WILL THE IMPLEMENTATION OF THE DIRECTIVE ON RESTRUCTURING AND INSOLVENCY HELP THE RECOVERY OF THE CROATIAN MARKETS AND STRENGTH THE ABILITY OF THE DEBTORS TO RESPOND TO NEW CHALLENGES?

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WILL THE IMPLEMENTATION OF THE DIRECTIVE ON RESTRUCTURING AND INSOLVENCY HELP THE RECOVERY OF THE CROATIAN MARKETS AND STRENGTH THE ABILITY OF THE DEBTORS TO RESPOND TO NEW CHALLENGES?*

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ABSTRACT

It must be pointed out that the issue of bankruptcy proceedings in countries with a long market tradition is a dynamic area where new solutions are sought that will follow the trend of change in the international economy. The European Union, which in 2019 adopted the Restructuring and Insolvency Directive, is also making an exceptional contribution to this issue. With the adoption of the Directive, the European Union has joined the general trend of deviation from traditional, formal bankruptcy proceedings by opening a wide area to private regulation, with all the associated opportunities and risks.

From the current point of view of Croatian law, the Directive does not provide "revolutionary" solutions, especially in terms of preventive restructuring, given that Croatian rules on pre-bankruptcy proceedings are essentially in line with the solutions contained in the Directive. Therefore, the subject of the analysis are valid norms as well as those from the Final Proposal of the Bankruptcy Law from 2022 (February 2022) related to collective legal protection in (pre) bankruptcy proceedings, having in mind the possible consequences of incomplete and inadequate regulation on the rights and interests of participants.

The analysis starts from the fact that the issue of legal protection is regulated by each state independently and that such autonomy of member states is limited by EU rules. Therefore, in addition to the legal analysis of legal protection, as it is according to the existing (valid) legal framework (de lege lata), this paper also includes the question of what such protection should be in view of the requirements of European law (de lege ferenda). A limiting factor in the context of this analysis is the lack of well-established judicial practice, given that the implementation of new legislation is in process of public debate. Therefore, the analysis is not based on

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practical problems, but on detecting possible problems that could cause difficulties in practical implementation of (pre)bankruptcy proceedings.

Keywords: *(pre)bankruptcy proceedings, the Restructuring and Insolvency Directive, implementation, Bankruptcy Act*

1. SKETCHES ON THE EVOLUTION OF BANKRUPTCY LAW UNTIL ACCESSION TO THE EUROPEAN UNION AND THE ADOPTION OF THE *ACQUIS COMMUNAUTAIRE*

The legal framework, nor the practice of bankruptcy, liquidation and compulsory settlement, in the previous system did not satisfy any of the interests that should be satisfied in *laissez faire* market. Accordingly, doctrine and jurisprudence considered the introduction of new bankruptcy legislation as a necessity. The new, modern, Bankruptcy Act was passed in May 1996[1] and subsequently amended several times.[2] Adoption of the Bankruptcy Act, following the example of the German *Insolvenzordnung* from 5 October 1994,[3] and the termination of the Law on Compulsory Settlement, Bankruptcy and Liquidation[4] represented a radical change in the way bankruptcy proceedings were conducted in the Republic of Croatia. Almost all of the changes were intended to overcome "acute" problems in practice and to improve the system of bankruptcy protection by functionalizing, accelerating and reducing the costs of bankruptcy proceedings. However, as the period after the adoption of the old BA was a time of economic growth, consequently there was no awareness of the need to consider and give bankruptcy other functions than to serve, only as an instrument for collecting overdue receivables from debtors unable to meet their obligations, which ultimately resulted in their bankruptcy liquidation.[5]

1.1. Balance sheet of bankruptcy legislation until 2013, i.e. until EU accession

More than half of the bankruptcy proceedings were concluded due to insufficient bankruptcy estate, i.e. without distribution of funds to creditors.[6] Moreover,

1 Official Gazette No. 44/96

2 Bankruptcy Act (*Stečajni zakon*), Official Gazette No. 44/96-45/13., hereinafter: old BA

3 See: Gallagher, A.; Wilde, J.; Dittmar, T., *The New German Preventive Restructuring Framework,* American Bankruptcy Institute, 2021, p. 50, *et seq.*

4 Law on Compulsory Settlement, Bankruptcy and Liquidation (*Zakon o prisilnoj nagodbi, stečaju i likvidaciji*), Official Gazette No. 53/91 and 54/94

5 Bodul, D., *et al., Pravnopovijesni i poredbenopravni prikaz razvoja stečajnog postupka,* Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 34, No. 2, 2013, pp. 911-941

6 Bodul, D., *et al.*, *Novosti i problemi u provedbi stečajnog zakonodavstva u Republici Hrvatskoj,* Ekonomski pregled – Zbornik Ekonomskog fakulteta Sveučilišta u Zagrebu, Vol. 65, No. 4, 2014, pp. 318-351

analyses confirm that creditors in bankruptcy proceedings did not collected most of their claims. The most common and largest creditors in bankruptcy proceedings are state institutions, which paradoxically have the lowest level of collection.[7] The problem is that such results of bankruptcy proceedings have significant consequences for the budget, which remained deprived of hundreds of millions of kunas. The main reason is that bankruptcy proceedings are not initiated within the deadlines provided by law or are not initiated at all. Untimely initiation of bankruptcy proceedings is related to the lack of interest of creditors and debtors, unforeseen costs of previous proceedings and unorganized documentation for submitting proposals for initiating bankruptcy proceedings. The length of insolvency and exceeding deadlines in this regard are also not in the function of meeting the defined goals. Untimely, in timely manner initiation of bankruptcy proceedings misses the opportunity to preserve the assets of the company, which is a prerequisite for a higher degree of settlement for creditors. A further, second indicator of the failure of bankruptcy proceedings is its duration.[8] It is longer than the envisaged deadlines and is conditioned by the timeliness of initiation, the manner of conclusion and the complexity of the procedure. Unresolved property legal relations, unsuccessful sales of property, procedural manipulation of appeal possibilities and accompanying litigation were among the main causes of the length of proceedings. Finally, the third performance indicator is the cost of bankruptcy proceedings. They vary significantly and, in the structure, they ranged up to 80% of bankruptcy estate. The high share of costs in the total income in bankruptcy estate is related to the duration of the proceedings, the amount of fees and the number of persons engaged in bankruptcy proceedings and the number of accompanying litigations.[9]

