

**INSOLVENCY  
LAW**  
LAWYER  
OF THE YEAR

# Romain Sabatier

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In this insightful interview, we are joined by Romain Sabatier from NautaDutilh, a seasoned expert in the field of insolvency law. With his deep knowledge and experience, Romain discusses the evolving future of insolvency law in the context of global financial challenges, including the unique aspects of handling cases in the Benelux region. He delves into the complexities of cross-border insolvencies, the increasing role of technology in legal processes, and the delicate balance between creditor rights and business rehabilitation. This conversation promises to shed light on the significant developments in insolvency law and the impact of recent global events like the COVID-19 pandemic and fluctuating Euro-zone inflation rates on the practice. Join us for a comprehensive exploration of these critical issues with a leading expert in the field.

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*“Effective insolvency laws should aim to protect the legitimate interests of creditors while fostering an environment that encourages the rescue of viable businesses.”*

**Q How do you see the future of insolvency law evolving, especially in the context of global financial challenges?**

Insolvencies are an important issue for the European economy. Companies are incorporated in international groups, apply various corporate governance rules and have access to capital in the global financial markets. Funds play an increasing role in many European jurisdictions (let alone in Luxembourg) by investing in debt or equity in many of these companies, which must adapt continuously to a changing business environment: globalisation, relocation of businesses, financial crisis, wars and unexpected market disruptions, new regulations, which in turn increase the risk of financial difficulties. These difficulties in a globalized economy are much harder to overcome and cure because cases are more intricate and complex to handle. I truly believe insolvency and restructuring will play a pivotal role in the coming years. It is a general trend that we see and that is also in line with the expectations of the OECD. You will notice that insolvency laws have recently been modernised in most EU Member States and also in the UK, Japan and Singapore. Luxembourg was one of the last Member States to do so but it now has a new toolbox which we hope to be an attractive alternative for funds and companies undertaking large restructurings.

**Q Compared to other jurisdictions, are there specific challenges or nuances in dealing with insolvency cases in the Benelux region?**

Because of the close geographical proximity and economic integration of the Benelux countries, cross-border insolvency cases are not uncommon. Of course, the EU Insolvency Regulation has helped a lot in providing a framework and adequate tools for dealing with cross-border insolvencies within those countries, but challenges may still arise in practice.

Cultural and business practices vary among the Benelux countries, influencing how insolvency cases are approached and resolved. Understanding these nuances is crucial for practitioners and stakeholders involved in insolvency proceedings. Not to mention that each country has its own rules and practices regarding debt recovery and creditor rights or the avoidance of preferred transactions, although they tend to have been harmonized over

the years. Understanding the specifics of these rules is crucial to navigate the potential challenges associated with debt recovery and preference actions in the Benelux region. Differences in court systems and legal traditions can also impact the efficiency and predictability of insolvency proceedings. This is precisely where our dedicated Benelux FR&I Team can have real added value for our clients as they know their respective markets like the back of their hand and are used to working together in a streamlined fashion across our three core jurisdictions.

**Q How do you approach cross-border insolvency cases? Are there specific principles or strategies that you consistently apply?**

Handling cross-border insolvency cases requires a careful and strategic approach due to the complexity of navigating through different legal systems, private international law considerations, and conflicts of law issues, not to mention different languages and court procedures across jurisdictions. In my experience, it is crucial to conduct an early assessment of the situation to understand the scope of cross-border issues. Identify the jurisdictions involved, the applicable laws, and potential conflicts in order to develop a comprehensive strategy to address these issues. Then it is critical to identify and protect assets across borders to prevent dissipation or loss when we act on the creditor side, which is typically the case. This may involve obtaining court orders, freezing assets, or collaborating with local authorities to secure the debtor's estate.

**Q How do you view the role of technology in insolvency law? Do you think tools like AI and data analytics are changing the landscape?**

The role of technology, including tools like AI and data analytics, in insolvency law is evolving and has indeed the potential to significantly impact the landscape. Technology can allow for more efficient and comprehensive data management, helping in due diligence processes during insolvency proceedings, and analyze large volumes of financial and operational data to identify patterns, trends, and potential areas of concern. On the debtor side, some AI tools can provide predictive analytics, helping stakeholders anticipate financial distress or bankruptcy risks, allowing for proactive measures to be taken to mitigate the impact.

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## **Q With your experience, what's your perspective on balancing creditor rights and the potential for business rehabilitation?**

Balancing these two is a critical but delicate aspect of insolvency laws. Creditor rights are fundamental to the functioning of financial markets and economic systems. Creditors have a legitimate expectation to be repaid for their claims. On the other hand, business rehabilitation is increasingly recognized as a desirable goal in insolvency proceedings. The OECD and the World Bank have been campaigning for years for a general enhancement of insolvency frameworks to support economic renewal and growth. Business rehabilitation can be beneficial not only for the debtor but also in the interest of creditors. A successful rehabilitation will result in higher returns for creditors compared to a liquidation scenario. For most policymakers and legislators, effective insolvency laws should aim to protect the legitimate interests of creditors while fostering an environment that encourages the rescue of viable businesses, thus promoting economic sustainability. That was clearly the goal of the EU Directive of 2019 on preventive restructuring frameworks.

## **Q Are there any recent developments or changes in insolvency law that you believe are particularly significant for businesses to be aware of?**

Indeed. Luxembourg recently passed the long-awaited act on business preservation and modernisation of bankruptcy law on 19 July 2023, implementing EU Directive 2019/1023 of 20 June 2019. It became live on November 1st and contains a whole new toolbox of preventive reorganisation procedures, notably (i) conservatory measures (ii) an out-of-court reorganization procedure by mutual agreement and (iii) three judicial reorganisation proceedings with a possibility to cram down dissenting creditors in certain circumstances at a very low threshold, which was a missing feature in Luxembourg proceedings until now.

## **Q In what ways do you think the COVID-19 pandemic and, more recently, high Euro zone inflation rates have influenced or will continue to influence insolvency practices and procedures?**

Some businesses have accumulated higher levels of debt to weather the economic challenges brought about by the pandemic and inflation can now impact debt dynamics, especially if interest rates keep rising. High inflation will necessitate debt restructuring for businesses struggling with increased borrowing costs. During the pandemic, creditors have been more willing to negotiate and collaborate with debtors to facilitate business rehabilitation. We see this has also been the case when inflation hit last year, which may be one of the reasons we have not seen this wave of restructuring work that everyone's been predicting since COVID-19. Albeit inflation has slowed in many countries, persistent inflation may, however prompt policymakers to revisit insolvency laws to address new challenges arising from increased costs and financial stress on businesses just like they did during the pandemic.

## **Q Finally, what are some of the critical challenges and opportunities you see for insolvency law practitioners in the coming years?**

In terms of challenges, I would say ongoing economic uncertainties and high levels of debt on top of the list. We should not also underestimate the increasing focus on ESG considerations, which may introduce new factors into insolvency proceedings, requiring practitioners to navigate these complex and evolving standards. On the opportunity side, I believe that new technological advancements will present opportunities to enhance efficiency in case management, data analysis and communication, potentially leading to more effective outcomes. We have also seen the development of alternative financing models, such as debtor-in-possession financings, which can be an opportunity to seize.

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