Evolution of the Preventive Restructuring Framework in Poland

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REFORMA ZAKONODAVSTVA O RESTRUKTURIRANJU, REORGANIZACIJI
I STEČAJU U SVETLU EVROPSKIH TENDENCIJA

Thematic Collection of Works
From the International Scientific Conference
THE REFORM OF LEGISLATION ON RESTRUCTURING, REORGANISATION AND
INSOLVENCY IN THE LIGHT OF EUROPEAN TENDENCIES

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SADRŽAJ/CONTENTS

PREDGOVOR

Istraživački tim nastavnika i saradnika Pravnog fakulteta Univerziteta u Istočnom Sarajevu, Instituta za uporedno pravo u Beogradu, Pravnog fakulteta Univerziteta u Banja Luci i Ekonomskog fakulteta Univerziteta u Istočnom Sarajevu u toku 2020-2022. godine realizovao je naučno-istraživački projekat „Reforma zakonodavstva o restrukturiranju, reorganizaciji i stečaju u svetlu evropskih tendencija“. Projekat je realizovan sredstvima Ministarstva za naučno-tehnološki razvoj, visoko obrazovanje i informaciono društvo Republike Srpske i Pravnog fakulteta Univerziteta u Istočnom Sarajevu. Projekat je imao za cilj analizu usklađenosti zakonodavstva o stečaju i restrukturiranju Republike Srpske sa pravom Evropske unije i pravima država okruženja, te ocenu adekvatnosti postojećeg zakonodavnog okvira sa aspekta njegove delotvorne primene.

Završetak projekta svečano je obeležen međunarodnim naučnim skupom, koji je održan 2.12.2022. godine na Pravnom fakultetu Univerziteta u Istočnom Sarajevu. Članovi projektnog tima i gosti - predavači iz Bosne i Hercegovine i evropskih država predstavili su svoje radove na temu zakonodavstva o restrukturiranju i stečaju. Na skupu je učestvovalo 20 referenata iz Bosne i Hercegovine, Srbije, Severne Makedonije, Nemačke i Poljske. Oni su analizirali nacionalno zakonodavstvo o stečaju i restrukturiranju i zahteve koje nacionalnom zakonodavcu postavlja pravo Evropske unije u toj oblasti.

Tematski zbornik radova „Reforma zakonodavstva o restrukturiranju, reorganizaciji i stečaju u svetlu evropskih tendencija“ sadrži kompletne radove učesnika međunarodnog naučnog skupa. Svi radovi su prošli dvostruku anonimnu recenziju pre objavljivanja. Uvereni smo da će zbornik, zbog svoje aktuelnosti, te temeljne i svestrane obrade najznačajnijih tema stečaja i restrukturiranja, privući pažnju naučnih radnika i praktičara kako u Bosni i Hercegovini, tako i u državama okruženja.

Posebnu zahvalnost iskazujemo Ministarstvu pravde Republike Srpske na finansijskoj podršci za štampanje ovog zbornika.

Koordinator projekta
Prof. dr Dijana Marković-Bajalović

FOREWORD

In the period 2020-2022, the research team of the Law Faculty University of East Sarajevo, the Institute for Comparative Law in Belgrade, the Law Faculty University of Banja Luka and the Economic Faculty University of East Sarajevo implemented a scientific-research project, "The Reform of Legislation on Restructuring, Reorganisation and Insolvency in the Light of European Tendencies". The Ministry of Scientific-Technological Development, Higher Education and Information Society of the Republic of Srpska and the Law Faculty University of East Sarajevo funded the project. The project aimed to analyse the consistency of national legislation on insolvency and restructuring with EU law and assess the effectiveness of the current legislative framework.

The project closure was celebrated by organising the international scientific conference on 2.12.2022 at the Law Faculty University of East Sarajevo. The project team members and guest lecturers from Bosnia and Herzegovina and European countries presented papers concerning restructuring and insolvency issues. Twenty authors from Bosnia and Herzegovina, Serbia, North Macedonia, Germany and Poland participated in the conference. They analysed national legislation on insolvency and restructuring and the requirements that EU law puts before national legislators in this field.