2. IMPLEMENTATION OF THE LAW ON FINANCIAL OPERATIONS AND PRE-BANKRUPTCY SETTLEMENT AND ACCESSION TO THE EUROPEAN UNION

However, frequent financial crises necessitated a radical reform of bankruptcy regulations, and since the bankruptcy technique has not made progress and bankruptcy is, as a rule, without a bankruptcy plan, there was a need for change. Therefore, at the end of 2012, in order to restructure or, if that is not possible, go

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7 *Loc. cit.*

8 Croatian Constitutional Court stated that even a nine-year bankruptcy was not too long due to the lack of the buyer's interest and complexity of the case in question. See: Croatian Constitutional Court, Decision No. U-IIIA - 2978/2009

9 *Loc. cit.* and Šverko Grdić, Z.; Radolović, J.; Bagarić, L., *Solventnost poduzeća u Republici Hrvatskoj i u Europskoj uniji,* Ekonomski pregled, Vol. 60, No. 5-6, 2009, pp. 250-266

bankrupt, the Government of the Republic of Croatia implemented the Law on Financial Operations and Pre-Bankruptcy Settlement.[10] It entered into force on 1 October 2012 with the introduction of an alternative out-of-court insolvency procedure - the pre-bankruptcy settlement procedure, reminiscent of the former institute of out-of-bankruptcy court compulsory settlement,[11] thereby significantly influencing Croatian insolvency law. As comparative legal analyses have become a necessary precondition for mutual dialogue and harmonization of national insolvency systems, it is important to point out that in the last decades, developed European economies have started to implement models similar to Chapter 11 of the US Bankruptcy Code (Art. 1101-1174. Chapter 11), thus encouraging the process of restructuring insolvent companies through a "pre-pack" and a "pre-negotiated" plan which is an alternative for the survival of the company.[12]

2.1. Balance sheet of pre-bankruptcy settlements from the Financial Operations and Pre-Bankruptcy Settlement Act

Statistical analysis of aggregate data from the system of Financial Agency (hereinafter: Fina) on pre-bankruptcy settlements for the period 01.10.2012 to 29.09.2017. has no pretensions or ability to provide a comprehensive analysis. However, from the that data we can see that it was realistic to expect that the pre-bankruptcy settlement procedure will be used by many debtors as cheaper way out through bankruptcy because in case of unsuccessful completion of the procedure, FINA submits a proposal to initiate bankruptcy proceedings free of charge. The data also points to another problem: the reality of the envisaged measures and the sustainability of the debtor's operations after the settlement is adopted. The presented results of pre-bankruptcy settlements should therefore be taken with great caution, as most of the plans from that period have only just begun to be implemented and potential problems with meeting the obligations under the settlement will only arise later (later date is not available). We emphasize this

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[10] Law on Financial Operations and Pre-Bankruptcy Settlement (*Zakon o financijskom poslovanju i predstečajnoj nagodbi*), Official Gazette No. 108/12, 144/12, 81/13, 112/13, 71/15 and 78/15, hereinafter: ZFPPN

[11] For older regulations see: Politeo, I., *Vanstečajna prinudna nagoda,* Hrvatsko štamparsko društvo, Zagreb, 1923; Walter, R., *Prinudna nagodba izvan stečaja de lege lata i de lege ferenda,* Bankarstvo, Zagreb, Beograd, Ljubljana, 1925

[12] Bankruptcy Code, Pub. L. 113-86, (except 113-79), pp. 1101-1174, [http://www.law.cornell.edu/uscode/text/], Accessed 12 February 2022., See: Warren, E.; Westbrook, J. L., *The Success of Chapter 11: A Challenge to the Critics*, Michigan Law Review, Vol. 107, 2009, pp. 603, 606; McCormack, G., *Corporate Restructuring Law – A Second Chance for Europe?* European Law Review, Vol. 42, 2017, pp. 532, 542.; Stanghellini, L.; Riz, M., *Best Practices in European Restructuring: Contractualised Distress Resolution in the Shadow of the Law*, Wolters Kluwer, 2018

as important because anecdotal evidence indicated that an increasing number of entities had their assets frozen immediately after the pre-bankruptcy settlement was completed and were facing or are in bankruptcy liquidation proceedings. The reason for this was the fact that for the most business entities, whose restructuring plan was approved by the Ministry of Finance, the first payment for priority claims proved to be an insurmountable step after the successful completion of the pre-bankruptcy settlement.[13] In the pre-bankruptcy settlement procedure, immediately after the acceptance of the plan, priority claims are collected, including, for example, workers' salaries. In most cases, workers block the account of (their own) company immediately after the pre-bankruptcy settlement because they are not paid within the legal deadline. Another problem, for which there are no statistics, is the problem of the position of related parties and the possibility of re-voting of bankruptcy creditors by related parties.[14] On a few occasions the courts to which a dubious settlement proposals were submitted justly found that voting rights cannot be exercised with respect to false claims.[15]

3. BANKRUPTCY LAW REFORM FROM 2015 AND 2017 IN THE CONTEXT OF THE EUROPEAN ACQUIS

Although the adoption of the ZFPPN in 2012 significantly changed the bankruptcy procedure in the Republic of Croatia, its practical application identified a number of problems in the interpretation and effects of certain provisions and institutes, which legislator tried to eliminate by adopting the new Bankruptcy Law in 2015. The new Bankruptcy Law enters into force on September 1, 2015.[16] The fact that there are no more advertisements in the Official Gazette will be noticed first, but all announcements go through the *e*-bulletin board of the courts, and the change in question is motivated by reducing the costs of conducting bankruptcy proceedings. Furthermore, the issue of advancing the costs of the proceedings has been resolved differently, in such a way that in case of blocking the account, funds for bankruptcy management will be partially reserved, and if such funds are not available or are insufficient, the debtor's responsible persons may be ordered to pay the costs. Few practical problems have also been eliminated, *exempli gratia,* legislator introduced an option to issue the OIB to the bankruptcy and liquida-

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13 Bodul, D., *et al.*, *Analiza učinaka predstečajnih nagodbi – Izvješće Ministarstva financija Republike Hrvatske od lipnja 2014,* Novi informator, No. 6310-6311, 2014, pp. 8-10; Bodul, D., *et al., „Završna bilanca" postupaka predstečajnih nagodbi,* Pravo u gospodarstvu, Vol. 4, No. 579, 2018, pp. 651-675

