SENG, WEE MENG: The Singapore Story of Injecting US Chapter 11 into the Commonwealth Scheme . . . . .	553
SKAURADSZUN, DOMINIK: Legal Protection against Decisions of the Single Resolution Board pursuant to Article 85 Single Resolution Mechanism Regulation . . . . .	123
SZABÓ, DÁNIEL GERGELY and SØRENSEN, KARSTEN: Corporate Governance Codes and Groups of Companies: In Search of Best Practices for Group Governance . . . . .	697
TIRADO, IGNACIO: Scheming against the Schemes: A New Framework to Deal with Business Financial Distress in Spain . . . . .	516
VAROTTIL, UMAKANTH: The Scheme of Arrangement as a Debt Restructuring Tool in India: Problems and Prospects . . . . .	585
Vos, TOM: ‘Baby, it’s cold outside ...’ – A Comparative and Economic Analysis of Freeze-outs of Minority Shareholders . . . . .	148
WYMEERSCH, EDDY: Brexit and the Provision of Financial Services into the EU and into the UK . . . . .	732