

# Save the date!

March 6, 2020 // TLC // Frankfurt // Institute for Law and Finance + Pre-Conference Young Professionals // European Central Bank





# **See you in Frankfurt!** Join the Transatlantic Legal Conference 2020



Our Transatlantic Legal Conference is the revamped and more focused version of our traditional Working Group Day (Fachgruppentag). The Transatlantic Legal Conference is – alongside the Annual Conference – the flagship event of the DAJV and open to all interested persons. It is co-organized by the DAJV working groups, which are forums that foster an intellectual and practical exchange among lawyers from all professions. The working groups present and discuss current topics and cases of transatlantic relevance with recognized experts from the US and Germany. Our four working groups cover the following areas of law: 1) Arbitration/Litigation/Mediation, 2) Antitrust/Regulated Industries/Media, 3) Constitution/Legislation/Public Law and 4) Mergers & Acquisitions. Each DAJV member may become a member of one or more working groups. The event concludes with a festive dinner, along with a dinner speech by a special guest.





Christian A. Krebs Coordinator of DAJV Working Groups



# **Program** March 6, 2020 // Frankfurt // Institute for Law and Finance

**Pre-Conference Young Professionals** (10.00 a.m. -12.00 p.m.) Big data analytics and artificial intelligence in central banking: Legal challenges to face and overcome **Venue:** European Central Bank

Transatlantic Legal Conference with panel sessions of DAJV Working Groups:

**Session I** (2.30 p.m. - 4.00 p.m.) **ALM (Arbitration, Litigation, Mediation)** Cyber-attacks in International Arbitration: Are proceedings safe from prying eyes?

#### ARIM (Antitrust, Regulated Industries, Media)

Dominant digital platforms – Do we have the right tools to control certain (undesirable) developments?

#### M&A (Mergers & Acquisitions)

This time the other way around? Is the US Business Roundtable copying corporate governance principles from good old Europe?

Session II (5.00 p.m. - 6.30 p.m.) ALM (Arbitration, Litigation, Mediation) The draft EU Representative Actions Directive: US-Style Class Actions in the Making?

#### **CLPL (Constitution, Legislation, Public Law)** Constitutional democracy in the field of artificial intelligence (AI)

#### M&A (Mergers & Acquisitions)

The new normal of W&I and R&W insurance – Panacea for Dealmakers or Risky Business?

### Timeline

- 1.30 p.m. Check-In
- 2.15 p.m. Welcome Remarks
- 2.30 4.00 p.m. Session I
- 4.00 p.m. Coffee Break
- 5.00 6.30 p.m. Session II
- 6.30 p.m. (end 10.00 p.m.) Reception & Dinner

## **Pre-Conference** (10.00 a.m. - 12.00 p.m.) Big data analytics and artificial intelligence in central banking: Legal challenges to face and overcome

It is no longer a secret that big data analytics and artificial intelligence have become a driving force for innovation and decision making, affecting multiple facets of today's economic and financial activities. The information provided by the new techniques is more complete, immediate and granular than traditional macroeconomic indicators. An increasing number of central banks, such as the ECB and the US Federal Reserve, have launched specific big data and AI initiatives to explore these issues. The adoption of those emerging technologies, however, raises legal questions concerning data protection and privacy laws in particular with regards to transborder data flows between the US and the EU. We invite you to discuss these issues with legal and economic advisors at the European Central Bank!



## **ALM** (Session I, 2.30 p.m. - 4.00 p.m.) Cyber-attacks in International Arbitration: Are proceedings safe from prying eyes?

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Is there any safe space from cyber-attacks? Anyone in Germany who was inclined to answer "yes", most likely changed his viewpoint when the cities of Bad Homburg and Frankfurt were forced to shut down their IT network following an infection with the Emotet malware on December 19, 2019. In recent years there has been a dramatic increase in cyber-attacks on corporates, governments and international organizations. There is no reason to assume that information collected, shared and used in an arbitration is immune from the threat a targeted or opportunistic attack. Is the world of arbitration sufficiently prepared? Who should take the lead in preventing cyber intrusions? Parties, counsel, arbitrators or arbitral institutions?