The thematic collection of works "The Reform of Legislation on Restructuring, Reorganisation and Insolvency in the Light of European Tendencies" comprises complete papers from the international scientific conference. All papers went through two double-blind peer reviews before publication. We are convinced that the collection of works, considering its actuality, as well as the thorough and comprehensive elaboration of the most significant issues in insolvency and restructuring, will draw the attention of researchers and practitioners in Bosnia and Herzegovina and countries of the region.

We express special gratitude to the Ministry of Justice of the Republic of Srpska for the financial support for the publication of this book.

Project Coordinator
Prof. Dijana Marković-Bajalović, PhD

Ulyana Zaremba, PhD* Izvorni naučni članak

EVOLUTION OF THE PREVENTIVE RESTRUCTURING FRAMEWORK IN POLAND

The research aimed to present key changes in the bankruptcy and restructuring law in Poland, aimed at improving the recovery procedures and implementing Directive (EU) 2019/1023 on the preventive restructuring framework. In 2016, a new Restructuring Law and a significant amendment to the Bankruptcy Law came into force. In 2020, a new instrument - simplified restructuring proceedings - was introduced to counteract the negative effects of the Covid-19 pandemic. Its usefulness was confirmed by numerous petitions for approval of the arrangement, which prompted the legislator to make further modifications to the restructuring law. In 2021, restructuring and bankruptcy proceedings became digitised. The National Debtors Register has also been launched - another revolution in the ongoing digitisation of the Polish justice system. In July 2022, the Sejm of the Republic of Poland received a bill of amendments to the act Restructuring Law and the Bankruptcy Law, aimed at the final implementation of the aforementioned Directive. The paper summarises the most important amendments to the Restructuring Law in Poland and the reasons for their adoption in relation to business practice. In addition, it discusses the effectiveness of restructuring proceedings based on statistical data and provides recommendations for non-EU countries on key aspects of legislative changes towards supporting companies in financial distress to restore their viability and ability to compete in the market, which has tangible economic benefits.

Keywords: Preventive restructuring. - Restructuring law. – Bankruptcy. - Law and economics. - Financial distress.

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1. INTRODUCTION

Until 2016, bankruptcy procedures in Poland (bankruptcy involving the liquidation of the debtor's assets and bankruptcy with the possibility of an arrangement), as well as rehabilitation procedures for entrepreneurs at risk of insolvency, were regulated by the Bankruptcy and Rehabilitation Law of 28 February 2003. Regardless of the type of bankruptcy proceedings, its purpose was to satisfy creditors to the greatest extent possible, not the survival of the entity. In turn, the commencement of reorganisation proceedings required the publication of an announcement in the *Monitor Sądowy i Gospodarczy* (hereinafter MSiG)[1] about the submission to the court of a declaration on the commencement of reorganisation proceedings. From the commencement of the proceedings until the decision on the discontinuance of the proceedings or court approval of the arrangement, enforcement proceedings against the debtor were suspended by the operation of law, and new proceedings could not be initiated. Depending on the size of the enterprise, the time to conclude an arrangement was 3 to 4 months, after which the proceedings were discontinued by operation of law (Article 519 PU - repealed).[2] Reorganisation schemes, which in theory were supposed to protect the entity from liquidation, were not used by entities in a difficult financial situation.

The literature[3] mainly indicated the infirmity of bankruptcy law in this respect, the devaluation of the act and the negative connotation of the word 'bankrupt'. It was emphasised that declaring an entity bankrupt irrespective of the choice of type of proceedings, 'stigmatised' the entrepreneur in the market, with the result that the recovery scheme was marginalised by business practice.[4] These opinions were substantiated by the statistics of

[1] Polish nationwide official Court and Economic Monitor Gazette.

[2] Act of 28 February 2003, Bankruptcy and Reorganization Law, *Journal of Laws* 215, item 233. Expiration date: December 28, 2016.

[3] E. Mączyńska, *Bankructwa i upadłości przedsiębiorstw. Aspekty teoretyczne i prawne* [in:] E. Mączyńska, S. Morawska (ed.), *Efektywność procedur upadłościowych. Bankructwa przedsiębiorstw katharsis i nowa szansa (The Effectiveness of the bankruptcy proceedings. The bankruptcy of the enterprises, catharsis and the new chance),* SGH Publishing House, Warsaw 2015, 80-81; R. Adamus, *Restructuring Law. Commentary*, C.H. Beck, Warsaw 2019, Introduction; Explanatory memorandum to the bill restructuring law. Sejm Paper no. 2824, 7.

