

Progress report on implementation of the Restructuring Directive

Regional survey of
Central and Eastern Europe

Austria
Bulgaria
Croatia
Czech Republic
Hungary
Poland
Romania
Slovakia
Slovenia



This overview is part of the
Change & Recovery Series

Wolf Theiss 2021

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Game changer for pre-insolvency regimes

The main goal of the Directive (EU) 2019/1023 ("Restructuring Directive") is the unionwide introduction of a restructuring tool which is designed to prevent insolvencies. The need to overcome differences between national laws and procedures regarding preventive restructuring, insolvency, discharge of debt and disqualifications is founded on the fact that restructuring and insolvency law is an essential decision-making factor in choosing locations for both businesses in the internal market and for foreign investors.

The Restructuring Directive provides various options for Member States to bolster and/or construct pre-insolvency restructuring machinery. Accordingly, the following needs to be carefully monitored on a regular basis: whether the measures as provided for by the Restructuring Directive will deliver their full potential for the benefit of the entire EU economy and the debtors within it.

To that end, this progress report on implementation of the Restructuring Directive, which will be regularly updated, will help determine whether the Restructuring Directive originally meant to become a unifier actually turns out to be a game changer for pre-insolvency regimes in Central and Eastern Europe.

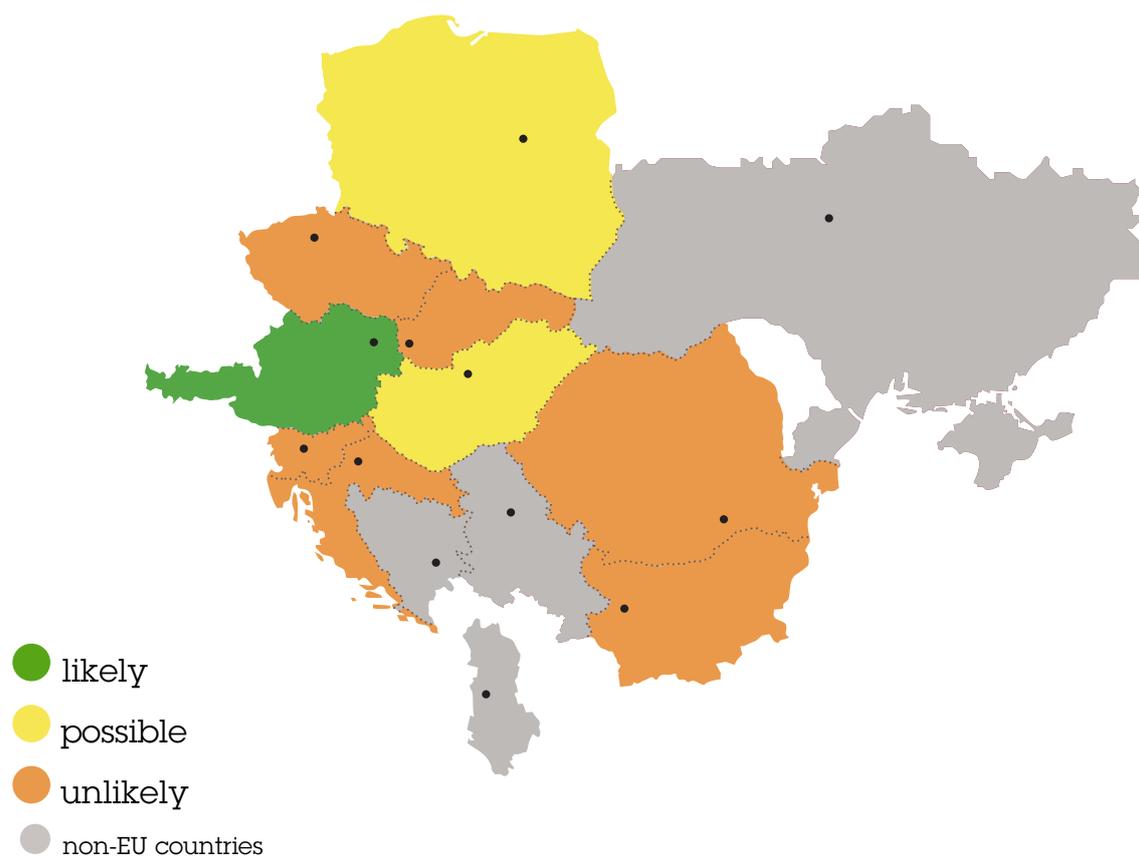
Mixed report as countries move towards July 2021 deadline

