

How to measure the success of national implementations of the Preventive Restructuring Directive?

Reinout Vriesendorp

According to art. 4(1) PRD, the EU member states shall "ensure that, where there is a likelihood of insolvency, debtors have access to a preventive restructuring framework that enables them to restructure, with a view to preventing insolvency and ensuring their viability, without prejudice to other solutions for avoiding insolvency, thereby protecting jobs and maintaining business activity." Consequently, all MS must have implemented the PRD by 17 July 2022 (art. 34(1)-(2) PRD) in order to comply with its provisions. Although probably not all MS will succeed, currently 18 out of 27 MS have at least some form of a preventive restructuring framework ("PRF") in place; see [tracker.eu.directive.on.restructuring.and.insolvency - INSOL Europe \(insol-europe.org\)](http://tracker.eu.directive.on.restructuring.and.insolvency - INSOL Europe (insol-europe.org).).

A topic which has not been dealt with sofar, is if (and when) the chosen/designed/implemented PRF will be successful in attaining the goals of the PRD, and more importantly, how it will be assessed/determined that a certain PRF is successful or not. Will it for example be measured by looking at

- the numbers of restructurings that have used a preventive restructuring proceeding (by value of the rescheduled claims and/or by number of claims/creditors/equityholders)? or
- the number of legal entities involved? or
- the number of employees whose jobs will have been saved?
- How long after the confirmation of a plan must such measurement take place (immediately after the confirmation, one month, half a year, one year etc.)?
- How will be taken into account restructurings that occurred without court involvement but under the 'threat/persuasion' of a preventive restructuring proceeding?
- To what extent will the success of a certain national PRF be (negatively) influenced by forum shopping to other, more debtor-friendly/favourable jurisdictions?
- Etc. etc.

The method to obtain proper responses to these questions is to make use of the 'wisdom of the IE(AF) [and CERIL] crowd' and have national representatives investigate in their jurisdiction how the success of an individual restructuring will be defined and assessed. Consequently, the success of the respective PRFs can be compared with each other with the objective to formulate best practices in this field. Subsequently, these outcomes and comparison can - but need not necessarily - be used (as one of the elements) for the report on the application and impact of the PRD in connection with the mandatory review of the PRD in 2026 (art. 33 PRD).

The goal of the presentation and subsequent paper is to put the assessment of the success of the various PRFs on the research agenda in the European insolvency law research community and to have some first discussions about an outline for the research agenda in that respect. In essence, I am looking for who is interested to join the quest for best practices and successful implementation of the PRD? And who is willing to assist in finetuning research question(s), methodology, etc.