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

14/12/2023

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)"?**
    - Yes
    - No

Law No. 43/2022 "For the development of micro, small and medium enterprises" is partially aligned with the recommendation of the EU Commission of May 6, 2003 regarding the definition of micro, small and medium enterprises (Official Notice L 124, 20/05/2003 P. 0036 – 0041).
<u>According to this Law :</u>

1. SMEs are the enterprises in which less than 250 people are employed and realize a total annual balance not greater than 250 million ALL.
2. A small enterprise is considered an enterprise with less than 50 employed persons, which has a total annual balance not exceeding 50 million ALL.
3. A micro-enterprise is considered an enterprise with less than 10 employed persons, which has a turnover or total annual balance not exceeding 10 million ALL.
4. A medium-sized enterprise is considered an enterprise with 50 up to 249 employed persons, which has a turnover or a total annual balance from 50 million ALL to 250 million ALL.

On insolvency, Albania stated that its legislative framework was partially aligned with the EU acquis. Albania has a National Insolvency Agency.

2. **If not, 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*)?**

In the article 119 of law for insolvency no. 110/2016 "For Insolvency" is a specified article regarding the obligation the companies for monitoring the economic and financial situation:

1. Unless otherwise specified, the supervisory administrator prepares an annual report on the progress of the implementation of the plan and files it with the bankruptcy court for consultation with creditors.
2. If there is no supervisory administrator, this duty is assigned to the debtor.
3. Creditors and the bankruptcy court have the right to request, at any time, additional information on the progress of the plan.

Albania's example demonstrates how banks can complement public institutions in assessing companies' financial situations.

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).**

   In case the debtor is a legal entity, any member of the decision making body/ies is obliged to file for bankruptcy within 60 days from the day he/she becomes aware, or should have been aware, of the state of insolvency. By the definition provided in the Bankruptcy Law, the state of insolvency will be considered to be any state where the debtor is unable to pay its obligations in due time and/or a financial situation when the total value of the obligations of the debtor exceeds the total value of its assets. Meanwhile, banks, insurance companies, pension funds and mutual funds can not be subject to bankruptcy procedure.

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.**

<u>The Bankruptcy Law provides for two main procedures:</u>

1. a reorganization of the activity of the debtor's business concluded between the debtor and its majority creditors, voting in groups according to their rights and financial interests.

The initiation of a bankruptcy proceeding requires the filing of a request which must be approved by the Bankruptcy Court. As mentioned in question 1.2. above, the Bankruptcy Law provides for two options of reorganization:

   1. a reorganization proceeding;
   2. a fast-track reorganization proceeding.
   3. In cases when a reorganization is not possible, the liquidation of assets is performed.

2. settling the debtor's obligations through the liquidation of the debtor's business and assets.

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.**

The economy's early warning infrastructure remains undeveloped. The central bank publishes data from different banks on blocked accounts of entrepreneurs on its website, allowing financially distressed companies to be identified before they file for bankruptcy. In addition, Article 104 of Law no.9920 dated 19.05.2008 "On Tax Procedures", as amended ('Tax Procedure Law') relates to the right of the tax office to initiate the insolvency proceedings for taxpayers registered in the form of commercial companies. Tax administration shall request the start of insolvency proceedings for taxpayers (registered in the form of commercial companies) in the following cases:

   1. Where for 2 (two) years the company has been registered by the National Registration Center ('NRC') as under a passive status;
   2. When the tax liabilities of this taxpayer are declared as uncollectible;
   3. Where a company declares losses of its own capital for at least 3 (three) consecutive years;
   4. Where the company has not carried out any commercial activity for a time period of at least 2 (two) years from the effective date of this law;

5. Where the company has unpaid liabilities towards the tax administration for at least 2 (two) years from the effective date of this law.

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).**

When it comes to preventive measures, Albania has made no major progress since the last assessment. The economy's early warning infrastructure remains undeveloped. The central bank publishes data from different banks on blocked accounts of entrepreneurs on its website, allowing financially distressed companies to be identified before they file for bankruptcy. However, the system does not currently allow enough time or information for a customized reorganization. The regulations oblige the central bank to publish data on instances of forced collection procedures, including the names of the legal entities/entrepreneurs, their registration numbers, the blocked accounts and the number of days of uninterrupted account blockage.

Article 104 et seq. of the Bankruptcy Law provides that, after the opening of the bankruptcy proceeding, depending on the financial situation of the debtor, the creditors' committee may decide on the dissolution/liquidation or the reorganization of the debtor. In such cases, a plan of reorganization may be filed with the Bankruptcy Court by:

1. the bankruptcy or supervisory administrator;
2. creditors with claims representing 20% or more of the total amount of claims; or
3. the debtor themselves who may file it, immediately or at any time, along with the request, upon the opening of the bankruptcy proceeding.

