

The Czech Implementation of the Directive on Preventive Restructuring: A Practical Approach to Individual Moratorium and other Implementation Issues.

Abstract

This thesis addresses the implementation of the Directive on Preventive Restructuring („Directive“) in the Czech Republic, focusing on its practical challenges. The Directive seeks to provide businesses in financial difficulties with robust mechanisms for early restructuring which allow them to avert insolvency, protect jobs, and preserve economic value. In the Czech context, although the introduction of individual moratorium was anticipated by the Directive, its implementation raises critical concerns about creditor protection and fairness of the entire process.

The primary aim of this thesis was to identify and analyze the most significant implementation issues associated with implementing individual moratoria. The research combines a detailed legal analysis with a case study of Liberty Ostrava, one of the first instances of the Czech preventive restructuring in practice.

The findings reveal significant weaknesses in the current framework. Individual moratoria allow debtors to impose restrictions on creditors without sufficient safeguards, as courts are not required to assess their full impact. In the case of Liberty Ostrava, the use of an individual moratorium directly led to the insolvency of its largest creditor, TAMEH Czech s.r.o. Furthermore, debtors are granted excessive discretion in defining “concerned parties,” which enables them to exclude key creditors from the restructuring process. These issues, in my opinion, disrupt the balance of interests intended by the Directive.

To address these challenges, this thesis proposes several reforms, emphasizing that courts should thoroughly evaluate the effects of individual moratoria on creditors and reject applications that would result in disproportionate harm. An appeal mechanism for creditors should be introduced to ensure procedural fairness. Additionally, judicial oversight of the debtor’s decision on concerned parties is essential to prevent manipulation.

The thesis concludes that, although preventive restructuring offers valuable tools for economic stability, its effectiveness in the Czech Republic depends on balancing debtor protection with creditor rights. Considering these recommendations could potentially strengthen the framework and better align it with the Directive’s objectives.

Key words: Preventive restructuring, Directive on Preventive Restructuring, Individual moratorium