14 *Loc. cit.*

15 See, for instance, High Commercial Court of the Republic of Croatia, Ruling No. No. Pž 8613/13-4 of 25 November 2013

16 Bankruptcy Act (*Stečajni zakon*), Official Gazette No. 71/15 and 104/17

tion estate. Also, as it has been noticed in practice that enforcement proceedings initiated and conducted by separate creditors take a long time, which prolongs the duration of bankruptcy, the right of a separate creditor to initiate enforcement proceedings after bankruptcy has been abolished i.e. now such proceedings are dismissed and they are referred to the commercial courts. With regard to the rules on bankruptcy trustees, it is stipulated that in bankruptcy proceedings they will be determined on the basis of automatic assignment in accordance with the list of trustees, but it is also stipulated that they will be removed from the list if they are dismissed in more than two bankruptcy proceedings. In addition, bankruptcy trustees will need to have a professional liability insurance policy. The institute of pre-bankruptcy settlement is regulated in such a way that it is conducted in full before the court, but the debtor can use this possibility only until the presumption on the basis of which bankruptcy proceedings must be initiated has been fulfilled. This was the result of the Recommendations on a New Approach to Bankruptcy and Insolvency of Entrepreneurs adopted by the European Commission in 2014, which laid down a set of general principles for national insolvency proceedings to encourage sustainable entrepreneurs to restructure at an early stage in order to prevent insolvency and to continue their business activities.[17] However, given that the requirements regarding the responsibility of the debtor for the orderliness of the proposal are very high and the rule on the majorities required for voting has been changed, it is not to be expected that many pre-bankruptcy agreements will be adopted in practice. Due to that, the possibility was returned to the creditors to vote on the bankruptcy plan after the opening of the bankruptcy procedure, as it was before the last amendment. However, in practice, perhaps the most important change is Fina's obligation to file for bankruptcy, if the legal entity has recorded unfulfilled payment bases in the Register of Order of Payment Bases for an uninterrupted period of 120 days. Also, through the rules on international bankruptcy in BA, the solutions of Council Regulation (EC) no. 1346/2000 of 29 May 2000 on bankruptcy proceedings were implemented.[18] However, given that the Regulation in question is legally above the BA, it was already in force.

However, in almost two years of application of the BA, the number of initiated pre-bankruptcy proceedings was found to be relatively small (273 initiated proceedings), with only 58 cases accepting the restructuring plan and confirming the

[17] Commission Recommendation 2014/135/EU of 12 March 2014 on a new approach to business failure and insolvency, Official Journal L 74/65, pp. 65-70

[18] Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, Official Journal L 160, 2000, pp. 1–18, no longer in force

pre-bankruptcy agreement.[19] Therefore, the aim of the Law on Amendments to the Bankruptcy Law, which entered into force on 2 November 2017, is primarily to facilitate pre-bankruptcy proceedings by prescribing realistic deadlines for taking certain actions in the proceedings.[20] Also, following ten years of application of the 2000 Regulation, the need of its reform has emerged, so a new Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings was adopted and published on 5 June 2015 in the Official Journal and entered into force 20 days after that publication (Art. 92, par. 1).[21] The new solutions have been implemented in the 2017 amendment to the BA: Exceptions are: a) Art. 86, which deals with the provision of information on national insolvency law and the insolvency law of the EU, and will apply from 26 June 2016; b) Art. 24, par. 1, relating to the establishment of national insolvency registers, shall apply from 26 June 2018; and c) Art. 25, relating to the European networking of national insolvency registers, which will apply from 26 June 2019 (Art. 92, par. 2, fig. a.-c.). It should be noted that the Republic of Croatia has designated only bankruptcy proceedings as the type of insolvency proceedings to which the Decree will apply, both with regard to the 2000 Decree (Annexes A and B) and with regard to the reformed 2015 Decree (Annexes A and B). In other words, the Regulation does not apply to previous pre-bankruptcy settlement proceedings as well as to current pre-bankruptcy proceedings.[22]

3.1. Analysis of qualitative and quantitative indicators of BA

The analysis of commercial court cases by their types shows that the largest part in the total number of received cases also refers to bankruptcy cases. However, the resolution rate of over 100% is recorded in bankruptcy cases, which means that more cases are resolved than new ones are received. Both for unresolved cases and for resolved cases, one of the most important indicators is the duration of resolved cases. At the same time, the DT indicator (indicator of case resolution time) indicates that commercial courts need the most days to resolve bankruptcy cases, which require an average of 360 days. Compared to the previous year, there is an increase in the time required to resolve bankruptcy cases from 308 to 360 days,

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19 See: Hausemer, P., *et al.*, *Impact assessment study on policy options for a new initiative on minimum standards in insolvency and restructuring law,* Publications Office of the European Union, 2017

20 Bankruptcy Act *(Stečajni zakon),* Official Gazette No. 71/15 and 104/17

21 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, Official Journal L 141, 2015, pp. 19–72

22 See: Ghio, E., *Case Study on Cross-border Insolvency and Rescue Law: An Analysis of the Future of European Integration*, Irish Journal of European Law, Vol. 20, No. 1, 2017

which is still within the acceptable range of 1 year.[23] This was certainly the result of the *Covid 19* pandemic as well as the earthquake that hit Zagreb.[24] It should be noted that the Law on Intervention Measures in Enforcement and Bankruptcy Proceedings for the duration of special circumstances [25] was in force from 1 May 2020 until 18 October 2020, and in accordance with the provisions of Art. 6 of the said Act, the bankruptcy reasons arising during the duration of special circumstances in the sense of that Act were not a precondition for submitting a proposal for opening bankruptcy proceedings. Therefore, the President of the Supreme Court in his Report points out that there are problems in the economic sector as a result of the pandemic, so it is to be assumed that in 2021 there will be a certain increase in the number of bankruptcy cases. The report also showed the inflow of bankruptcy cases. The inflow of items includes received items in the observed period. However, analysing the Report, it was not clear whether the inflow of cases has grown from year to year.[26] Furthermore, one of the important parameters in the analysis is the number of judges working on bankruptcy cases. In general, the same number of bankruptcy cases was resolved in 2020 compared to 2019, but it is not clear whether there was an increase or decrease in the number of judges working on bankruptcy cases, because then if we look at the average number of resolved cases per judge, the statistics would be different. Furthermore, as numerical indicators do not give a complete picture of the bankruptcy issue, the author also included qualitative indicators, which were obtained by analysing the content of final judgments. The analysis of the verdicts indicated the consistency and unambiguity of the argumentation, so the analysed sample of cases suggests a high quality of the substantive aspects of the verdicts. However, there were fears that this will change as a result of the announcements of the Ministry of Justice to increase the norm of judges (Framework Criteria for the Work of Judges). The doctrine indicates that second instance judges will often look for any (not necessarily strong enough) reason to revoke / annul a first instance decision, in order to save time needed to analyse the merits of the case.[27]