[4] P. Antonowicz, P. Banasik, M. Chruściak, S. Morawska i B. Prusak, "Legal and Management Determinants Effective Restructuring as a Preventive Institution Of Enterprise Bankruptcy - Perspective of the National and International Benchmarks", *Management and Finance*, Sopot 2018, 4, 9-10.

reorganisation proceedings initiated or the number of approved arrangements. Between 2007 and 2013, arrangement bankruptcies, on average, accounted for 17.62% of the total number of bankruptcies declared. Reorganisation proceedings were used by entities even less frequently. Over the entire seven-year period, only 227 bankruptcy reorganisation petitions were filed with the courts in Poland, averaging less than 1% of the total number of bankruptcy petitions filed by companies.[5] Why were entrepreneurs reluctant to use the recovery mechanism? First of all, this scheme was intended for entities at risk of insolvency, and this state of affairs, as a result of the entrepreneur's failure to perceive, underestimation or unwillingness to communicate signals of liquidity risk in the company to counterparties, quickly turned into a state of insolvency, which already obliged the debtor to file for bankruptcy. Declaring bankruptcy, even with the possibility of an arrangement, made it much more difficult for the entrepreneur to operate. In particular, the annotation 'in bankruptcy', which was added to the existing company name, created a negative connotation of bankruptcy. In 2012, the Minister of Justice appointed a team of experts who developed a comprehensive analysis of the problems of the Polish insolvency system and proposed legislative, IT and institutional solutions that fit into the assumptions of the so-called 'second chance policy'.[6] The team included judges, legal counsels, and attorneys, as well as representatives of legal sciences, economists, representatives of banks and other state institutions. This was the beginning of work on significant changes to the bankruptcy law in Poland, which had not been amended for almost 10 years.

[5] Ibid, 147-149.

[6] M. Geromin, B. Groele, A. Machowska, D. Wędzki (ed.), *Rekomendacje Zespołu Ministra Sprawiedliwości ds. Nowelizacji Prawa upadłościowego i naprawcze-go (Recommendations of the Team of the Minister of Justice for the amendment of the Bankruptcy and Reorganisation La*w), Ministry of Justice - Poland, Warsaw 2012, 5.

2. IN-DEPTH REFORM OF THE BANKRUPTCY AND REORGANISATION LAW IN POLAND

In March 2014, a Recommendation of the European Commission was published, which suggested changes to the national laws of EU Member States to allow the restructuring of a company at an early stage to prevent bankruptcy, while maximising the satisfaction of creditors.[7] The recommendation is that restructuring proceedings should be quick, inexpensive and should allow the debtor to take as many out-of-court steps as possible to reach an agreement with creditors. In October of the same year,[8] a bill of a new Restructuring Law was submitted to the Sejm of the Republic of Poland, together with a justification of the need for reform. The main objective of the project was to introduce effective instruments to restructure the indebted entity and prevent its bankruptcy, which was expected to have a positive social (preservation of jobs) and economic (possibility to continue performing contracts, a higher degree of satisfaction of creditors) impact. The extraction of restructuring procedures into a new act was dictated by a substantial amendment of the previous regulations. The four types of restructuring proceedings proposed by the legislator were intended not to stigmatise the debtor with the odium of bankruptcy and to enable both entities at risk of insolvency and insolvent entities to reach an arrangement with their creditors in a short period. The Restructuring Law of 15 May 2015 regulating recovery procedures and the amendment to the Bankruptcy and Recovery Law of 28 February 2003 (the title of which was changed to Bankruptcy Law) became effective at the beginning of 2016.[9]

The Restructuring Law already took into account most of the corporate restructuring principles set out in the Directive (EU) 2019/1023 of 20 June 2019 at the drafting stage.[10] The regulation of resolution procedures

[7] Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency Text with EEA relevance, *Official Journal of the European Union,* L74/65, http://data.europa.eu/eli/reco/2014/135/oj, last visited 16 January 2023.

