

Technical Update:

Significant progress in relation to the implementation of the EU Preventive Restructuring Directive in EU Member States in the context of the post COVID-19-crisis

Myriam Maily writes about the new joint project between LexisPSL and INSOL Europe in relation to the implementation of the EU Preventive Restructuring Directive in EU Member States



MYRIAM MAILLY
INSOL Europe Technical Officer

New INSOL Europe/LexisPSL Joint Research on Implementation of EU Directive 2019/1023

After the successful joint project on ‘How EU Member States recognise restructuring/insolvency proceedings commenced in third country states’ (still available online at: www.insol-europe.org/technical-content/introduction), a new collaboration has started with LexisPSL in relation to the implementation in the EU Member States of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency).

This research looks at how the EU Member States as well as the UK (before Brexit) have implemented Directive (EU) 2019/1023 as part of the Joint Project between INSOL Europe and LexisPSL to track implementation.

With the precious assistance of the INSOL Europe membership and INSOL Europe Country Coordinators, a table summarising some of the key findings has been published to cover issues of whether the implementation of the EU Directive on Restructuring and



Insolvency has led to the creation of new proceedings or to minor/major changes to existing proceedings (Q1), the relevant opening criteria (Q2), the voting threshold for the approval of a restructuring plan (Q8), the conditions under which creditors can be crammed down (Q12) or whether the targeted proceedings will be listed in Annex A of the EU Insolvency Regulation (Recast) (Q14).

The consolidated table also includes a final column which gives links to the full article for each country, which answers all 17 questions relating to the involvement of courts (Q2), the eligibility of foreign companies (Q4), the DIP principle and the appointment of an insolvency practitioner (Q5), the length of the moratorium on claims when

applicable (Q6), the constitution of classes for ‘affected creditors’ (Q7), the position of secured creditors and employees (Q10-11), the application (or not) of the absolute priority rule in case of (cross-class) cram-down (Q12), the consequences on current contracts (Q13), the eventual protection or priority of new money or other arrangements (Q15) as well as the cost and length of the preventive restructuring process (Q16-Q17).

While the EU Directive has been effective since 17 July 2019 and had to be implemented by Member States by 17 July 2021, some Member States that encountered particular difficulties in implementing the EU Directive notified in January 2021 their wish (under Article 34.2 of the text) to request an extension of a



If you want to contribute, please do not hesitate to send me the relevant materials at: technical@insol-europe.org



maximum period of one year (i.e., to 17 July 2022).

Consequently, the consolidated table is not yet complete and will be updated with more countries, as more articles are received in the weeks to come. At the time of writing, answers from the following countries are available: **Austria, Croatia, Cyprus, Finland, France, Germany, Greece, Hungary, Lithuania, Portugal, Slovakia, The Netherlands** and the **UK**.

We are grateful to the following contributors for their precious cooperation: Gottfried Gassner and Johannes Varga (AT), Jelenko Lehki (HR), Andri Antoniou (CY), Jan Lilius (FI), Jean-Luc Vallens (FR), Frank Tschentscher (DE), Yiannis Bazinas (HL), Zoltan Fabok (HU), Frank Heemann (LT), Catarina Serra (PT), Dávid Oršula (SK), Alice van der Schee (NL) and Kathy Stones (UK).

Individual articles as well as the consolidated table are available at: www.insol-europe.org/technical-content/insol-europelexispsl-research-on-implementation-of-the-eu-directive-20191023

National Insolvency Statistics

Updated insolvency statistics have been published for **Cyprus** (Year 2021 and monthly statistics for 2022), **France** (Q1 2022) as well

as for **England & Wales, Northern Ireland and Scotland** (Q1 2022).

Direct links to national insolvency registers are now available for **Cyprus, Croatia, Greece, Hungary, Latvia, Lithuania, Slovenia** and new statistical entries have been published for **Bulgaria, Romania** and **Slovenia**. It is also worth mentioning that **Greece** has already published relevant statistics in accordance with the EU Directive (source: EBRD).

At the **European** level, a link to statistics in relation to declarations of bankruptcies published by Eurostat on a quarterly basis has been also added for the benefit of the INSOL Europe members (latest edition as at 17 May 2022). As part of this collection, quarterly comparisons in the EU and euro area, quarterly comparisons by Member State and quarterly comparisons by activity are available. At the **global** level, a link to the 2021 Global Bankruptcy Report from the Dun & Bradstreet Worldwide Network (May 2022) has also been made available.

All these relevant sources of information are now available via the dedicated technical section of our website at: www.insol-europe.org/technical-content/national-insolvency-statistics ■

by email: technical@insol-europe.org

Other Useful Links



Coffee Breaks Series 2021

> www.insol-europe.org/publications/web-series

Updated Insolvency Laws

> www.insol-europe.org/technical-content/updated-insolvency-laws

National Insolvency Statistics

> www.insol-europe.org/technical-content/national-insolvency-statistics

EIR Case Register

> <http://tinyurl.com/y7tf2zc4>

European Insolvency Regulation

> www.insol-europe.org/technical-content/useful-links-to-be-aware-of-before-applying-the-recast-insolvency-regulation-2015848

> www.insol-europe.org/technical-content/outcomes-of-national-insolvency-proceedings-within-the-scope-of-the-eir-recast

> LinkedIn

www.linkedin.com/company/insol-europe/

> www.insol-europe.org/technical-content/state-of-play-of-national-insolvency-data-by-outcomes-currently-available

> www.insol-europe.org/national-texts-dealing-with-the-eir-2015

EU Directive on Restructuring and Insolvency (2019)

> www.insol-europe.org/technical-content/eu-draft-directive

> www.insol-europe.org/technical-content/eu-directive-on-restructuring-and-insolvency

Brexit Publications

> www.insol-europe.org/technical-content/brexit-publications

USBC Chapter 15 Database

> www.insol-europe.org/technical-content/introduction

Academic Forum Publications

> www.insol-europe.org/academic-forum-documents

> www.insol-europe.org/academic-forum-news

Academic Forum Sponsors:




Partners across Europe

For further information, please contact:

Ali Zaidi - Head of Litigation & Insolvency
e: ali.zaidi@edwincoe.com

Simeon Gilchrist - Partner
e: simeon.gilchrist@edwincoe.com

Christina Fitzgerald - Partner
e: christina.fitzgerald@edwincoe.com



Ranked in Band 1 Restructuring/Insolvency for Personal Insolvency UK-wide
Chambers UK 2022

Edwin Coe LLP | 2 Stone Buildings | Lincoln's Inn | London | WC2A 3TH | t: +44 (0)20 7691 4000 | e: info@edwincoe.com | edwincoe.com