## Desk research on the transposition of the Directive by some EU Member countries with particular attention to the project partners' countries

**15/12/2023**

**Draft of questions to be considered in the analysis**

1. Has the Member State transposed "Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, discharge of debt, and measures to increase the efficiency of restructuring, insolvency, and discharge procedures and amending Directive (EU) 2017/1132 (Restructuring and Insolvency Directive)"? (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1023)

   NO

2. If no, what does national legislation provide regarding any obligations (within companies) related to monitoring the company's economic and financial situation and **business continuity** (*1 - Technical Glossary*)?

   Bankruptcy Laws of the Republic of Srpska and Federation of Bosnia and Herzegovina (separate laws for 2 entities). This form will focus on the Bankruptcy Law of the Republic of Srpska.

3. According to national regulations, specify which **economic entities** (*2 - Technical Glossary*) **can be subjected to the bankruptcy procedure** (*3 - Technical Glossary*) and **which economic entity cannot be subjected to the bankruptcy procedure** (4 - Technical Glossary).

   As per the Bankruptcy Law of the RS, the restructuring procedure and the bankruptcy procedure can be carried out over the property of a legal entity and the property of an individual debtor, who is a general partner in a limited partnership and a founder of a partnership.

   Small entities that do not have the status of a legal entity (such as small entrepreneurs) cannot be subject to the bankruptcy procedure as described in the Bankruptcy Law. The law that would regulate personal bankruptcy has been on hold in Bosnia and Herzegovina for over 10 years.

4. In the context of a **business crisis** (*5 - Technical Glossary*), are there different procedures to apply if the economic entity (not an individual) falls into the category of businesses that can be subjected to the bankruptcy procedure rather than to the category of businesses that cannot be subjected to the bankruptcy procedure? If yes, please specify these procedures.

   Yes, there is a restructuring procedure, which is carried out for the purpose of regulating the debtor's legal position and his relationship with creditors, and with the aim of continuing his activities. The restructuring procedure can be opened if it is established that there is a threat of insolvency and if the debtor is late in paying the assumed financial obligations by up to

60 days. Threatening insolvency exists if the debtor will not be able to settle the assumed payment obligations upon maturity in the next 12 months according to the maturity plan.

The restructuring procedure can last up to 5 months, and the aim is to produce a financial and operational restructuring plan that contains:

1) facts and circumstances from which the existence of assumptions for the opening of the restructuring procedure emerges,

2) the amount of the lack of liquid assets determined based on financial statements,

3) measures of financial restructuring and operational determination of their effects on the lack of liquid assets, profitability of operations and elimination of insolvency,

4) business plan for the current year and at least the next two calendar years, with a detailed explanation of each position of the plan,

5) balance sheet as of the last day of the period for which the business plan is drawn up,

6) analysis of claims according to size, category (employee claims, exclusive rights, separate rights and other claims), level of expected settlement and proposed deadlines for their settlement,

7) the debtor's offer to creditors on the method, terms and conditions of settlement of claims,

8) calculation of restructuring costs.

5. Has the State established (or delegated to national bodies) a set of **early warning indicators** (*6 - Technical Glossary*) to monitor business crises? If yes, please provide a brief description of them.

   Yeas, there is one main indicator: threatening insolvency exists if the debtor will not be able to settle the assumed payment obligations upon maturity in the next 12 months according to the maturity plan.

6. Is it possible to carry out a preventive restructuring process (*7 - Technical Glossary*)? If so, please indicate who is responsible for initiating it (e.g., the entrepreneur or other parties).

   Yes, as described in the point 4. The restructuring procedure is initiated at the proposal of the debtor (the entrepreneur) or at the proposal of the creditor if the debtor agrees with that proposal. If the creditor submits a proposal for initiating the restructuring procedure, he is obliged to submit the consent of the debtor along with the proposal.

7. What are the national bodies responsible for overseeing the preventive restructuring process related to a business crisis? Describe the tasks of these bodies.

   The national bodies involved in the restructuring procedure are the Court and the trustee. The court examines the admissibility of the proposal for opening the restructuring procedure

within eight days from the date of submission, and decides whether to start the procedure or not.
The trustee is appointed by the Court from the list of bankruptcy trustees, taking into account the number of restructuring proceedings, i.e. bankruptcy proceedings in which he has already been appointed. The trustee's obligations are to:

1) examine the state of the debtor's property and operations,

2) prepare a list of creditors' claims, enter them into the table of reported claims and submit them to the court together with the received claims reports and attachments for publication on the court's notice board, the court's electronic board, in the "Official Gazette of the Republic of Srpska" and on the APIF website (https://www.apif.net/), within eight days from the date of expiry of the claim reporting deadline,