[8] However, work on the draft started earlier. In July 2013, a draft of assumptions to the bill - Restructuring Law - was created on the website of the Governmental Legislation Centre.

[9] Act of 28 February 2003, Bankruptcy Law, *Journal of Laws* 2003 item. 535 – consolidated text.

[10] 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

in a separate piece of legislation has resulted in great enthusiasm among lawyers and entrepreneurs, as evidenced by numerous publications, business interviews and the increasing number of applications for the initiation of restructuring proceedings over the years. The four types of restructuring proceedings that have been introduced (proceedings for the approval of an arrangement, accelerated arrangement proceedings, arrangement proceedings and sanative proceedings) differ in terms of their complexity, the court's participation in the restructuring process, the number of remedial instruments available, the speed and amount of costs involved in conducting the proceedings.[11] The procedure for approval of an arrangement is the procedure requiring the least court involvement in which the arrangement is adopted as a result of an independent collection of votes of the creditors by the debtor and is subject only to court approval. Originally, this procedure did not provide any protective instruments for the debtor, which resulted in a negligible number of petitions for the approval of the arrangement. The situation changed in 2020 after the introduction of the so-called simplified restructuring to prevent the negative effects of the Covid-19 pandemic (more on this in the next section).

The other three judicial types of proceedings allow assets to be protected from enforcement, as well as offering instruments to support recovery. The number of disputed claims, i.e. those for the existence of which there must be a dispute between the parties as to the scope of the benefit and the factual basis, should be noted as the main difference between the accelerated arrangement procedure and the arrangement procedure. Accelerated arrangement proceedings may be opened if the sum of disputed claims entitled to vote on the arrangement does not exceed 15%.[12] Sanative proceedings apply to entities in very difficult financial situations and are excluded from the so-called preventive restructuring framework (it remains outside the scope of Directive 2019/1023). It allows a deep repair of the company and not just a restructuring of its liabilities. This is made possible by regulations governing employment restructuring, contract restructuring and optimisation of corporate assets.

restructuring and insolvency), *Official Journal of the European Union*, L172/18, http://data.europa.eu/eli/dir/2019/1023/oj last visited 15.02.2023.

[11] More extensively, the course of the restructuring in each proceedings was described in: U. Zaremba, „The legal restructuring framework in Poland: Does it help indebted enterprises avoid bankruptcy?", *International Insolvency review*, 2022, nr 31, p. 129–146.

[12] Act of 15 May 2015, Restructuring Law, Polish Journal of Laws 2015, item 978, Article 3 (2).

The choice of the type of proceedings is dictated primarily by the economic and financial condition of the indebted enterprise. The assumption is that the earlier corrective action is taken, the less complicated and time-consuming restructuring process is required. In the first four years of the restructuring law being in force, more than 1504 restructuring proceedings were initiated, and 52 petitions were submitted for approval of an arrangement adopted as a result of an independent collection of creditors' votes by the debtor without court involvement.[13] Changes in restructuring law, the impact of government decisions during the Covid-19 pandemic, changes in tax law, the war in Ukraine, the energy crisis, and double-digit inflation resulted in 2290 companies entering restructuring in 2022, an increase of nearly 24% compared to 2021 and as much as 203% compared to 2020.[14]

On 20 June 2019, the EU Council adopted the text of the latest directive[15] setting out a framework for corporate restructuring, which aims to ensure that viable and fair companies in financial distress have access to an effective national preventive restructuring framework, allowing them to benefit from full debt relief within a short period after a specified deadline. It is worth noting that the Directive repeatedly addresses the aspect of the economic viability of the company and the possibility of quickly restoring it through restructuring. If this is not possible, restructuring efforts could reduce the entity's assets to the detriment of creditors, hence entities with no chance of survival should be quickly liquidated. In July 2022, the latest bill amending the Restructuring Law and Bankruptcy Law was introduced in the Sejm, which aims to fully implement the provisions of Directive (EU) 2019/1023. The most recent changes planned for implementation mainly concern simplification of the procedure for filing the petition to open restructuring proceedings for microenterprises, exclusion of sanative proceedings from preventive restructuring proceedings, regulation of the scope of suspending individual enforcement actions, approval of a restructuring plan against the objection of a group of creditors, as well as protec-

[13] U. Zaremba, *Restrukturyzacja sądowa a upadłość przedsiębiorstw w Polsce (Judicial restructuring and bankruptcy of companies in Poland)*, ASPRA Publishing house, Warszawa--Rzeszów 2021, 156.