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23 Bodul, D., *Pogled na Izvješće Predsjednika Vrhovnog suda i stanje stečajnih predmeta*, Novi informator, No. 6688-6689, 2021, pp. 1-4

24 See: Madaus, S., Javier Arias, F., *Emergency COVID-19 Legislation in the Area of Insolvency and Restructuring Law,* European Company and Financial Law Review, Vol. 17, 2020, p. 318

25 Law on Intervention Measures in Enforcement and Bankruptcy Proceedings for the Duration of Special Circumstances (*Zakona o interventnim mjerama* u ovršnim i stečajnim postupcima u vrijeme trajanja posebnih okolnosti), Official Gazette No. 53/20

26 See: High Commercial Court of the Republic of Croatia, *Statistics,* [https://sudovi.hr/hr/vtsrh/o-sudovima/statistika], Accessed 12 February 2022

27 Bodul, D., *Pogled na Izvješće Predsjednika Vrhovnog suda …op. cit.,* note 23, p. 1-4

4. WHAT'S NEW IS THE RESTRUCTURING AND INSOLVENCY DIRECTIVE

On June 26, 2019 Restructuring and Insolvency Directive (hereinafter: the Directive) was published in the EU OG[28] laying down rules on: frameworks for preventive restructuring at the disposal of debtors in financial difficulties if there is a likelihood of insolvency, with the aim of preventing insolvency and ensuring the sustainability of debtors; procedures leading to debt relief for insolvent entrepreneurs or natural persons (so-called second chance); measures to increase the efficiency of restructuring, insolvency and debt relief procedures, in particular as regards to their shorter duration. Member States had two years (from the entry into force on 17 July 2019) to transpose its provisions into national law, but may, on "particular difficulties", as Art. 34(2) of the Directive puts it, request an additional year from the Commission for implementation. Finally, that most Member States of the EU have failed to implement the Directive in time. One of the interesting reasons mention in doctrine is the fact that many Member States have difficulties to keep pace with the EU.[29] In other words, the combination of a multitude of legal acts, the complexity of regulations, and short implementation deadlines seems to overwhelm many national governments. It is difficult to understand why the Commission is exerting such massive time pressure on such an important and complex issue.

In any way, the aim and essential content of the Directive are in line with the European Commission's Proposal from 22 November 2016. On the other hand, the Proposal was based on the European Commission's Recommendation from 12 March 2014 (A New Approach to Business Failure and Insolvency). The Directive primarily seeks to reduce the greatest obstacles to the free movement of capital arising from differences between Member States' restructuring and insolvency frameworks and to strengthen a culture of remediation within the EU based on the principle of second chance. All of this should lead to a reduction in barriers to trade and investment.[30] The new rules also seek to reduce the share of non-

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28 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

29 Reinhard, B., *Adopting the Directive: Member States "in particular difficulties",* INSOL Europe, Eurofenix - The journal of INSOL Europe, [file:///D:/Users/Dejan/Downloads/Eurofenix_84_Summer_2021.pdf] Accessed 4 April 2022; See also: Reinhard, B., *Harmonization of Insolvency Laws: a possible undertaking?,* 2022, [https://www.law.ox.ac.uk/business-law-blog/blog/2022/02/harmonisation-insolvency-laws-possible-undertaking], Accessed 4 April 2022.

30 Garrido, J., *et. al., IMF working paper WP/21/152 on Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive,* dated May 2021 [https://www.imf.org//media/Files/

performing loans in banks' balance sheets and prevent their accumulation in the future. The Directive also seeks to strike the right balance between the interests of debtors and creditors. Namely, the adoption of the Directive for the first time creates a single legal framework for the preventive restructuring of companies out of bankruptcy proceedings throughout the European Union. Preventive solutions are a growing trend in insolvency law with aim to make it easier for sustainable companies in financial difficulties to access frameworks for preventive restructuring by allowing for early-stage structural adjustment to avoid insolvency and, in this regard, laying off employees. In addition, providing a second chance to honest insolvent or over-indebted natural persons/entrepreneurs is necessary in order to rehabilitate them faster and thus preserve their accumulated entrepreneurial experience for future economic endeavours.[31]

5. A LOOK AT THE FINAL DRAFT BANKRUPTCY LAW WITH REGARD TO THE IMPLEMENTATION OF THE SOLUTION OF THE DIRECTIVE

5.1. Some legal novelties in general provisions

In accordance with the Directive, the Draft provides access to early warning systems because the sooner a debtor can detect its financial difficulties and take appropriate action, the more likely it is to avoid imminent insolvency or, in the case of permanently impaired operations, a more orderly and efficient liquidation process. In order to increase support for workers and their representatives, it is necessary to provide workers' representatives with access to relevant and up-to-date information on the availability of early warning tools and to familiarize them with procedures and measures related to debt restructuring and debt relief. The Draft stipulates that an employer with imminent insolvency or pre-bankruptcy proceedings must inform workers at least once a year about news regarding early warning tools as well as procedures and measures related to debt restructuring and debt relief (Art. 7a). The author is sceptical about this measure since no sanctions for non-compliance are prescribed.

Publications /WP/2021/English/wpiea2021152-print-pdf.ashx], Accessed 21 January 2022; Zhang, D., *Preventive Restructuring Frameworks: A Possible Solution for Financially Distressed Multinational Corporate Groups,* European Business Organization Law Review, Vol. 20, 2019, pp. 285, 286

31 Volberda, H., *Crises, Creditors and Cramdowns: An evaluation of the protection of minority creditors under the WHOA in light of Directive (EU) 2019/1023,* Utrecht Law Review, Vol. 17, No. 3, 2021, pp. 65–79.; Henriques, S., *The Duties of Directors When There Is a Likelihood of Insolvency and the Proposal for a New Directive,* European Company Law Journal, Vol. 16, No. 2, 2019, p. 50 *et seq.*

The Directive also stipulates that the application of the latest information and communication technologies requires clear, up-to-date and concise information tailored to users on available preventive restructuring procedures and that debtors have access to one or more clear and transparent early warning tools which could lead to the possibility of insolvency and which can signal to them that it is necessary to act without delay (Art. 3 (1) of the Directive). Therefore, there is an obligation of the Ministry of Finance, the Tax Administration and the auditor to warn the debtor of the negative development in his payment that they noticed in the course of their activities. The employer is obliged to inform the employees once a year regarding the early warning tools, while the debtors and the public will have access to relevant and updated information on the *e*-Bulletin board (Art. 7a). Such decisions are the result of the fact that even a cursory insight into the bankruptcy proceedings initiated so far shows that almost no bankruptcy cases have been initiated within 21 days from the day when bankruptcy reason occurred. This conclusion is supported by the legislator decision to implement in BA 2015, the institute according to which FINA has the obligation to submit a proposal to open bankruptcy proceedings, under certain conditions. Moreover, although the obligation to initiate bankruptcy is defined and although the amendment to the BA 2017 (Art. 109) determines who can submit the proposal for the opening of bankruptcy proceedings and there is already a criminal offense of "causing bankruptcy", new provisions on duties of directors or management of companies in case of probability of insolvency are certainly step forward to achieve the goal of timely initiation of bankruptcy (Art. 20a).