The system in place was created with the aim of avoiding non-performing loans, thus potentially preventing SMEs from filing for bankruptcy. In that respect, some banks and some private credit registries developed their own mechanisms to assess customers' credit performance, by drawing on information from multiple sources such as tax declaration, social security declaration, and balance sheets. These credit information sources could be coordinated under a potential "insolvency register", allowing the government to have an overview of credit performance.

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 bankruptcy proceeding is initiated by virtue of a written request of the debtors themselves or the other creditors, which is afterwards approved by a decision of the Bankruptcy Court.

1. The bankruptcy procedure is administered by the bankruptcy court. The bankruptcy court disposes of decisions and orders.
2. The bankruptcy court may investigate on its own initiative all aspects of the bankruptcy procedure.
3. The bankruptcy court is competent to adjudicate all issues related to the bankruptcy procedure and affecting the extent of the bankruptcy, including:
    a. any lawsuit of the administrator regarding the invalidity of the debtor's legal actions;
    b. any lawsuit related to the responsibility of the debtor's administration;
    c. any lawsuit related to the recognition and/or opposition of the creditor's claims;
    d. cases where the bankruptcy court acts according to the provisions of point 5, article 69, and point 3, article 78, of this law.

4. The bankruptcy court is not competent to judge the continuation of cases, in which the debtor is in the role of plaintiff against third parties.
5. The bankruptcy court judges on written evidence in the consultation room. Exceptionally, it judges in a hearing session only when it is necessary to receive new evidence, in addition to the written evidence filed.
6. The request for the opening of the bankruptcy procedure at the request of the creditor and the lawsuits for the opposition of the actions are judged in a hearing session.

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

According to the article 43 of the Insolvency Law, the bankruptcy court is competent to appoint bankruptcy administrator, supervisory administrator and temporary administrator, the candidate who is suitable for the case and independent of creditors and debtors.

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

Bankruptcy proceedings result in the suspension of the judicial judgment of all civil actions where the debtor is a party, plaintiff or defendant. The purpose of such suspension is to preserve the bankruptcy mass, but the bankruptcy administrator can reopen judicial cases where the debtor is a plaintiff.

<u>Temporary administrator</u>

1. Before starting the procedure, the bankruptcy court may appoint a temporary bankruptcy administrator or a supervisory temporary administrator as a temporary measure.
2. If the bankruptcy court appoints a temporary bankruptcy administrator and does not allow the debtor to dispose of his property, the right to administer and dispose of the debtor's property is given to the temporary bankruptcy administrator. In such cases, the provisional bankruptcy administrator:
    a. Guarantees the safety and preservation of the debtor's property;
    b. Continues the day-to-day administration of the debtor's activity until the bankruptcy court decides to start a bankruptcy procedure;
    c. Performs, as an expert, the tasks described in point 1, article 19, of this law, at the request of the bankruptcy court;
    d. Performs other duties that the bankruptcy court may order

<u>Appointment of the expert</u>

If for the ascertainment or clarification of the facts, special knowledge is required in the fields of science, technique or art, which are not covered by the specific knowledge of the administrator, the bankruptcy court may call, at any stage of the bankruptcy procedure, one or more experts if requested by the parties or if deemed reasonable by the bankruptcy court.

<u>Appointment of administrators in bankruptcy</u>

The bankruptcy court is competent to appoint bankruptcy administrator, supervisory administrator and temporary administrator the candidate who is suitable for the case and independent of creditors and debtors.

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

When a request is presented to the court for opening of bankruptcy procedures, the bankruptcy court may appoint a temporary bankruptcy administrator.
On the decision for bankruptcy the court also provides the deadlines regarding:

1. The creditor's meeting should be held within 45 days and, in any case, no later than 90 days from the date of announcement of the court's decision. In these meeting the creditors must decide on further continuation of bankruptcy proceedings based on the report prepared by the bankruptcy administrator;
2. The meeting of creditors for verification, which should be held not earlier than 10 days and no later than 60 days, starting from the last day of admissibility of the claims, and which should examine and verify the claims filed. If the creditors find it reasonable, the meeting to report and verify can be held at the same time;

SOURCES

1. The new bankruptcy law, what will happen to Albanians from May 23?
2. Law No. 43/2022 on the Development of Micro, Small and Medium Enterprises
3. Screening report Albania
4. Restructuring Laws and Regulations in Albania
5. Albania
6. Restructuring Laws and Regulations in Albania
7. Chapter 13. Albania: Small Business Act profile
8. The Bankruptcy according the Albanian law Effects of practice and legal framework in setting up a structured system of Bankruptcy administration

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.