[14] MGBI, Postępowania upadłościowe i restrukturyzacyjne (Bankruptcy and restructuring proceedings). Report 2023. https://www.mgbi.pl (15.02.2023)

[15] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks ...op. cit., 18 - 55.

tion of new financing, interim financing and other transactions related to the restructuring process.[16]

3. SIMPLIFIED RESTRUCTURING PROCEEDINGS AT THE TIME OF THE COVID-19 PANDEMIC

On 20 March 2020, the Minister of Health issued a decree declaring a COVID-19 epidemic state in Poland, based on which several business restrictions were introduced. In order to help businesses maintain liquidity and protect the maximum number of jobs, special anti-crisis measures were developed and introduced. One such interim solution was the simplified restructuring proceedings, introduced by Anti-crisis Shield 4.0.[17] A major advantage of this type of proceeding was that the debtor received protection from enforcement and protection from termination of contracts essential to the conduct of business immediately after the announcement was made in the *Monitor Sądowy i Gospodarczy* that the day of arrangement had been set. The protection period lasted for a maximum of four months, and during this time, the debtor was expected to collect the creditors' votes and prepare a petition for approval of the arrangement. Failure to submit the petition within the prescribed period resulted in the discontinuance of the proceedings by operation of law.[18] The court's involvement was limited to approving or refusing to approve the arrangement adopted by the debtor through an independent collection of creditors' votes. Entrepreneurs at risk of insolvency or already insolvent could take advantage of the simplified restructuring instrument from 24 June 2020 to 31 November 2021. In the first year, 1251 simplified restructuring proceedings were opened, accounting for as much as 84% of all restructuring proceedings initiated. Among all open simplified restructuring proceedings, an arrangement was

[16] Explanatory Memorandum to the bill amending the act Restructuring Law and Bankruptcy Law of 24 May 2022, Government Legislation Center, https://legislacja.rcl.gov.pl/projekt/12361503, last visited 15 January 2023.

[17] Official legal act title: Act of 19 June 2020 on subsidies to interest rates on bank loans granted to entrepreneurs affected by COVID-19 and on the simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19, *Polish Journal of Laws* of 2020 item 1086.

[18] Ibid, Article 20.

adopted in almost half of the cases (48%), with the majority of the arrangements approved by the court.[19]

The course of simplified restructuring procedure consisted of five main steps:

1. Signing a contract with a licensed restructuring advisor;
2. Preparation of the arrangement proposals, the inventory of claims, and determination of the arrangement date (claims arising after the arrangement date were not included in the arrangement);
3. Making a notice in the MSiG about the determination of the arrangement date (from the publication of information on the determination of the arrangement day, the debtor had 4 months to apply to the court for approval of the arrangement);
4. Collection of creditors' votes on the proposed arrangement;
5. Submitting a petition to the court for approval of the arrangement.

Due to the protection from enforcement and termination of key contracts, as well as the possibility of extending the arrangement to secured creditors without their consent, this procedure has proven to be an attractive solution for entities in financial distress. The popularity of the proposed solution prompted the legislature to transfer (with minor changes) the provisions from Shield 4.0 to the Restructuring Law, and from December 1, 2021, entrepreneurs can open proceedings for approval of an arrangement according to the amended rules. In 2022, the number of initiated proceedings for approval of an arrangement (according to the revised regulations) was 2155, which equalled 91% of all open restructurings for the year.[20] Statistics confirm that companies in the early stages of financial difficulties are eager to use the resolution instrument, where the court's involvement has been reduced to a minimum, but with the possibility of protection from enforcement and termination of key contracts within a statutorily defined period. The legislator has set a time limitation that will prevent debtors from using the proceedings for approval of the arrangement more often than once every ten years, except in situations in which

[19] B. Pilitowski, P. Sołowij, K. Tatara, Ł.Trela, B. Sokół, J. Michalak, M. Pyzik-Waląg, K. Ochocińska, *Uproszczone Postępowanie Restrukturyzacyjne – raport z roku funkcjonowania (Simplified Restructuring Proceedings - a report on one year of operation)*, Fundacja Court Watch Polska, Toruń 2021, 19.