Furthermore, the dynamics of bankruptcy statistics in the Republic of Croatia has not been sufficiently researched, due to structural instabilities and frequent reforms of the bankruptcy system. This has resulted in the fact that in the Republic of Croatia it is still impossible to link the number of bankruptcies to any economic variables and that the analysis of bankruptcy statistics is reduced to a simpler form of observing the frequency of bankruptcies. Therefore, the new decision on data collection by the Ministry of Justice regarding the number of proceedings, their duration, costs, collection, number of lost jobs (Art. 20b) may serve as a quality solution for more precise changes or ultimately less frequent changes in bankruptcy regulations.

5.2. Legal novelties in the pre-bankruptcy proceedings

5.2.1. *Redefining the objectives of pre-bankruptcy proceedings*

The main goal is the same - to preserve financial discipline through the security of collection of receivables and to prevent further deterioration of companies for

which are concluded that it is possible to preserve them, or which have the perspective and purpose of continued existence. However, at the beginning of the Novella we see an explanation of the objective of pre-bankruptcy proceedings, i.e. how the objective now includes the prevention of insolvency, which is in line with the objectives of the Directive and the tendency to preserve business continuity by applying various legal or economic measures.

5.2.2. *Submission of a proposal for opening pre-bankruptcy proceedings*

The decision according to which the opening proposal is authorized to be submitted by the debtor or the creditor, if the debtor agrees with the proposal (consent must be submitted with the proposal) has been amended and now only / exclusively the debtor can submit a proposal for opening (Art. 25). Regarding the documents related to the proposal for opening pre-bankruptcy proceedings, the change was made, so if the restructuring plan was not submitted with the proposal for opening pre-bankruptcy proceedings, the plan must be submitted to the court no later than 21 days from the day the decision on established and disputed claims becomes final or on delivery of the decision of the second instance court on the appeal against the decision on determined and disputed claims (Art. 26).

5.2.2.1. *Restructuring plan proposal*

The debtor has the right to submit a restructuring plan (Art. 26a) and the proposal of the restructuring plan must be amended (Art. 27) in such a way that the proposal of the restructuring plan is extended.

Separate creditors can participate in the restructuring plan only if they explicitly and voluntarily agree to it. The restructuring plan must not infringe on the right of separate creditors to settle from cases in which there are separate settlement rights, unless otherwise expressly provided by that plan (Art. 38). Thus, it is now possible to encroach on the rights of separate creditors, stipulating that the rights of separate creditors may be limited by a restructuring plan without their consent, but they must not be put in a worse position than they would be if there was no plan and bankruptcy proceedings have been opened. Unless otherwise specified in the restructuring plan, it shall be specified for separate creditors in which part their rights are reduced, for how long the settlement is postponed and which other provisions of the restructuring plan apply to them. However, the method of filing claims for separate and exclusive creditors has not changed.

The article regulating the position of workers and former debtor's workers is deleted as unnecessary (Art. 37.) because pre-bankruptcy proceedings do not encroach on

workers' rights and if the debtor is more than 30 days late in pre-bankruptcy proceedings with payment of wages the pre-bankruptcy proceedings are suspended.

It is also clarified that creditors affected by pre-bankruptcy proceedings can realize their claims against the debtor only in pre-bankruptcy proceedings (Art. 39.).

5.2.3. *Prerequisites for the appointment of commissioners*

The preconditions for the appointment of a commissioner in pre-bankruptcy proceedings remain the same as the preconditions for the appointment of a Trustee/ Bankruptcy manager, with the difference that now the appointment of a commissioner is an obligation and not a possibility of a court (Art. 33). This is a good solution because if the court does not appoint a commissioner in the pre-bankruptcy decision there is no legal impediment to appointing a commissioner subsequently, which could greatly slow down the pre-bankruptcy proceedings and jeopardize compliance with deadlines within which the proceedings must be completed (Art. 23.). However, the rule that the applicant is obliged to advance the costs of pre-bankruptcy proceedings in the amount of 5,000.00 HRK has not been changed, so the question arises as to how the costs will be covered, especially the remuneration of the commissioner who has a much more active role in the proceedings.

5.2.4. *The role of the court and the determination of claims*

The role of the court is clarified by stipulating that the court manages the examination hearing and does not examine the reported claims (Art. 46) because claims reported within the prescribed time are considered established if they have not been disputed by the debtor, trustee or creditor (Art. 47). By removing or modifying existing or introducing new solutions into legislation, the aim was to overcome certain problems in practice and to reduce the administrative role of the court and strengthen its judicial function. However, it is not uncommon for the "same" claim to be reported by the creditor and the guarantor and / or guarantors who guaranteed the creditor's claim. Problems will arise if the reported guarantor's claim is not disputed by an authorized person within the legal deadline. A valid legal solution may reduce creditors' rights and significantly damage creditors by outvoting non-debtor guarantors alone or with other creditors when deciding on a restructuring plan proposal, but this only increases the obligation of trustees and creditors to determine their basis after filing claims and whether there are grounds for disputing them.

Until the Draft, the legislator did not distinguish between claims for which the creditor has an enforceable document from claims for which there is no enforce-

able document, so it would follow that the creditor is always referred to litigation if the claim was disputed by the debtor. Therefore, now if there is an enforceable document for the disputed claim, the court will refer the disputant to the litigation to prove the merits of its challenge (Art. 48). The Draft elaborates the manner in which the determination of the claim in litigation may be requested (Art. 50), so in litigation the determination of the claim may be requested only on the basis and in the amount indicated in the application or at the examination hearing. In addition to the request to determine the merits of the disputed claim for which there is no enforceable document, the creditor may request the settlement of the claim to the extent determined by the approved restructuring plan, if the litigation is initiated after confirmation of the restructuring plan. If the disputed claim for which there is an enforceable document, the litigation may require determination of the merits of the dispute on the basis of the enforceable document which is the subject of the claim and in the amount specified in the application or at the hearing. If the appellant fails in the litigation, the creditor of the disputed claim may, on the basis of the enforcement document which was the subject of the dispute, request enforcement to the extent determined by the confirmed restructuring plan. If the litigation is initiated after the suspension of the pre-bankruptcy proceedings, the creditor may demand the fulfilment of the claim in full.