However, progress across the region is mixed as the EU-wide July 2021 implementation deadline fast approaches. Some countries have been impacted by competing legislative and political priorities (and even elections), while the possibility of a one-year extension until July 2022 provides some cushion for those that are unable to make the initial deadline.

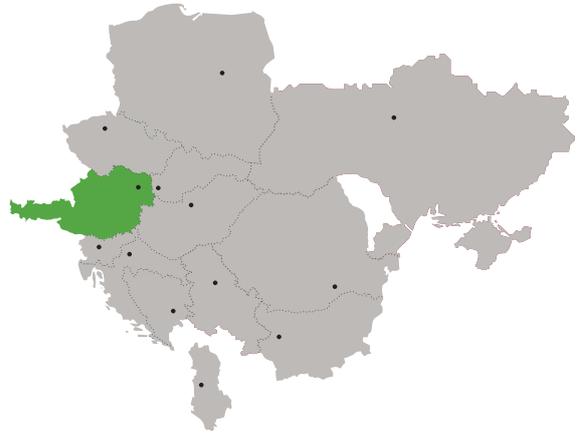
Many/most countries in CEE will request extension for 2022

With countries in various states of play, and the possibility of looming insolvencies in Q2/Q3 of this year, there is pressure to show results. Nonetheless, facing various hurdles, extensive discussions in committees and the challenges of effective harmonisation, it is likely that many or most of the countries in CEE will need to request full or partial extensions until 2022.

Implementation of the Restructuring Directive by July 2021 deadline



	Current state of development	Likelihood of achieving July 2021 implementation deadline
● Austria	Draft law complete	Likely to make July 2021 deadline
● Bulgaria	Public discussions ongoing	Implementation possible, but unlikely
● Croatia	In preliminary stages	Implementation not likely
● Czech Republic	First draft bill possible soon	Implementation likely only by 2022
● Hungary	Preliminary draft complete	Implementation possible
● Poland	Transposition underway	Partial implementation possible
● Romania	Consultations on draft law underway	Implementation possible, but unlikely
● Slovakia	First draft law possible soon	Implementation likely not sooner than 2022
● Slovenia	Preliminary stages	No timelines in place



Austria

Wolf Theiss Vienna

State of implementation

**Draft law complete,
likely to make July 2021 deadline**



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Draft law already in place

On 22 February 2021, the ministerial draft of the Restructuring and Insolvency Directive Implementation Act was published. In addition to the introduction of a new Restructuring Code (RC), inter alia the Insolvency Code (IO) is to be amended. The review period ended on 6 April 2021; it is expected to come into force in the third quarter of 2021.

Opportunities for debtors

According to the RC, debtors should be given the opportunity to achieve a turnaround by means of a restructuring plan during a non-insolvency procedure while generally retaining self-administration. Such a plan may be implemented, if necessary, against the resistance of individual "disrupters of the agreement".

"The RC tries to close the existing gap between insolvency proceedings and consensual out-of-court restructuring and to overcome the obstruction potential of individual creditors."

For private individuals and individual entrepreneurs, debt relief shall be facilitated within three years. The IO is to be amended accordingly.

A giant leap forward for Austrian law?

The new RC represents a new era for restructuring law outside of insolvency. Restructuring measures are now also possible against the will of individual creditors. The concept of the cross-class cram-down is also new.

Since the previous attempts of the Austrian legislator to prevent insolvency by means of a pre-insolvency restructuring process have not been accepted and - like the recent Corporate Reorganisation Act - remained largely "dead" law, it remains to be seen whether the new restructuring process will become important in actual practice.