[20] Centralny Ośrodek Informacji Gospodarczej, https://www.coig.com.pl/ (1.02.2023)

the discontinuation of the proceedings has been made with the consent of the council of creditors, or there has been no announcement of the determination of the day of arrangement (proceedings were conducted without the use of protective instruments).[21]

4. DIGITALISATION OF RESTRUCTURING AND BANKRUPTCY PROCEEDINGS

Until 1 December 2021, court documentation of restructuring and bankruptcy proceedings was handled in paper form and announcements required by the Restructuring and Bankruptcy Law were issued in the nationwide official gazette - *Monitorze Sądowym i Gospodarczym* (MSiG). Under Article 24 (1) of EU Regulation No. 2015/848,[22] as of 28 June 2018, Member States should maintain on their territory at least one register in which information about insolvency proceedings is announced immediately after the initiation of such proceedings.

In November 2016, work was launched on the development of the Central Register of Restructuring and Bankruptcy.[23] It was intended to be used for posting and announcing orders, decrees, documents and information relating to bankruptcy and restructuring proceedings and to allow for the submission of petitions and other documents. However, the registry was not launched, as it was recognised that it needed to be expanded to allow for the complete digitisation of restructuring and bankruptcy proceedings. In mid-2018, a bill on the National Register of Debtors (*Krajowy Rejestr Zadłużonych - KRZ*) was submitted to the Sejm of the Republic of Poland, where the legislative process was ongoing for about six months. The Act of 6 December 2018 on the National Register of Debtors came into force two years after it was signed. The delay in the launch of the Registry was influenced, among other things, by the temporary anti-crisis regulations

[21] Act of 28 May 2021 amending the Act on the National Debt Register and certain other acts, *Polish Journal of Laws* 2021, item 1080.

[22] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, http://data.europa.eu/eli/reg/2015/848/ 2022-01-09 (15.02.2023)

[23] EU member states were obliged to set up the register by the European Parliament and the Council in Regulation 2015/848 of 20 May 2015. The registers were to be operational in each country as early as 26 June 2018.

in connection with Covid-19 (i.e., simplified restructuring proceedings). The contract for the implementation of the registry was awarded to Asseco Poland S.A., selected through an open tender "Construction, maintenance and development of the National Registry of Debtors system". The project was valued at PLN 31 million and it was the highest bid, but the other potential contractors ultimately declined to undertake the work.[24] The implementation of the *KRZ* was co-financed by EU funds under Measure 2.17 Effective Justice. Some of the advantages of the *KRZ* include:

- increasing the transparency of bankruptcy and restructuring proceedings through online access to data and court dockets;
- speeding up proceedings by reducing the time from issuance of a decision to its delivery by 80%, and eliminating delays in the delivery of correspondence;
- facilitating access to the files of restructuring and bankruptcy proceedings;
- reducing costs for participants and bodies in restructuring and bankruptcy proceedings by eliminating the publication of the announcement in the MSiG, as well as reducing by 99% the amount of correspondence sent in paper form.[25]

The KRZ has been constructed in such a way as to enable its connection with the European e-Justice Portal, which acts as a central electronic point of public access to bankruptcy information[26].

[24] The tender conditions are posted on SMARTPZP - a system providing support for the process of awarding public contracts by means of electronic communication in organizational units subordinate to the minister of justice. https://ezamowienia.ms.gov .pl/czs/public/postepowanie?postepowanie=1467080 (12.01.2023)

[25] Information on the adoption of the law on the National Debtors Register https://www.gov.pl/web/premier/projekt-ustawy-o-krajowym-rejestrze-zadluzonych (17.01.2023)

[26] Eplanatory memorandum to the government's bill on the National Debtors Register, https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=2637 (2.01.2023)