5.2.5. *Voting and classifying creditors*

If the proposal of the restructuring plan does not include all determined and disputed claims, the debtor is obliged to submit the restructuring plan to the court no later than 21 days from the day the decision on determined and disputed claims becomes final that is, from the day of delivery of the decision of the second instance court on the appeal against the decision on determined and disputed claims, submit to the court a restructuring plan which includes all determined and disputed claims (Art. 52). Thus, it is now clearly stated that the proposed restructuring plan must cover all identified and disputed claims. In fact, given that it is difficult to expect from the debtor to submit an accurate restructuring plan proposal before the decision on established and disputed claims becomes final, it can be expected that debtors will submit restructuring plan proposals as a rule no later than 21 days after the decision on determined and disputed claims becomes final, i.e. from the day of delivery of the decision of the second instance court on the appeal against the decision on determined and disputed claims. However, if the complete restructuring plan is submitted to the court before the decision on established and disputed claims is made, the court will publish it on the e-Bulletin Board website within three days of receipt. If the debtor does not submit the restructuring plan within the prescribed deadlines, the court will suspend the proceedings.

The legislator encourages restructuring by stipulating that creditors will be considered to have voted for the restructuring plan if they by the beginning of the voting hearing do not submit a voting form or submit a form from which it is not possible to determine unequivocally how they voted (Art. 58) which is contrary to the existing decision according to which if creditors do not submit a voting form or submit a form from which it is not possible to determine unequivocally how they voted by the beginning of the voting hearing, they will be considered to have voted against the restructuring plan proposal.

The rules on the classification of participants in the bankruptcy plan shall apply accordingly to the classification of creditors in the restructuring plan. Creditors will be deemed to have accepted the bankruptcy plan if in each group the majority of creditors voted for the plan and the sum of the claims of creditors who voted for the plan exceeds twice the sum of claims of creditors who voted against the plan (Art. 59, see also Art. 330, par. 1 in conjunction with Art. 56). In this context, the rules on required majorities are also being refined nomo technically (Art. 59, see also Art. 308, par. 1 in conjunction with Art. 56). A new article is added, Art. 59a which regulates the provisions on the majority decision of a group of creditors in such a way that if the required majority is not reached in a certain group of creditors, and all other preconditions for approving the restructuring plan are met, at the proposal of the debtor or with his consent, the group will be deemed to have accepted the plan and the court will approve the restructuring plan if the following conditions are met: 1. the creditors of that group are not put in a worse position by the restructuring plan than they would be in the absence of the restructuring plan; 2. the creditors of that group participate appropriately in the economic benefits that should be due to the participants under the restructuring plan; and 3. the majority of creditors' groups have accepted the restructuring plan with the required majority who are holders of shares or groups of creditors with claims of lower payment orders (of course in the sense of Art. 139).

5.2.6. *Deciding on the approval of the restructuring plan*

The rules on the postponement of the hearing do not change, except for the title: "Postponement of the hearing to discuss and vote on the restructuring plan" (Art. 60). It is important to mention that the decision on the approval of the restructuring plan is being revised. Namely, after the creditors accept the restructuring plan, the court will decide whether to approve the restructuring plan. Furthermore, the Draft prescribes the situations when the court will *ex officio* or upon the proposal from creditors, debtors, shareholders and holders of other founding rights, legal entities, deny confirmation of the restructuring plan (Art. 61). New provision

regulates the court's decision on the restructuring plan, in such a way that if the preconditions for confirming the restructuring plan are not met, the court will deny the confirmation of the restructuring plan and suspend the pre-bankruptcy proceedings (Art. 61a). Legislator also regulates the right and conditions for filing an appeal against the decision approving the restructuring plan or denying the approval of the restructuring plan (Art. 61b).

5.2.7. *Duration and suspension of pre-bankruptcy proceedings*

The Draft changes the duration of the pre-bankruptcy proceedings, so instead of 300 days the pre-bankruptcy proceedings must be completed within 120 days, and exceptionally the court may, at the proposal of the debtor, creditor or trustee, allow an extension of 180 days if it deems it expedient for the conclusion of the pre-bankruptcy procedure and if progress has been made in the negotiations on the restructuring plan. However, the court may suspend the pre-bankruptcy proceedings if the debtor has contributed to the longer duration of the pre-bankruptcy proceedings than the stated deadlines. In order to prevent reasons for abuse of pre-bankruptcy proceedings, the same article stipulates that the court, at the request of the debtor, creditor or trustee, will lift the ban on enforcement and security proceedings against debtors and suspend pre-bankruptcy proceedings if it becomes apparent that part of the creditors that could prevent the restructuring plan does not support the resumption of negotiations on the restructuring plan (Art. 63). With the same goal, the reasons for the court to suspend the pre-bankruptcy proceedings are expanded (Art. 64).

There is also a new regulation on Fina's actions with the grounds for payment after the opening of pre-bankruptcy proceedings. The changes are related to the fact that in accordance with the amendments, the appointment of a commissioner has been determined as mandatory, and to the change of the provisions on claims that are not affected by the pre-bankruptcy proceedings (Art. 69).

5.2.8. *The issue of temporary financing in pre-bankruptcy proceedings*

In accordance with the Directive, the provisions relating to the assumption of new cash borrowing are amended. A new article stipulates that: the debtor may, with the written consent (given at the latest at the hearing on the restructuring plan) of creditors, who together have more than two thirds of legally established claims, take over new debt in cash from existing or new creditors for temporary financing that is justified and urgently needed to ensure business continuity and increase the value of assets during pre-bankruptcy proceedings. After submitting the consent, the court will examine whether the consent was given by the required number of

creditors and whether the temporary financing is justified and urgently needed, and if it finds the above, it will issue a decision; the debtor may envisage in the restructuring plan new financing by the existing or new creditor, which is necessary for the implementation of the restructuring plan and does not unduly harm the interests of the creditor, where the creditor is included in the restructuring plan; if bankruptcy proceedings are subsequently opened against the debtor, the claims of creditors on the basis of temporary financing and the claims of creditors on the basis of new financing shall be settled before other bankruptcy creditors, except creditors of the first higher payment order; if the debtor is subsequently declared bankrupt, temporary financing and new financing cannot be challenged and the providers of such financing are not liable on the grounds that it harms the creditor's overall credibility, unless it is established that it would violate certain legally prescribe principles (Art. 62a).

