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

26/01/2024

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

   The Republic of North Macedonia **has not yet 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)"

   However, the process to comply with this EU Directive has been started a couple of years ago. It is in an advanced stage and so far the following activities have been undertaken, in chronological order:

   - In 2020, the Ministry of Economy, in cooperation with the International Finance Corporation (World Bank Group), drafted a Draft Law on Insolvency, which is compliant with EU Directives 2019/1023 on preventive restructuring and 2017/1132 Restructuring and Insolvency Directive.
   - In March 2021, the Insolvency Draft Law was publicly announced on the government's national public opinion platform.
   - After discussions with stakeholders, public debates and brainstorming, the Draft Law on Insolvency has been submitted to the Macedonian Government.
   - In February 2023, the Government reviewed the Draft Law on Insolvency, determined the Law, and decided to submit it to the Assembly of the Republic of North Macedonia for adoption.
   - At the moment, the Draft Law on Insolvency is in the parliamentary procedure and is waiting to be adopted.
   - It is expected to be adopted after the elections (May 2024), most likely at the end of 2024

2. If yes, when was the Directive transposed? Please indicate the legislative sources for the transposition.

   It is not yet transposed, a new Draft Law on Insolvency that is in comlience with the Directives (EU) 2019/1023 and (EU) 2017/1132 is in process of adoption.

3. If yes, what impact did the transposition of the Directive have on national regulations concerning the inclusion of specific obligations (within companies) related to monitoring **business continuity** (*1 - Technical Glossary*)?

   Business continuity is defined by the Law on Commercial Companies. Probably, the transposition of the regulation would have an impact on this law.

4. 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*).

   According to the provisions of the currently applicable Bankruptcy Law, Persons over whose assets a bankruptcy procedure is conducted is defined in Article 4, and applies to:
   - over the assets of a debtor - legal entity, as well as over the assets of a debtor-individual who had a registered business activity.
   - against the assets of an economic interest group, against the assets of a deceased person, or against mutual assets of spouses.

   Bankruptcy procedure may not be conducted over
   - the property of the Republic of Macedonia, over the funds financed from the Budget of the Republic of Macedonia, over the pension and disability insurance funds, the health insurance fund, local self-government units, the bodies of the state administration as well as other legal entities with public authorization if such legal entities are exempt from bankruptcy procedure by Law.
   - the founders or the shareholders shall be jointly liable for the obligations of the legal entity referred in the previus paragraph, against which the Bankruptcy procedure is not to be conducted.

   The provisions of the Bankruptcy Law shall not apply to the bankruptcy procedure on banks, saving houses, insurance companies and other financial organizations, except the provisions regulating the issues which are not regulated with special laws.

   Bankruptcy procedure may also be opened upon company's liquidation, until the distribution of the liquidation estate has not been completed.

   The New Draft Law on Insolvency that is in process of adoption provides a wider range of provisions.
   It states that persons whose property is subject to a preventive procedure restructuring, pre-bankruptcy reorganization and bankruptcy procedure are defined in Article 5, where it is stated as follows:
   (1) The procedure for preventive restructuring, pre-bankruptcy reorganization as well as bankruptcy proceedings are carried out over the property of a debtor - a legal entity and a debtor - an individual.
   (2) The procedure for preventive restructuring, pre-bankruptcy reorganization as well as bankruptcy proceedings can also be carried out over the property of a legal entity in which the state of the Republic of North Macedonia or local self-government units are partners, i.e.

shareholders, as well as over the property of a public enterprise that carries out activities of public interest if not otherwise provided by law definitely something else.
(3) Bankruptcy proceedings can be conducted over the property of an economic interest community, over the property of a deceased person and over the common property of spouses.
(4) Bankruptcy proceedings can be opened even after the liquidation of a trading company, as long as the monetization of property that is part of the liquidation mass has not started.

Persons whose assets are not subject to preventive restructuring, pre-bankruptcy reorganization and bankruptcy proceedings are defined in Article 6.
(1) The procedure for preventive restructuring, pre-bankruptcy reorganization and bankruptcy proceedings cannot be carried out over the property of:
- Republic of North Macedonia,
- the funds that are financed from the budget of the Republic of North Macedonia,
- pension and disability insurance funds,
- the health insurance fund,
- state administration bodies and local self-government units,
- other legal entities with public authority, if they are not exempted from the bankruptcy procedure by a special law.
(2) The procedure for preventive restructuring, pre-bankruptcy reorganization cannot be carried out over banks, savings banks, insurance companies, brokerage companies, financial companies, leasing companies and other financial institutions.
(3) The provisions of this law that refer to the bankruptcy procedure are applied to the bankruptcy procedure of banks, savings banks, insurance companies and brokerage companies, financial companies, leasing companies and other financial institutions, unless otherwise regulated by another law.