Category	Type of announcement
Arrangement day	Determination of the arrangement day
Restructuring petition filed by the debtor	Ruling to record a restructuring petition in the repertory
	Court decision to refuse to open restructuring proceedings
	Ruling to return a restructuring petition
	Court decision to discontinue the proceedings on the consideration of the restructuring petition
Opening of restructuring proceedings	Court decision to open restructuring proceedings
	Court decision to open restructuring proceedings becomes non-appealable
	Filing of a complaint against the decision to open restructuring proceedings
Restructuring advisor role	Appointment of a supervisor for the implementation of the arrangement
Inventory of claims	Date of submission of the inventory of claims (and disputed claims)
	Court decision to approve the inventory of claims
Creditors' meeting	Calling of a creditors' meeting
Arrangement	Court decision to approve the arrangement (and information that the decision becomes non-appealable)
	Court decision to repeal the arrangement (and information that the decision becomes non-appealable)
	Court decision refusing to approve the arrangement
	Court decision on the implementation of the arrangement (and information that the decision becomes non-appealable)
	Decision to open proceedings to modify a previously approved arrangement
	Decision on the adoption of the arrangement
	Notification of the date of the hearing to consider the arrangement
Termination / discontinuance of the proceedings	Court decision to discontinue restructuring proceedings (and information that the decision becomes non-appealable)
	Information on the termination of restructuring proceedings

Table 1. Selected types of announcements in the Polish National Debt Register for restructuring proceedings (Source: own elaboration based on National Debtors Register, https://krz.ms.gov.pl/ (28.02.2023)

The long-awaited Registry became operational on 1 December 2021 and was not the only digital revolution in the Polish justice system. The register is public, maintained by the Minister of Justice, which discloses data on ongoing restructuring proceedings, bankruptcy proceedings, proceedings for a ban on business activity, and unsuccessful executions, including executions for alimony payments.[27] Restructuring advisors, acting in restructuring proceedings as court supervisor, administrator, supervisor of arrangement, or trustee in the case of bankruptcy proceedings, maintain electronic files of the proceedings in the system. An important role is also played by the notice board, where announcements are posted by category, as described in Table 1.

In the period from 1 December 2022 to 28 February 2023, the register included: 2816 notices in the arrangement day category, 1727 notices of filed restructuring petitions (petitions for approval of an arrangement or initiation of restructuring proceedings), 286 resolutions on the opening of proceedings (accelerated arrangement, arrangement or sanative), 547 announcements in the arrangement category and 73 announcements on the termination or discontinuance of restructuring proceedings. These statistics confirm the advantage of the arrangement approval proceedings over other types of proceedings, due to their specifics, including simplicity, speed, low court involvement in the debt restructuring process and the protective mechanisms provided for the debtor.

The National Debtors Register undoubtedly represents a digital revolution. Despite the numerous questions raised by restructuring advisors, reported errors and doubts about how and where to post specific documents, the Registry is working and fulfilling its role. It should be pointed out that errors and shortcomings are typical at the initial stage of the operation of any application, system or even computer game. Trying to eliminate all bugs through long-term testing would take a long time and require a lot of financial resources, in some cases contributing to the phenomenon of overinvestment. Future users of the product, due to their knowledge and experience, are able to quickly identify shortcomings and use the function, i.e. report a bug to contribute to the rapid improvement of the system.

[27] Ministry of Justice, https://www.gov.pl/web/sprawiedliwosc/krajowy-rejestr-zadluzonych (15.01.2023)

5. CONCLUSIONS

Restructuring proceedings are not intended for every indebted entity, as once they are opened, the debtor must pay new obligations on an ongoing basis, as well as cover the costs of the proceedings, which would be difficult to do in the absence of sales revenues. According to Directive (EU) 2019/1023 of June 20, 2019, a debtor that has lost its ability to generate revenues and the probability of restoring economic viability is low should be liquidated quickly, as restructuring efforts could result in the accumulation of losses to the detriment of creditors and the economy as a whole. In Poland, three types of proceedings have been provided within the framework of preventive restructuring, from which debtors both at risk of insolvency and also insolvent can benefit. This approach removes the need to distinguish between insolvency and the threat of insolvency at the stage of selecting the type of proceedings. As a rule, the procedure for approval of the arrangement is out-of-court, although the adopted arrangement requires court approval. Its attractiveness for financially distressed entities increased significantly after the introduction of protective mechanisms for the debtor at the stage of collecting creditors' votes (a maximum of 3 months after the arrangement day is set). Amendments to facilitate access to the preventive restructuring framework for micro-enterprises resulted in as much as 60% of all restructurings in 2022 being natural persons conducting business. This compares with 34% in 2019, where the majority group was limited liability companies.[28]

