Lithuania: Transposing the Restructuring Directive

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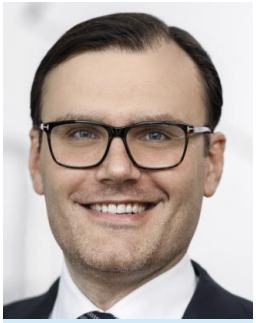

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> *The proposed changes offer a toolkit that might motivate debtors to start a rescuing process earlier*

The conditions for insolvencies and restructurings have been identified as one of the main areas, in which the legal framework in Lithuania needs modernisation.[1]

After the recent introduction of a new insolvency law for legal entities ("Insolvency Law"),[2] further improvements are expected by the transposition of the Directive. The Lithuanian Parliament is expected to pass soon into law a Bill which foresees amendments to the Insolvency Law and to other laws.[3] The understanding underlying the Bill and its proposed amendments is that with its new Insolvency Law, Lithuanian laws are to a large extent already compliant with the Directive. Some of the proposed major amendments include the following:

Introduction of the concept of "likelihood of insolvency" for legal persons

The definition for this is not new but derived from the definition of "financial difficulties" in the Insolvency Law. It covers situations where it is probable that the legal person will become insolvent within the next three months. The amendments would impose additional obligations on managers in the "likelihood of insolvency" to immediately inform the creditors about the probability of insolvency, propose solutions for the financial difficulties, and refrain from any actions which could negatively affect the viability of the business.

Mandatory appointment of an administrator in restructuring cases in certain situations

The current law leaves the appointment of an administrator fully at the discretion of the court. In line with the Directive's requirements, the amendments would define the situations, in which the appointment of an administrator would become mandatory.

Introduction of the possibility of a cross-class cram down

The amendments would allow cramming down a dissenting creditor class and dissenting owners. A cram down on dissenting creditors would require a majority of more than 50% of all votes of creditors in the approving group in addition to the other requirements for a cross class cram down as laid down in the Directive. A cram down on dissenting creditors would require a qualified majority of two thirds of all votes in each of the creditor groups. It would, however, still not be possible to force them to accept a debt-for-equity swap by way of cram down.

Regulation on "essential executory contracts"

The amendments would introduce this concept and thus enable debtors, during a stay, to seek protection against these contracts being terminated or otherwise modified by creditors to whom the stay applies.

Additional protection of employees' interests

The current Insolvency Law does not explicitly regulate employment relations during restructurings. With the proposed amendments debtors undergoing restructuring would have to provide information to and consult with their employees in accordance with the procedures in the Labour Code. Also, the restructuring plan would have to be supplemented with information about the plan's effects on the employees: description of the situation of the employees, consequences of restructuring, the number of redundancies expected, etc. Another novelty would be that employees of companies undergoing restructuring would be entitled to participate in the wage protection scheme of the Guarantee Fund.

In-court restructuring proceedings under the Insolvency Law are ineffective, not least because their initiation often takes two to three months, which is way too long to rescue companies in financial difficulties.

The proposed changes offer a toolkit that might motivate debtors to start a rescuing process earlier and that would allow, at least in certain cases, to restructure without having to go through a lengthy court process. ■

Footnotes:

1 Cf. e.g. World Bank "Doing Business 2020"

2 Law on the Insolvency of Legal Persons, in effect since 1 January 2020, see *Heemann/ Zabulionytė*, Eurofenix, #77, p 39.

3 Law on Bankruptcies of Natural Persons, the Labour Code and the Civil Code.