5. 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.

The provisions of the Law on Bankruptcy do not apply to the bankruptcy procedures related to banks, savings banks, insurance companies and other financial organizations, except for the provisions governing matters that are not regulated by the special laws. In this context, special laws are enforced considering these issues, such as the Law on Banks for the financial sector.

In the Draft Law on Insolvency, there are no special criteria according to which companies will be determined that will be able to implement the procedures for solving financial difficulties at an early stage, that is, to implement a procedure for preventive restructuring.
In order to carry out a procedure for preventive restructuring, companies need to prove that they are facing future insolvency. That means, in the case of a preventive restructuring procedure, they must prove that within a period of one year they will become insolvent or unable to pay, i.e. in the case of pre-bankruptcy reorganization, that the company will not be able to fulfill its existing obligations after their maturity.

According to the Draft Law on Insolvency, Article 6, the procedure for preventive restructuring, pre-bankruptcy reorganization and bankruptcy proceedings cannot be carried out over the property of the Republic of North Macedonia, the funds that are financed from the budget of the Republic of North Macedonia, pension and disability insurance funds, the health insurance fund, state administration bodies and local self-government, other legal entities with public authority, if they are not exempted from the bankruptcy procedure with a special law.

The procedure for preventive restructuring, pre-bankruptcy reorganization cannot be carried out over banks, savings banks, insurance companies, brokerage companies, financial companies, leasing companies and other financial institutions.

The provisions the Draft Law on Insolvency that refer to bankruptcy procedure are applied to the bankruptcy procedure over banks, savings banks, insurance companies and brokerage companies, financial companies, leasing companies and other financial institutions, if not otherwise regulated by another law.

6. 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 new Draft Law on Insolvency, in Article 7, provides provisions for an early warning system. Early warning system is a set of tools that enable timely information to creditors about debtors facing future insolvency and creation of conditions for debtors to take all actions in a timely manner for timely resolution of future insolvency.
   (1) The early warning system is established in order to enable debtors to recognize financial difficulties early and take measures and implement procedures in order to overcome the future insolvency provided for by this law, as well as to inform creditors in a timely manner in order to take appropriate measures measures.
   (2) The Ministry of Economy at least once a month on publishes on its website a list of companies that have not made certain payments to third parties and therefore face future insolvency.
   (3) The Administration for Public Revenues, and other institutions and legal entities
   are obliged to submit to the Ministry of Economy data about the companies they came across in their operations related to untimely settlement of obligations towards third parties.
   (4) The Ministry of Economy, within the framework of its competences, will provide opportunities for advisory services to debtors who have entered a state of future insolvency for exiting such a state.
   (5) The Minister of Economy will, by an act, regulate the manner and procedure of publishing data on the website, the delivery of data from other institutions and the provision of advisory services for debtors who have come to a state of financial difficulties in their operations.

7. Is the decision to initiate a preventive restructuring process (*7 - Technical Glossary*) entirely entrusted to the entrepreneur or delegated to other entities? If yes, which entities?

The current bankruptcy law does not provide for a preventive restructuring procedure. However, there is a Law on out-of-court settlement, which is not applied in practice (since the adoption of the law, two procedures have been initiated and they have not been completed).
According to the draft New Insolvency Law, which is in line with EU directive 2019/1023, a Proposal for opening a procedure for preventive restructuring is authorized to be submitted by the legal representative of the debtor.
The court decides on the proposal for opening the procedure for preventive restructuring submitted by an authorized proposer.
The preventive restructuring procedure is based on a preventive restructuring agreement. The debtor and creditors who have accepted the agreement sign it. The debtor, within eight days after signing the contract, submits to the court a request for approval of the contract.

8. What are the national bodies responsible for overseeing the **preventive restructuring process** (*7 - Technical Glossary*) related to a business crisis? Describe the tasks of these bodies.
Current laws do not provide for a procedure for preventive restructuring.
The new draft Law on Insolvency does not foresee special provisions for the supervision of the process of preventive restructuring. The process itself is based on an agreement between the debtor and the creditors, and accordingly, the creditors should monitor whether the debtor undertakes the agreed activities to get out of the crisis. Otherwise, the provisions for termination of the contract can be invoked.