3) make a list of the employees of the bankrupt debtor and calculate their claims in accordance with the regulations and inform them of the amount of claims entered in the table of reported claims,

4) publish a written statement on the reported claims of debtors and trustees, within eight days from the date of expiry of the deadline for submitting a written statement on reported claims,

5) submit to the court the collected documentation related to the creditors' claims within eight days from the date of expiry of the period in which the creditors can dispute the reported claims,

6) publish the documentation that arrives later,

7) make a statement about claims, i.e. whether he considers the claim report founded or disputes the report, as well as the reasons for disputing the report, and to enter data in the table of reported claims,

8) disputes the claims if, based on the creditors' announcement or for some other reason, he suspects their existence,

9) supervises the debtor's operations, and especially the debtor's financial operations, the creation of obligations towards third parties, the issuance of means of payment insurance, operations in the sale of goods, i.e. services, making sure that the debtor's property is not damaged,

10) carry out an assessment of the degree of settlement of creditors in the event that bankruptcy proceedings have been conducted against the debtor,

11) gives an opinion on whether the conditions for the conclusion of the restructuring procedure and the feasibility of the restructuring procedure in practice have been met,

12) hires an auditor or another expert if necessary,

13) submit a complaint to the court if the debtor acts contrary to the provisions of this law,

14) supervises the timeliness and completeness of settlement of the costs of the restructuring procedure.

8. What is the preventive restructuring tool (or tools) adopted by the State? Please provide a brief description.

   The goal of the restructuring process is to financially and operationally restructure the debtor (the entrepreneur). Financial and operational restructuring is a procedure conducted by the court with the aim of agreeing with creditors and the bankrupt debtor on the method of settling creditors' claims to improve the debtor's liquidity and eliminate his bankruptcy.

   The restructuring procedure is initiated at the proposal of the debtor (the entrepreneur) or at the proposal of the creditor, and is examined by the Court. Then, the report on the debtor's financial and operational position is drafted, and based on that the financial and operational restructuring plan is submitted to the Court, which then decides whether to go forward with the restructuring or not.

   If the restructuring process is approved by the Court, the creditors of the entity are informed and asked to submit proof that they have receivables to claim from the entity.

   According to the financial and operational restructuring plan, the creditors are paid off.

9. At what stage of the preventive restructuring process and in what manner does the judicial authority (**Court Approval**) intervene (*8 - Technical Glossary*)?

   The court is first involved when the financial and operational restructuring plan is submitted to the Court.

   The legal consequences of the opening of the restructuring procedure occur at the moment of publication of the decision on the opening of the restructuring procedure on the notice board of the court.

   The legal consequences of the opening of the restructuring procedure occur for all the creditors' claims against the debtor that arose before the opening of the procedure.

10. In how much time should the preventive restructuring process be implemented and closed?

    The restructuring process should be closed in 5 months from its start. In justified cases, the deadline can be extended by the Court by a maximum of 90 days.

**Sources:**

Bankruptcy Law of the Republic of Srpska, *Official Gazette of the Republic of Srpska,* no. 16/2016

Law on the Bankruptcy of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina,* no. 53/21

## Technical Glossary

1. **Business Continuity**: it represents the usual operation of a business. The company is normally considered capable of continuing its operations in the foreseeable future. Business continuity is a fundamental prerequisite, as it allows the company to continue to exist and operate in a normal situation, carrying out the activities for which it was created.
2. **Economic Entity**: an economic entity refers to the entity to which rights and obligations arising from the exercise of economic activities are attributed.
3. **Economic Entity subjected to the bankruptcy procedure**: it represents an economic entity that exceeds the insolvency thresholds imposed by national law, and therefore, if the entity is in an insolvency state, it runs the risk of being declared bankrupt.
4. **Economic Entity not subjected to the bankruptcy procedure**: it represents an economic entity that is below the insolvency thresholds imposed by national law, and therefore, even if the entity is in an insolvency state, it cannot be declared bankrupt. Thus, bankruptcy procedures do not apply to this category of entities.
5. **Business Crisis**: an enterprise is considered to be in a state of crisis when it is no longer able to pursue the "purposes" for which it was created due to economic losses.
6. **Early Warning Indicators**: a set of economic and financial indices used to identify a potential business crisis.
7. **Preventive Restructuring**: measures that aim to restructure the activities of the debtor, including modifying the composition, terms, or structure of the debtor's assets and liabilities or any other part of the debtor's capital structure, such as the sale of assets or parts of the business, and, if provided for by national law, the sale of the business as a going concern, as well as any necessary operational changes or a combination of these elements.
8. **Court Approval**: it represents a safeguard for compliance with the agreement reached through mediation among all parties involved in the recovery process, especially in cases where one party does not adhere to the terms and conditions of the agreement. When the court intervenes, the effects of the recovery plan become binding on all parties.