THE CZECH IMPLEMENTATION OF THE DIRECTIVE ON PREVENTIVE RESTRUCTURING: A PRACTICAL APPROACH TO INDIVIDUAL MORATORIUM AND OTHER IMPLEMENTATION ISSUES

HANA MATOUŠKOVÁ

Abstract: This article 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 article 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 article 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 article 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.

Keywords: preventive restructuring; Directive on Preventive Restructuring; individual moratorium

DOI: 10.14712/23366478.2025.501

1. INTRODUCTION

In today's interconnected European economy, the concept of preventive restructuring has taken center stage as a key instrument for addressing financial issues among businesses within the European Union, designed to offer companies in financial distress an alternative to formal insolvency proceedings. The concept seeks to help debtors restructure their obligations early to avoid the severe consequences of formal insolvency proceedings while preserving viable enterprises, protecting jobs, and reducing the economic and social fallout typically associated with business failures. The European Union has embraced this philosophy and recognized the importance of harmonized frameworks that ensure businesses across Member States can access effective restructuring tools regardless of their jurisdiction

The concept of preventive restructuring was legally formalized with the adoption of the *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 Preventive Restructuring"**), which introduced minimum standards for preventive restructuring frameworks, including provisions for stays of enforcement actions, debtor-in-possession arrangements, and the facilitation of cross-class cram-downs. These mechanisms aim to balance the interests of debtors and creditors, encorage early intervention, and prevent the escalation of financial difficulties into insolvency.

As preventive restructuring continues to evolve, particularly in the Czech Republic, it is crucial to address the implementation challenges that arise and ensure that these frameworks remain effective and fair for all parties involved. Therefore, this article seeks to answer the central question: *"What are the key challenges in the Czech implementation of the Directive on Preventive Restructuring?"* Specifically, it delves into the problems associated with individual moratoria, exploring their practical implications, potential risks, and avenues for improvement, introduced through a detailed analysis of Czech restructuring law and a focused case study on Liberty Ostrava. My aim is to shed light on how preventive restructuring can be refined to better adress both local needs and European standards.

The article begins with introducing the concept of preventive restructuring and establishing the legal foundations of the Directive on Preventive Restructuring. It then introduces the Czech Republic's legislative framework and shows how preventive restructuring fits within existing legal principles while addressing potencial gaps. A case study of Liberty Ostrava on individual moratoria in the last chapter offers practical insights.

In terms of methodology, this article draws on a variety of sources and experiences, mainly consisting of a thorough examination of legal texts and academic literature. I was fortunate to gain first-hand insights into these issues during my internship at a law firm, which added depth to my research. My main sources included legal literature, the text of Directive on Preventive Restructuring, Czech legislative materials, and relevant

legal commentaries. I also relied heavily on scholarly articles to better understand the Directive on Preventive Restructuring and the challenges of its implementation.

I hope this article contributes to a better understanding of the tools available to protect businesses and boost their financial recovery.

2. INTRODUCTION TO PREVENTIVE RESTRUCTURING

In recent years, the European approach to rescuing businesses has undergone a notable transformation. Alongside the traditional insolvency law, which primarily addresses bankruptcy and liquidation, a new specific framework of restructuring law has emerged. This new approach emphasizes the early recovery of entrepreneurs facing financial difficulties and aims to address issues in their nascent stages and ultimately prevent bankruptcy alltogether.[1]

The focus on restructuring as a preventive tool reflects a recognition of its tangible benefits. Prolonged, costly, and inefficient formal insolvency procedures often result in suboptimal outcomes, consuming resources that could otherwise aid recovery. By equipping entrepreneurs with tools to address challenges at an early stage, the new restructuring framework enables them to avert insolvency and sidestep formal insolvency proceedings.[2]

Recognizing financial difficulties early on is crucial for improving the likelihood of resolving issues effectively.[3] For instance, creditors seem to be generally more willing to cooperate when the problems appear more manageable: *"The earlier that a company engages with this process when it foresees financial difficulties, the more assets it is likely to have to support a turnaround and to convince creditors to cooperate for the benefit of the collective and equitable satisfaction of creditors."*[4]

The impact of business continuity extends far beyond the enterprise itself, as the closure of a business often leads to considerable job losses and a cascade of negative social consequences.[5] The development and promotion of an effective restructuring mechanism is equally vital from a broader perspective, as it contributes to overall economic stability and resilience. These tools not only support the survival of individual businesses but also help sustain the interconnected networks that underpin the economy as a whole.[6]

---

1 ZEMANDLOVÁ, A. *Procesní aspekty preventivní restrukturalizace* [Procedural aspects of preventive restructuring]. Prague: C. H. Beck, 2024, p. 1.

2 Ibid., p. 1.

3 Ibid., p. 1.

4 GANT, J. L. – BOON, G.-J. et al. The EU Preventive Restructuring Framework: in Extra Time? In: *SSRN* [online]. 2021, p. 5 [cit. 2024-12-02]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3938867.