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

According to the current Law on Bankruptcy, in article 29, point 5 it is stipulates that the restructuring plan should refer to a period of the next 5 years from the date of submission of the proposal for opening a procedure for out-of-court settlement. But nowhere in the legal solution is it stipulated that the implementation of the plan should be completed within these 5 years. The financial and operational restructuring plan contains:
1) description of the facts and circumstances that indicate the existence of conditions for the opening of out-of-court settlement procedure;
2) calculation of shortage of liquid assets on the day of the attached financial reports;
3) description of financial restructuring measures and calculation of their effects on the shortage of liquid assets;
4) description of financial restructuring measures and calculation of their effects on profitability of operations and removal of insolvency;
5) plan of operation for a period of five years with a detailed explanation of the reasons for determination of each position of the plan;
6) planned balance sheets on the last day of the five-year period for which it is compiled the plan of operation and
7) proposal for an out-of-court settlement with:
a) analysis of claims by size, category (priority claims, export rights, separation rights and unsecured claims), expected level of settlement and proposal of deadlines for their settlement and comparison with expected settlement in case of bankruptcy and
b) calculation of restructuring costs.

Financial restructuring is a plan of measures to be implemented the debtor to become liquid and solvent which include:
1) reduction and postponement of due debt obligations;
2) in capital companies, an increase in the founding stake;
3) repayment of installments, change of maturity dates, interest rates and others terms of credits, loans or other claims or security instruments;
4) monetization or transfer of property for the purpose of settling claims;
5) write-off of debt, write-off of interest and change of interest rates;
6) execution, change or waiver of lien;
7) investment of additional funds for security by the debtor or third parties, including providing sureties and guarantees;
8) conversion of creditors' claims into a stake in the company;
9) connection with business contracts with a strategic partner in order to ensure the sustainability of further operations;
10) recapitalization by the strategic partner and
11) other measures that enable the debtor to be liquid and solvent.

According to the Draft Law on Insolvency, the early warning system is aimed at timely warning of creditors. It is an early warning tool in the form of an alarm mechanism that indicates when a certain company has not made certain types of payments, for example, non-payment of taxes or social security contributions. The Ministry of Economy at least once a month will publish on its website a list of companies that have come to a state of financial difficulties in their operation i.e. have not performed certain payments to third parties and therefore they have a future insolvency. The Public Revenue Office, and other institutions and legal entities are obliged to submit data to the Ministry of Economy about the companies with untimely settlement of obligations towards third parties. The Ministry of Economy within its own competencies will provide opportunities for the advisory services of debtors who have entered a state of future insolvency to solve this situation.

Early warning tools should be adapted depending on the size of the company. Special early warning tools would be created for large companies and groups that would take into account their specificities. Additionally, the entire early warning system should be elaborated in a by-law, which should be adopted by the Minister of Economy.

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

According to the Draft Law on Insolvency the court supervises the work of the trustee, the court is obliged to endeavor that all actions in pre-bankruptcy reorganization are undertaken within the deadlines determined by the Law on insolvency.

The court will stop the preventive restructuring procedure with a decision in the following cases: 1) if the court rejects the proposal for approval of the contract in accordance with Article 34 paragraph (4) of this law, 2) if the debtor within the period specified in Article 32 paragraph (3) of this law does not submit a request for the approval of the contract, 3) if the creditors with a claim of at least 30% of the amount of all claims included in the basic review of claims request the suspension of the procedure, 4) if the debtor requests a suspension before submitting a request for approval of the contract, 5) if the debtor is more than 15 days late with the payment of wages to the employees up to the minimum wage or with the payment of taxes and contributions that he was obliged to pay together with employee salaries.

If the reasons for stopping the preventive restructuring procedure arise, the court will pass a decision which: 1) states that the reasons for stopping the preventive restructuring procedure have been fulfilled 2) states that by stopping the preventive restructuring procedure, the legal consequences that arose with the opening of the this procedure.

The court takes the decision from paragraph (3) of this article within eight days from the day when the reason for stopping the procedure for preventive restructuring from paragraph (1) of this article arose.

A request to stop the procedure for preventive restructuring due to the reason provided for in paragraph (1) item 5 of this article, in addition to every creditor, can be submitted by every employee of the debtor.

The court ex officio within eight days after receiving the request from paragraph (5) of this article will obtain all the evidence of the paid salaries and contributions from the competent tax authority. If the court determines that the condition of paragraph (1) item 5 of this article is met, it will stop the procedure for preventive restructuring. The court shall publicly announce the decision in paragraph (1) of this article.

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

According to the EU directive, the duration of the entire procedure is limited so that the debt restructuring plan should be completed within 3 years from the start of its implementation. After the expiration of this term, insolvent economic entities can be fully legally released from their debts.

According to the Draft Law on Insolvency, Article 20, if the contract for restructuring provides stopping the maturity of the secured claims or changing the agreed interest rate as restructuring measures, then in the contract it will be necessary for all secured claims to determine the same term for stopping the maturity, but not more than **five years** counted from the validity of the decision to approve the restructuring agreement or change of the agreed interest rate, unless a certain creditor agreed to a longer term of deferred maturity of its own secured claims or an even greater reduction in interest rates.

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.