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Bulgaria

Wolf Theiss Sofia

State of implementation

Public discussions ongoing and implementation by July 2021 possible, but unlikely



Public discussions currently underway

Recently the Bulgarian Ministry of Justice has proposed substantial reform in the insolvency regime by introducing changes in the Bulgarian Commercial Act. These changes are in line with the Road map for reform of the framework for insolvency and stabilisation which has been prepared in cooperation with the European Commission in 2019 in respect of the Action Plan of the Republic of Bulgaria to Join the ERM II. It is expected that the changes in the Commercial Act would also be related to Directive 2019/1023 (Directive).

Draft improves gaps in insolvency regime

The proposed draft law is currently at a stage of public discussions, which is a preliminary legislative step before introducing the draft to the Bulgarian Parliament for discussion and adoption.

“However, whilst the draft improves certain gaps in the insolvency regime and minimises the risks of jeopardising the process by the debtor, it is not evident from the announced text of the draft that it will transpose the Directive.”

Summer deadline is achievable but unlikely

In that regard, it is not very likely that the transposition will occur before 17 July 2021. Bulgaria is in a period just after completion of parliamentary elections and a new government is not elected yet, therefore the Parliament would rather focus on the political issues than on the legislative programme and on the harmonisation with the EU law.



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Croatia

Wolf Theiss Zagreb

State of implementation

**In preliminary stages, implementation by
July 2021 not likely**



Implementation proposal drafts planned for October 2021

The Directive is planned for implementation, but no concrete steps have been undertaken yet. According to the planned activities of the Croatian Government for 2021, drafting of the proposal of the implementation of the Directive has been assigned to the Ministry of Justice and Administration.

Completion possible in 2022

The implementation is planned by way of amendments to the Insolvency Act and Consumer Insolvency Act. The draft proposals are planned to be ready by 18 October 2021. After that, the proposal needs to pass the parliamentary procedure, therefore, we expect that the implementation will likely be completed only in 2022.



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Czech Republic

Wolf Theiss Prague

State of implementation

**First draft bill possible soon but
implementation likely only by 2022**



Draft bill possible in the first half of 2021 but October 2021 elections may interfere

In the Czech Republic, the Ministry of Justice has finished the consultation with the relevant experts (the process lasted many months) and is now writing the text of the bill. A first draft should hopefully be achieved in the first half of 2021.

As general elections are scheduled for October 2021, it is not realistic to expect the bill to be adopted before that time. A realistic time estimate is that it will be enacted in first half of 2022.



Robert

Pelikan

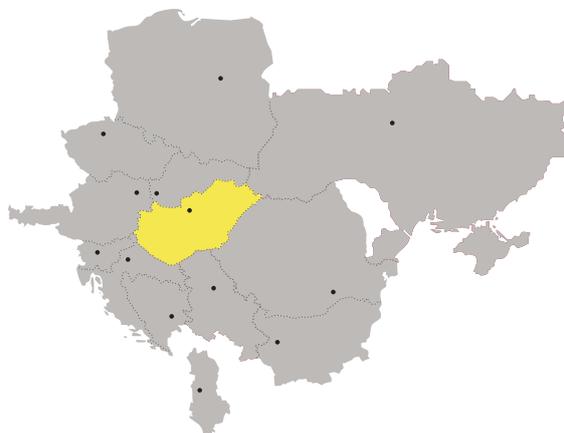
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Hungary

Wolf Theiss Budapest

State of implementation

Preliminary draft complete and implementation by July 2021 possible



Preliminary draft complete, and implementation by July 2021 deadline possible

In Hungary, the implementation of the Directive is pending. The working committee set up by the Ministry of Justice has prepared the preliminary draft of the Hungarian version and the publication of the legislative proposal is expected soon. Pursuant to the legislative approach, the draft would be a new law, and it also requires the harmonisation with the insolvency and corporate laws. .

Harmonisation is challenging

The implementation process seems slower and the harmonisation is questionable, as a new pre-insolvency procedure is to be created and regulated in accordance with the Directive.

“Besides a number of new provisions of the Directive, the pre-insolvency procedure would be a new tool in the currently available insolvency and restructuring procedures.”

