

BULGARIA

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✓ NATIONAL REFORMS IN THE FIELD OF PREVENTIVE RESTRUCTURING

Adoption of a preventive restructuring mechanism (effective as of 1 July 2017) is among the latest and most important legislative changes in 2017 in Bulgaria, made as a result of the recommendations of the European Commission and the Council of the European Union for adoption of expedited debt restructuring and second chance frameworks, as well as in response to the critics that Bulgaria is the only EU Member State whose legislation does not provide for a nearly restructuring mechanism.

The goal of the newly adopted procedure is to create a special framework for traders and commercial enterprises in an attempt of the local legislator to overcome the current negative situation in Bulgaria, where the length and recovery for insolvency proceedings are well above the average level for the EU. However, in terms of technical realisation, the legal practitioners are rather skeptical about the effectiveness and viability of the stabilisation procedure in its current mode. The first impression is that the amendments have been adopted in a very formal manner, repeating to a great extent the onerous regulation of the restructuring within the framework of insolvency proceedings. The amendments set up the leading role of the state, which itself creates conditions for the unequal treatment of the rest of the private creditors vis-à-vis the state. Another serious procedural shortcoming is that the amendments do not provide for detailed regulation of the interconnection and possible collision between expedited debt restructuring and potential insolvency proceedings opened afterwards. There are also certain issues in terms of the expedition and costs of the new procedure - the amendments do not provide for any preferable cost rules for the stabilisation procedure in comparison to those of the standard court proceedings. This also includes the trustee, whose appointment and remuneration are mandatory. Failure of the trader to pay the remuneration of the trustee or the verifier (optional figure) is an ultimate ground for termination of the stabilisation procedure, irrespective of the reasons for the lack of payment (eg, refusal of the trader to pay due to excessive remuneration, set by the court). There is a number of other failings of the new law which ruin the effectiveness of the procedure and render it difficult to use, especially for small and medium enterprises seeking low-cost restructuring procedure.

In conclusion, while the new amendments conform to most of the common principles on the use of preventive restructuring frameworks as set out in the proposal of the European Commission for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures, there still are some significant inconsistencies, which need to be overcome.

✓ APPLICATION OF INSOLVENCY AND PREVENTIVE RESTRUCTURING ONLY TO TRADERS

Another legal issue, which is subject to increasing public debate and discussion among the legal practitioners in Bulgaria is the potential enactment of the so-called “civil insolvency” (insolvency of natural persons), where any natural persons (non-traders and consumers) could be subject to insolvency regulation. As of now, insolvency regime is only applicable for traders, which, with some minor exceptions, are legal persons under Bulgarian law. The new law for preventive restructuring is also accessible only for traders, in contradiction to the principles of the Draft Directive Proposal.

In the context of the pending public debate, there is a recent proposal in the Parliament for the adoption of a draft law on the insolvency of natural persons, which are not traders. The proposal is yet to be discussed within the Law Commission of the Parliament before officially being put to the vote.