The International Council for Commercial Arbitration ("ICCA"), the New York City Bar Association ("NYC Bar") and the International Institute for Conflict Prevention and Resolution ("CPR") have introduced best practice suggestions for cyber security in international arbitration on November 21, 2019, the 2020 Cybersecurity Protocol for International Arbitration. How does the arbitral community evaluate this Protocol? These are just some of the issues we intend to discuss on March 6, 2020.



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### **ARIM** (Session I, 2.30 p.m. - 4.00 p.m.) Dominant digital platforms – Do we have the right tools to control certain (undesirable) developments?

Dominant digital platforms are not dreams of the future; they are today's reality. However, do we have the right tools to control certain (undesirable) developments?

We want to examine this overarching question from an antitrust and data protection law point of view. How do the German, European and U.S. legal systems deal with platform operators?

How are different national views on antitrust issues affecting platform operators? Is there a reliable damage theory? Is antitrust law the better data protection/privacy law?



### **M&A** (Session I, 2.30 p.m. - 4.00 p.m.) This time the other way around? Is the US Business Roundtable copying corporate governance principles from good old Europe?

In its recent corporate governance proposal the Business Roundtable called for a commitment to long-term sustainable economic value creation. This has prompted a vigorous debate on the optimal corporate governance model. While some are insisting that changes in corporate governance are constrained by an imperative to maximize shareholder value, others believe that effective reform requires prescriptive regulation. There are also alternative solutions being proposed, reimagining corporate governance as a cooperative exercise among the corporate stakeholders.

Join our working group session to discuss the state of play of this exciting debate and its impact on cross-border dealmaking.



## **ALM** (Session II, 5.00 p.m. - 6.30 p.m.) The draft EU Representative Actions Directive: US-Style Class Actions in the Making?

On November 28, 2019, the Council of the EU reached agreement on a draft directive on representative actions for the protection of the collective interests of consumers. The proposed legislation is highly controversial. Business groups have expressed concern that the directive could lead to a spate of litigation and 'forum shopping', as groups and their lawyers bring cases in different EU countries to maximise their chances of winning their cases and getting compensation. Are these fears justified? Is the draft close to final or does it need a complete revision? Discuss with us and our renowned panelists!



## **CLPL** (Session II, 5.00 p.m. - 6.30 p.m.) Constitutional democracy in the field of artificial intelligence (AI)

Artificial Intelligence (AI) no longer merely plays a role in industry 4.0, but it also influences our everyday lives, our society as a whole and our political systems. The working group Constitution, Legislation, Public Law will look at how AI challenges our constitutional democracy. The panel will address the question of how this new technology must be devised to support the maintenance of and strengthen our constitutional democracy. How can ethical rules for AI safeguard democracy and to what extent are enforceable laws and regulations necessary to protect our constitutional systems? Is there a need to incorporate democratic principles, i.e. the rule of law and human rights to govern the technology of Artificial Intelligence?



## **M&A** (Session II, 5.00 p.m. - 6.30 p.m.) The new normal of W&I and R&W insurance – Panacea for Dealmakers or Risky Business?

In the last decade, the use of W&I insurance in M&A transactions has become a well-known and often used instrument in the toolbox of M&A practicioners in Europe. The US market has caught up in recent years and meanwhile also regularly uses R&W insurance – as it is usually referred to there – as a means to facilitate M&A deals. We will introduce key concepts and differences between the European and US M&A insurance markets and new trends and innovations to look out for. The panel will also discuss how insurances handle claims in practice and how this compares to traditional claims made against the seller. Finally, we will explore the question whether the pricing of M&A insurers is viable in the long term and whether the replacement of seller liability by insurance liability really awards the buyer the same standard of protection.



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