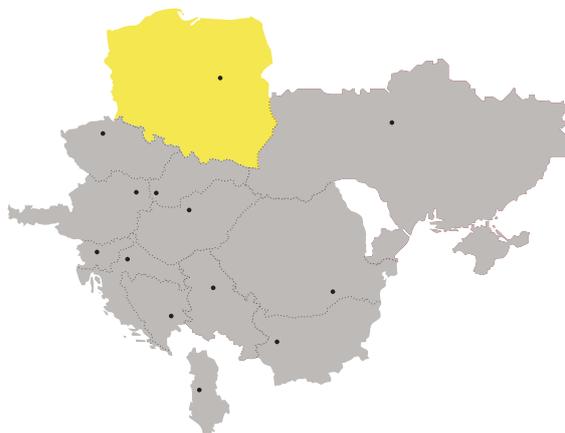
Based on the current situation, implementation of the Directive may be finalised in July 2021.



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Poland

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State of implementation

**Transposition underway and partial implementation
by July 2021 possible**



Poland may opt for partial implementation by July 2021 deadline

In Poland, the transposition of the Directive is on its way. Based on the to-date works of the Ministry of Justice and consultations with professional associations, it is likely though that only part of the Directive will be implemented this year with an extension still being sought for the remaining parts.

In particular, the government has already proposed a bill amending the Restructuring Law with a view to bring already existing – simplified restructuring proceedings introduced by anti-Covid legislation - in line with the requirements of the Directive.



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Romania

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State of implementation

Consultations on draft law underway and implementation by July 2021 possible, but unlikely



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Consultations on draft law underway and timelines look possible, but unlikely

The Romanian Ministry of Justice published on 19 March 2021 the draft law for amending the Law no. 85/2014 on insolvency prevention procedures and insolvency proceedings. The main objective of this draft law is the implementation of Directive, coming roughly a year and a half after the Romanian Government announced it was starting the drafting process.

Commission keen to move forward quickly

The draft was up for public debate until 9 April 2021, which is within the general timeframe of implementation. Barring any fundamental changes proposed by the general public, the draft will make its way to the Parliament (two chambers voting system) in the coming weeks in order for the legislative forum to cast their votes on it. Given the pressure from the Commission on the implementation of certain other Directives, we might see this draft law signed into law by the deadline of July 2021, although the draft law does mention that Member States (i.e. implicitly Romania) do have the possibility to extend the deadline for one year if transposition is troublesome.



Slovakia

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State of implementation

First draft law possible soon but implementation likely not sooner than 2022



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The transposition deadline has been postponed by one year

The situation in the Slovak Republic in respect of transposition of the Directive is such that it will not be implemented by the original deadline 17 July 2021. The Ministry of Justice of the Slovak Republic has requested an extension of the transposition by one year, i.e. by July 2022.

Major changes to regulation of administrators

A working committee has been set up by the Ministry of Justice in order to manage the implementation. Numerous amendments to the Act on Bankruptcy and Restructuring shall be implemented.

“For instance, changes to the regulation of small bankruptcy, which should be simplified, early warnings, and major changes are to come regarding the regulation of administrators.”

In the near future, various press releases specifying the aforementioned changes shall be published by the Ministry of Justice.



Slovenia

Wolf Theiss Ljubljana

State of implementation

**Preliminary stages with
no timelines in place**



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Preliminary stages with no concrete timelines

In Slovenia, the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 is currently in the preliminary stages of transposition into national law. In this respect, a working draft of the Act amending the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (ZFPPIP-H), has been published by the Ministry of Justice in December 2020.

Draft proposes new type of pre-insolvency restructuring

The principal new measure proposed in the draft is adding a new type of pre-insolvency restructuring process conducted by the court, which would temporarily stay any enforcement and security proceedings against the debtor. This also constitutes the main material difference between this new type of proceeding and the existing procedure of preventive restructuring.

“The draft has been criticised by certain leading authorities of insolvency law in Slovenia.”

No indications of legislative process moving forward

Since the publication of the working draft of the Ministry of Justice in December, there have been no indications of the legislative process moving forward, and it is unlikely that the respective act will be adopted by July 2021. A definitive timeline for the transposition of the Directive is thus unknown.

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