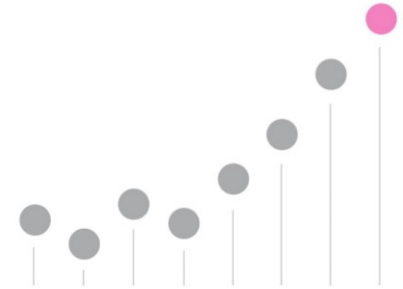


to the point Finance

Restructuring Directive



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Editorial | Restructuring Directive

- **Gamechanger or damp squib? It is a project that has been two years in the making – the implementation of the Restructuring Directive.** In force since June 2019, the Restructuring Directive required implementation into national laws, with the option of a one-year extension, by 17 July 2021. The COVID crisis and the ensuing economic turmoil has added urgency to the project that seeks to make it easier for businesses to pre-emptively restructure their liabilities. However, governments have had their hands full with short-term troubleshooting and did not focus on the implementation of the Restructuring Directive. While most countries imposed some sort of moratorium on the repayment of loans and some even altered their insolvency laws to prevent a "wave" of insolvencies, only two countries, Austria and Hungary, have implemented the Restructuring Directive on time. In Bulgaria, Slovenia and Romania drafts were published but have not yet been adopted. The other countries have either formally postponed the implementation or have simply missed the deadline.

The Restructuring Directive provides for exciting and extremely useful concepts for out-of-court restructurings. The challenge is to embed these concepts in national law without creating too many hurdles for companies to make use of the new tools. For countries where out-of-court restructurings have not yet been established in practice, such as Romania, the new law will be a real chance to improve the local restructuring culture. But laws itself are not sufficient; market participants have to accept and use them. So, I urge you all: **Use it or lose it!**



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An overview of the current status of the implementation of the Restructuring Directive (EU) 2019/1023 in CEE is below:

Austria

- **The Restructuring Directive has been implemented in the new Restructuring Code (*Restrukturierungsordnung*)** accompanied by some amendments in Austrian insolvency law. It entered into force in July 2021 and offers an additional judicial restructuring option besides insolvency proceedings and out-of-court restructurings. If insolvency is likely, a debtor may use restructuring proceedings including all the tools as stipulated in the Restructuring Directive. It also introduces the possibility of fast-track "simplified restructuring proceedings". Under certain circumstances, the consent of refusing financial creditors (representing up to 25 % of the total financial liabilities) to a restructuring agreement negotiated prior to the opening of simplified restructuring proceedings can be replaced by a court confirmation.

[Philipp Wetter](#)

Bulgaria

- **Bulgaria did not meet the deadline for implementation due to the current political instability.** A draft implementing bill was published on the government's webpage in February 2021 and is expected to be submitted for voting once a working parliament is established. We believe the draft bill does not fully transpose the Restructuring Directive. Furthermore, it does not address the major drawback of the current pre-insolvency restructuring procedure that is practically impossible to commence. Thus, courts regularly hold that there is no "threat of over-indebtedness" (as a prerequisite for restructuring) but actual over-indebtedness requiring the opening of insolvency. So more flexible criteria are needed to ensure actual commencement of the procedure.

[Tsvetan Krumov](#)

Croatia

- **According to the annual plan of legislative activities, the responsibilities for implementing the Restructuring Directive** were delegated to the Ministry of Justice and Public

Administration. The implementation process is not yet at full speed; however, it will be done through amending both the Insolvency Act and the Consumer Insolvency Act. A first draft bill is expected to be available in September 2021.

[Ozren Kobsa](#)

Czech Republic

- **The process of implementing the Restructuring Directive in the Czech Republic was split into two streams:** (i) discharge of debts relating to individuals only, which will be implemented by an amendment to the Insolvency Act (the bill is currently still in the legislative process); and (ii) the legal framework for preventive restructuring itself, i.e. relating to corporate clients, which will be implemented by a separate act - this first legislative proposal was released on 30 July 2021.

[Natalie Rosova](#)

Hungary

- **Hungary has implemented the Restructuring Directive. It will enter into force on 1 July 2022** and introduce an out-of-court restructuring tool to strengthen enterprises and the position of their creditors in the Hungarian market. The debtor is free to decide which creditor it wishes to involve and with which it must agree on the reorganisation plan, while the moratorium applies only to those creditors. The aim of the restructuring procedure is to agree on a restructuring plan with these creditors. The restructuring plan must be adopted by a majority of votes in each class of creditors involved and it is binding on all creditors involved. If the creditors do not reach consensus at the vote or the court does not approve the restructuring plan, the restructuring procedure is deemed unsuccessful and the moratorium will be lifted. Nevertheless, that failure does not warrant insolvency proceedings being initiated against the debtor, which should give debtors enough comfort to turn to this restructuring tool.

[Gergely Szaloki](#)

Poland

- **Poland has not yet implemented the Restructuring Directive.** Poland asked for a one-year extension and intends to finalise the implementation process by 17 July 2022. The government has been carrying out public consultations and set up a working group tasked with drafting the new legislation. It is worth noting that Poland already has a modern restructuring framework providing for four different preventive restructuring proceedings that offer many features provided in the Restructuring Directive, such as group voting, stay of enforcement actions or cross-class clamp-down. However, the Restructuring Directive will significantly affect secured claims. They will mandatorily participate in the restructuring, while for now the restructuring of those claims requires, in principle, the claim holder's consent. It is

possible that the government may want to use the implementation of the Restructuring Directive as an opportunity for a more general overhaul of the restructuring law and to modify the existing rules beyond the requirements of the Restructuring Directive.

[Daniel Radwański](#)

Romania

- **The draft bill was released on 19 March 2021.** The revised draft bill was published on the Ministry of Justice's website on 2 June 2021 and requires approval of the Economic and Social Council and Legislative Council. As a next step, the government should approve the draft bill and send it to the Parliament. The most important amendments are the abolishing of the ad hoc authorisation (*mandatul ad hoc*) and the introduction of the Restructuring Agreement Procedure (*Procedura Acordului de Restructurare*), an out-of-court negotiation of an agreement proposed by the debtor. The debtors can decide which categories of receivables remain outside the restructuring (unaffected claims).

[Justin Armasu](#)

Slovakia

- **The bill implementing the Restructuring Directive is still being prepared by the Ministry of Justice of the Slovak Republic.** The preparation materials have not yet been published – the bill is currently undergoing an internal commenting proceeding. It is expected that the bill will enter the inter-ministerial commenting proceedings and become publicly available by the end of August 2021.

[Alexandra Adamičková](#)

Slovenia

- ***Ipsa facto* clause limitations may apply under the new Slovenian Insolvency Act.** The draft legislation transposing the Restructuring Directive – currently in the legislative pipeline without a concrete timeline – provides for a statutory override of the *ipsa facto* clauses in the "essential contracts". According to the proposal, the counterparties to such contracts will not be able to withhold performance, terminate or detrimentally modify these contracts solely on the account of the debtor's insolvency or the likelihood thereof, notwithstanding the contractual regulation. Given the broad definition of "essential contracts" (i.e. those necessary for the continuation of day-to-day operations) – seemingly expanding on Art. 7(4) of the Restructuring Directive – without any express carve-outs, the exact scope of the statutory restriction, notably regarding financial contracts, is yet to be clarified.

[Peter Gorše](#)

For further information, please contact any of the individuals named above, your usual contacts at Schoenherr or any member of our [banking, finance & capital markets practice group](#).