Also, in accordance with the Directive, a new provision is added which regulates the protection of other transactions related to restructuring. According to the said provision, without prejudice to the rules on temporary and new financing, if bankruptcy proceedings are subsequently opened against the debtor, transactions that are justified and urgently needed for negotiations on the restructuring plan, implementation of the restructuring plan and are in accordance with the restructuring plan, cannot be refuted on the grounds that they harm the totality of creditors, unless it is a criminal offense, violation of the principles of conscientiousness and honesty and conflict of interest of the opposing party. Transactions that are considered justified and urgently needed are, for example: fees and costs related to negotiations, fees and costs for professional advice closely related to restructuring...*et seq*. (Art. 62b).

5.2.9. *Conclusion of pre-bankruptcy proceedings*

The new provision on the conclusion of pre-bankruptcy proceedings stipulates that the court will issue a decision on the conclusion of pre-bankruptcy proceedings as soon as the decision on the confirmation of the restructuring plan becomes final. This is important because the question was asked - in what way does the court end the pre-bankruptcy proceedings and continues the bankruptcy proceedings as if a proposal for opening bankruptcy proceedings had been submitted (Art. 74a).

5.3. Novelties in the field of bankruptcy trustee profession

Following the guidelines of the Directive, the legislator reintroduces a list of bankruptcy trustees (hereinafter: BT) parallelly changing the conditions for entry on the List (Art. 79), while the Minister responsible for justice department issues a

decision on entry and deletion from the BT list (Art. 83). In parallel, a new article (79.a) *"List of highly qualified BTs"* is added for the area of jurisdiction of all courts, which regulates the qualifications, expertise and previous achievements that the BT must meet in order to be included in the list of qualified BTs.

Art. 79.b under the heading *"BT Company"* regulates the provisions of who and under what conditions may establish an BT company and which types of BT companies may be established. In accordance with the new provisions, two or more BTs registered on the BT list may establish an office with the status of a legal entity (BT company).

A more significant change is the manner in which the BT is dismissed (Art. 91), according to which the court would be able to dismiss the BT *ex officio* if he does not act on the order of the court or at the request of the creditors 'committee or the creditors' assembly, if he fails to perform its duties successfully or for other important reasons. Thus, the existing provision according to which BT should liquidate the bankruptcy estate within a year and a half from the reporting hearing is repealed for objective reasons (it was especially problematic in situations where the debtor had a larger bankruptcy estate). Also, the existing regulation according to which the dismissed BT has no right to appeal, but only the court allows him to comment, unless important reasons require otherwise, has been amended. Thus, the Board of Creditors and every bankruptcy creditor who voted for the proposal for dismissal of the BT have the right to appeal against the decision on dismissal of BT. It is also clarified when the BT ceases to perform its duties (Art. 91). However, it is not answered when the active BT ceases to perform its duties because the bankruptcy proceedings can be concluded and suspended in several ways, which results in deleting the bankruptcy debtor from the court register, so it can be said that deleting the bankruptcy debtor from the court register terminates the bankruptcy trustee function. However, it is not uncommon for the bankruptcy trustee to continue to represent the bankruptcy estate even after deleting the debtor from the court register. Moreover, after the conclusion of the bankruptcy proceedings, the bankruptcy trustee is obliged to represent the bankruptcy estate (Art. 89).

5.4. Novelties in bankruptcy proceedings

5.4.1. *Textual improvements and fillings of legal gaps*

With regard to filing claims (Art. 257), the State Attorney's Office of the Republic of Croatia is authorized to represent creditors in bankruptcy proceedings on the basis of claims from the budget, institutes or funds in accordance with special regulations.

Enforcement proceedings and securing of separate creditors that are in progress at the time of opening bankruptcy proceedings shall be terminated regardless of when the enforcement proceedings were initiated unless a decision on settling the separate creditor has already been made in the enforcement proceedings (Art. 169).

The article regulating legal remedies and legal consequences of refuting the legal actions of the bankruptcy debtor is completely changed, so the bankruptcy creditors and the bankruptcy trustee are authorized to refute the legal actions of the bankruptcy debtor on behalf of the bankruptcy debtor. A lawsuit to refute legal actions may be filed within two years from the opening of bankruptcy proceedings, and the legal actions of the debtor may be challenged by raising an objection in the litigation without a time limit. The bankruptcy trustee may file a lawsuit to challenge legal actions only with the approval of the bankruptcy judge (Art. 289.).

5.4.2. *Bankruptcy plan*

In 2015, the rules on the bankruptcy plan were significantly changed, in a way that legislator returned almost all the possibilities that creditors had until 2012 and implemented new ones. Therefore, it was already then stated exhaustively what can be done through the bankruptcy plan, and the Draft adds and determines other appropriate activities (Art. 303). Thus, measures of an economic, financial, legal and organizational nature (there is no *numerus clausus*) will provide a far greater number of opportunities for a bankruptcy debtor to emerge from the crisis and settle its creditors in an acceptable way, which is in line with the Directive's objectives.

5.4.2.1. *Filing a bankruptcy plan*

With regard to the submission of the bankruptcy plan, the manner and persons authorized to submit the plan are changed, so that the debtor can submit the bankruptcy plan together with the proposal for opening bankruptcy proceedings. After the opening of the bankruptcy proceedings, the bankruptcy trustee and the individual debtor have the right to submit the bankruptcy plan to the court. The bankruptcy plan submitted to the court after the final hearing will not be taken into account.

5.4.2.2. *New rules on required majorities*

Due to ambiguities in practice, the rules on required majorities are changed, so creditors will be considered to have accepted the bankruptcy plan if in each group the majority of creditors voted for the plan and the sum of the claims of creditors

who voted for the plan exceeds twice the sum of the claims of creditors who voted against the plan (Art. 330). In this context, the rules on prohibition of obstruction have been changed, so that the voting group will be considered to have accepted the bankruptcy plan, although the required majority has not been reached under law prescribe conditions.