The process of digitising restructuring and bankruptcy proceedings has been difficult and lengthy, but positive outcomes are being seen by practitioners, judges and other stakeholder groups after just one year of operation of the system. Among the key points and recommendations for countries that are not covered by the (EU) Preventive Restructuring Framework Directive, but are thinking of revising pre-insolvency regulations based on the Polish experience, are:

- visible economic benefits of rescuing companies experiencing temporary financial difficulties. For this purpose, it is necessary to raise awareness among market participants that restructuring of liabilities does not mean the bankruptcy of the entity, and that the promptness

[28] Centralny Ośrodek Informacji Gospodarczej, https://www.coig.com.pl/, last visited 17 February 2023.

of corrective actions indicates good management and increases the likelihood of executing the arrangement;

- a higher degree of satisfaction of creditors compared to liquidation of the debtor's assets through bankruptcy proceedings;
- increasing the share of microenterprise restructuring requires easier access and simplified procedures (overly long and costly processes can act as a deterrent);
- effective digitalisation of proceedings if an experienced ICT system contractor is selected;
- the need for market analysis and monitoring. Preventive instruments can only be considered useful if those experiencing financial difficulties decide to use them.

The modern world is rapidly changing, and the scale of uncertainty and threats is greater than in the past. The high risk of bankruptcy can discourage young people from starting and running businesses and experienced people from scaling up their businesses. This can be counteracted by an effective preventive restructuring framework that enables a company, experiencing temporary financial difficulties, to restore its viability and regain its ability to compete in the market under a so-called 'second chance' policy.

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RAZVOJ OKVIRA PREVENTIVNOG RESTRUKTURIRANJA U POLJSKOJ

Apstrakt

Cilj istraživanja je da predstavi ključne promjene u poljskom zakonodavstvu o stečaju i restruktuiranju, s ciljem unaprijeđenja procedura oporavka i implementacije Direktive (EU) 2019/1023 o preventivnom okviru restrukturiranja. Godine 2016. na snagu je stupio novi Zakon o restrukturiranju, kao i značajne izmjene Zakona o stečaju. U cilju suzbijanja negativnih efekata COVID 19 pandemije, 2020. godine predstavljen je novi instrument koji sadrži pojednostavljene procedure restrukturiranja. Njegova korisnost potvrđena je brojnim zahtjevima za odobrenje sporazuma o restrukturiranju, što je zakonodavca navelo da izvrši dalje izmjene zakonodavstva o restrukturiranju. 2021. godine postupci stečaja i restrukturiranja su digitalizovani. Pokrenut je i Nacionalni registar dužnika – još jedna revolucija u tekućoj digitalizaciji poljskog pravosudnog sistema. Jula 2022, Donji dom Parlamenta Republike Poljske, tzv. Sejm, zaprimio je prijedlog izmjena i dopuna Zakona o restrukturiranju i Zakona o stečaju, u cilju konačnog sprovođenja pomenute Direktive. U radu su sumirani najvažniji prijedlozi izmjena i dopuna Zakona o restrukturiranju Poljske, kao i razlozi za njihovo usvajanje u vezi sa poslovnom praksom. Pored toga, razmatra se efikasnost postupka restrukturiranja na osnovu statističkih podataka i daju preporuke za zemlje koje nisu članice EU o ključnim aspektima izmjena zakonodavstva u pravcu pružanja podrške kompanijama u finansijskim poteškoćama da povrate svoju održivost i sposobnost da se takmiče na tržištu koje ima opipljive ekonomske olakšice.

Ključne riječi: Preventivno restrukturiranje. – Zakonodavstvo o restrukturiranju. – Stečaj. – Pravo i ekonomija. – Finansijske poteškoće.

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