5 JOUROVÁ, V. Early Restructuring and a Second Chance for Entrepreneurs: A modern and Streamlined Approach to Business Insolvency: Factsheet [online]. European Commission, November 2021, p. 2 [cit. 2024-12-02]. Available at: https://ec.europa.eu/information_society/newsroom/image/document/2016-48/eu_factsheet_40047.pdf.

6 ZEMANDLOVÁ, *c. d.*, p. 2.

3. LEGAL BASIS OF PREVENTIVE RESTRUCTURING

3.1 THE DIRECTIVE ON PREVENTIVE RESTRUCTURING

A defining feature of directives, as a form of secondary European Union law, is their focus on achieving specific results, while giving Member States the freedom to choose how to achieve them. This flexibility is essential not only during the transposition of the directive into national law but also in the application of the resulting measures, as national courts are required to interpret domestic laws in light of its objectives to ensure the intended outcome.[7]

The purpose of the Directive on Preventive Restructuring must be understood within the context of the European Unions's effort to develop a restructuring culture and promote the "second chance" concept for entrepreneurs. Fragmented national laws were discouraging investment and causing inefficiencies, including debtors relocating to countries with more favorable rules. To address this, the Directive on Preventive Restructuring aims to harmonize restructuring laws across Member States with the intention of building a more competitive and unified European Capital market.[8]

In recent years, there has been a noticeable shift toward restructuring-focused solutions for insolvency and efforts to prevent financial crises before they occur. This reflects the growing role of economic principles in shaping insolvency law. The goal is to improve economic efficiency and reduce the costs of insolvency, not only for those directly involved, like debtors and creditors, but for society as a whole.[9]

There's now a stronger focus on the broader economic consequences of insolvencies, such as harm to the economy and rising unemployment. This has driven efforts to minimize these impacts and develop tools to reduce the ripple effects of financial failure.[10]

The Directive on Preventive Restructuring builds on these ideas. It requires Member States to introduce laws that help businesses tackle financial difficulties early – before they spiral into insolvency. These measures are designed to protect the value of businesses, save jobs, and promote economic stability, while aligning legal approaches with economic goals.

The Directive on Preventive Restructuring emphasizes efficiency and aims to make restructuring faster and less costly. It encourages out-of-court negotiations as the main way to resolve financial troubles and addresses challenges like cross-border cases and group restructurings. To prevent misuse, it includes safeguards against relocating a debtor's main business operations (COMI) to countries with more favorable laws. Rather than imposing a one-size-fits-all procedure, the Directive on Preventive Restructuring gives Member States flexibility to design systems that best suit their legal and economic needs. Judicial or administrative involvement is deliberately limited, reflecting

---

[7] Ibid., pp. 15–18.
[8] Ibid., p. 16.
[9] DOHNAL, J. *Správa a řízení obchodní korporace v hrozícím úpadku* [Administration and management of a business corporation in imminent bankruptcy]. Prague: C. H. Beck, 2024, pp. 18–21.
[10] Ibid., pp. 18–21.

a preference for informal negotiations, with intervention occurring only to provide necessary oversight or protection.[11]

The Directive on Preventive Restructuring places a strong emphasis on speed and efficiency in the restructuring process. As acting quickly is often crucial to the success of these processes, delays can jeopardize a business's survival, making timely procedures essential to keeping operations running.[12]

3.2 TRANSPOSITION OF THE DIRECTIVE ON PREVENTIVE RESTRUCTURING INTO CZECH LAW

The integration of the Directive on Preventive Restructuring into Czech law marks an adjustment rather than a complete departure from the existing legal structure. While the Directive on Preventive Restructuring introduces a systemically novel approach to restructuring, it aligns with principles already present in Czech civil and corporate law. By combining these established principles with the requirements of the Directive on Preventive Restructuring, the Czech legal system aims to enhance its capacity to address financial crises while adhering to European standards.[13]

Czech law has long emphasized preventive actions in corporate management. The Civil Code requires individuals to act responsibly to avoid harm,[14] and corporate leaders must exercise loyalty, care, and competence. This principle extends to corporate governance, where members of corporate bodies must exercise their duties with loyalty, knowledge, and care[15] to protect company's assets and manage risks to prevent insolvency. Further, corporate governance laws hold members of statutory bodies accountable for failing to prevent insolvency if it was reasonably avoidable and outline steps, such as convening shareholder meetings, to address potential threats to a company's stability.[16]

While these principles form a solid foundation for managing financial distress, existing Czech law lacked certain tools that were introduced by the Directive on Preventive Restructuring. For instance, the coverage gap[17] rule and the protective moratorium[18] provide important stopgaps for companies on the verge of insolvency. Even though these provide some protection, they lack a structured framework for creating enforceable restructuring plans.[19]

The Czech legislation views preventive restructuring as a predominantly private process facilitated by a latent judicial framework. This approach ensures that court intervention is limited to instances where it is strictly necessary, such as confirming