5.5. Novelties in the procedure of release from remaining obligations

It should certainly be pointed out that the legal position of an individual's bankruptcy debtor is different from the legal position of the debtor who is a legal entity. The effects of the opening of bankruptcy proceedings do not apply to the entire assets of the individual debtor. If bankruptcy proceedings are conducted over the property of an individual debtor, the bankruptcy estate does not include the property of the individual debtor on which enforcement against him could not be carried out according to the general rules of enforcement proceedings. Thus, the individual debtor is in the same position as any debtor (natural person) in the enforcement proceedings. The individual debtor from the Bankruptcy Law 2015 is no longer just a sole trader and a craftsman, but any natural person who performs some economic, professional or other activity and who is liable to pay income tax or profit tax and he can be exempted from his obligations to bankruptcy creditors that remained unsettled in the bankruptcy proceedings through the rules of the Bankruptcy Law. The precondition for exemption is the initiation of liquidation bankruptcy which means liquidation of the property of an individual debtor and settling creditors to the extent possible thus leaving unsettled claims of bankruptcy creditors. In addition, the debtor is required to make all his seizure income from subsequent period (3 years by the Draft) available for collections to the bankruptcy creditors.

6. HOW REALISTIC IT IS TO EXPECT BETTER INDICATORS OF THE INSOLVENCY PROCEDURES

Recognizing the fact that the issue of bankruptcy proceedings in countries with a long market tradition is a dynamic area in which new solutions are sought that will follow the trend of changes in the international economy, the question of expediency and the need to implement amendments to insolvency law remains extremely topical. Generally speaking, comparative doctrinal research shows that there are different understandings of procedural doctrine and legislation about bankruptcy models.[32] Different models of bankruptcy proceedings, whether judi-

[32] Rasekh, A., Rosha, A., *Restructuring and Insolvency in Europe: Policy Options in the Implementation of the EU Directive, IMF Working Papers*, Vol. 152, 2021, A001, [https://www.elibrary.imf. org/view/

cial or administrative models of bankruptcy protection, have led today to modern legal systems offering different conceptions of bankruptcy proceedings that oscillate between a concept similar to court decision-making, on the one hand, and purely administrative models, on the other, and between them there are several different transitional or combined models. Moreover, neither the Organization for Economic Cooperation and Development, the International Monetary Fund, the World Bank, the United Nations Commission on International Trade Law, the American Law Institute or the International Institute for the Unification of Private Law that analyses bankruptcy regulations, do not have a clear view of which model is most suitable for practical application. Thus, it indicates how the law regulates specific societies. These societies have their own traditions and problems. So, what can one expect from the Directive now? It certainly achieves its goal to establish preventive restructuring frameworks throughout Europe. But the only binding requirement is that Member States must provide a pre-insolvency restructuring framework with certain instruments; the concrete form of these instruments and of the whole procedure is subject to individual decisions of the national legislators. Therefore, although the Republic of Croatia has the general goal of transforming its law in accordance with EU law, it still faces individual challenges. The statistics now available usually show only half of the truth - it reveals the number and type of submissions, but say nothing about the failure of rescue negotiations, the impact of insolvency on third parties or individual communities, or the long-term success or failure of pre-bankruptcy plans. Moreover, statistics do not reveal what is most important: how pre-bankruptcy proceedings works in practice, very specifically whether the debtor has duly fulfilled his obligations to creditors and whether, if he has not fulfilled his obligations, has bankruptcy proceedings been initiated as a last resort. Ultimately, although the pre-bankruptcy procedure implemented in 2015, amended in 2017 represents a serious shift in the Croatian economy, especially as a *conditio sine qua non* of thorough and necessary restructuring of the existing real sector, we believe that the final performance assessment is still not entirely possible no matter what methodological approach we have chosen. Coming down to the practical and empirical level, we see that the adoption of the BA in 2015 significantly changed the bankruptcy procedure in the Republic of Croatia. However, in its many years of practical application, a number of problems have been noticed in the interpretation and effects of certain provisions and institutes, which has been tried to overcome by implementing the novelties in 2017 and now in 2022. In principle, we can say that the Republic of Croatia has a complete framework for the implementation of bankruptcy reorganization, which in addition to the bankruptcy plan includes a hybrid informal

journals/001/2021/152/article-A001-en.xml], Accessed 15 May 2022

pre-bankruptcy procedure. Although it is difficult to say for now what results the new model of pre-bankruptcy proceedings will yield, the indicative method of establishing the facts shows that the first experiences will not be satisfactory and are primarily the result of an inadequate institutional framework for insolvency proceedings. Thus, starting from the point of view that the reform is a radical redefinition and redesign of the rules of procedure, in order to improve key bankruptcy procedural parameters (higher creditor settlement, lower costs and shorter duration of proceedings), it is difficult to say that the reform of insolvency law in 2022 and implementation of the aforementioned Directive will be called reformistic. Furthermore, laws of systemic importance, such as the BA, are not desirable to be changed frequently, as this is contrary to the principle of legal certainty. Also, if the authorities recognized by the scientific and professional public do not participate in their preparation, which is also the case, then it is not unusual for controversial results and a short life of such laws to occur. Experience to date shows that the rules on insolvency proceedings are often changed without a specific analysis of the problem while ignoring the profession, but also that creditors in whose interest the bankruptcy proceedings are conducted are all influenced by daily politics, which greatly complicates the quality of insolvency proceedings and positions of creditors. This leads to another problem. Namely, the BA is only one of the laws governing insolvency proceedings, and the rules on ownership, enforcement, taxes, litigation and the existence of clear registers of assets and changes in the subject assets are important for the successful conduct of proceedings. Therefore, the duration of bankruptcy proceedings in the Republic of Croatia depends on the issues of determining assets and resolving the issue of ownership and registration of the debtor's assets in the appropriate registers. However, it is not enough to constantly change the rules on bankruptcy proceedings, but the rules related to the conduct of bankruptcy proceedings should be systematically applied in order to provide a second chance to honest entrepreneurs, and prevent the others from further damaging their business. In conclusion, we strongly believe that the modernization of Croatian insolvency law should be done in the direction of its "Europeanization", which must be understood as a process more serious than simply transplanting legal institutes, because the legal system consists not only of "European" regulations but also of its appropriate national application. Moreover, group of experts on restructuring and insolvency law submitted a proposal for the further harmonization of insolvency laws by the end of June 2022.[33] For those who are familiar with

[33] On 11 November 2020, the European Commission – based on the new Capital Markets Union Action Plan of 24 September 2020 – published the initiative *Enhancing the convergence of insolvency laws - Inception Impact Assessment Initiative Enhancing the convergence of insolvency laws,* [https://ec.europa.eu/info/law/betterregulation/have-your-say/initiatives/12592-Enhancing-the-convergence-of-insolvency-laws-], Accessed 4 April 2022

the field of insolvency this is an impressive and it is probably safe to say that this might be perceived as being rather ambitious. As prof. Reinhard B. said …*for the avoidance of doubt, harmonization in this field of law deserves support! However, we all know, haste makes waste*….[34]

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