---

11 ZEMANDLOVÁ, *c. d.*, p. 17.
12 Ibid., p. 17.
13 SCHÖNFELD, J. – KUDĚJ, M. – HAVEL, B. – SPRINZ, P. *2023: Start preventivní restrukturalizace: nová šance pro podnikatele, nebo velký problém pro věřitele?* [Start of preventive restructuring: A new chance for entrepreneurs or a big problem for creditors?]. Prague: C. H. Beck, 2023, pp. 17 and 18.
14 Section 2900 of the Czech Civil Code
15 Section 159 of the Czech Civil Code
16 SCHÖNFELD, *c. d.*, 18.
17 Section 3(3) of the Insolvency Act.
18 Section 125 of the Insolvency Act.
19 SCHÖNFELD, *c. d.*, pp. 19 and 20.

restructuring plans or approving cross-class cram-downs. This minimizes reputational risks for businesses while preserving the privacy of their negotiations. Unlike models in some neighboring countries,[20] the Czech system limits judicial intervention and thus maintains the private-law nature of the process.[21]

Central to the framework is the restructuring plan, which originates from a collaborative process initiated by the debtor. This process begins with the submission of a recovery project,[22] a document that outlines the debtor's financial situation, diagnoses the causes of financial distress, and proposes solutions. The recovery project serves as the foundation for negotiations, requiring credibility and detailed analysis to inspire trust among creditors. The restructuring plan itself expands on the recovery project and specifies the legal and financial measures needed to restore the debtor's solvency and secure the continued operation of his business.[23] The creditors may approve the restructuring plan without court intervention if it receives the support of a three-quarters majority within affected parties. However, if there is no consensus, courts can approve the plan through a mechanism that prevents dissenting creditors from blocking progress, provided the plan ensures fair treatment, including compliance with the "best interest of creditors" test.[24,25] Although the framework emphasizes private negotiations, judicial oversight remains essential for ensuring compliance with the principles of fairness and proportionality. For instance, when approving a restructuring plan under a cross-class cram-down, courts review them to confirm they are feasible, lawful, and fair to all creditors.[26]

The legislation establishes clear conditions for entering preventive restructuring. The debtor must not be insolvent in the legal sense but must face financial difficulties severe enough to risk insolvency without intervention. The business must also demonstrate the potential for recovery through restructuring and act in good faith during negotiations with creditors.[27]

Although Czech law already includes effective measures for handling financial difficulties, the proposed changes offer significant improvements. They provide a clear structure for creating binding restructuring plans without unanimous creditor approval and introduce safeguards for interim financing to encourage creditor participation. By emphasizing private negotiations and minimizing court involvement, the framework reduces the stigma and disruption often associated with formal insolvency proceedings.[28]

---

20 I.e.: Slovakia or Germany.
21 SCHÖNFELD, *c. d.*, p. 20.
22 In Czech: *sanační projekt*.
23 SCHÖNFELD, *c. d.*, p. 21
24 Article 2 (1)(6) od the Directive on Preventive Restructuring
25 SCHÖNFELD, *c. d.*, pp. 22 and 23.
26 Ibid., p. 23.
27 Ibid., p. 21.
28 ZEMANDLOVÁ, *c. d.*, p. 63.

3.3 THE ACT ON PREVENTIVE RESTRUCTURING

The Czech *Act No. 284/2023 Sb. on Preventive Restructuring, adopted to implement Directive (EU) 2019/1023 on restructuring and insolvency* (the **"Act on Preventive Restructuring"**) introduces a procedural and substantive mechanism for corporate restructuring designed to prevent insolvency. The law faced significant delays in its enactment, entering into effect over a year after the extended deadline for transposition.[29]

The Act on Preventive Restructuring introduces a novel procedural framework distinct from the traditional insolvency proceedings. It aims to provide a lighter, more efficient alternative that aligns with the emphasis on reducing formalities, costs, and delays (as outlined in the Directive on Preventive Restructuring). The Act on Preventive Restructuring prioritizes private negotiations between the debtor and creditors while reserving judicial intervention for specific instances where it is necessary to protect stakeholders or ensure procedural integrity.[30]

The Act on Preventive Restructuring also attempts to address perceived shortcomings of insolvency proceedings, particularly their procedural rigidity, which has often deterred debtors from timely intervention due to fear of negative consequences or the complexity of collective court proceedings.[31]

Substantive and procedural norms are combined by the Act on Preventive Restructuring, which unfortunately complicates its conceptual clarity. While substantive norms cover restructuring measures and the responsibilities of the parties involved, procedural norms outline the court's role and the rights of creditors and other stakeholders. Bringing these together in one law was practical because the issues are interrelated but has resulted in certain ambiguities.[32]

3.4 THE ROLE OF COURTS AND REGULATORY BODIES

Consistent with the philosophy of the Directive on Preventive Restructuring, judicial involvement is intentionally limited, intervening only when necessary to provide oversight and maintain fairness. The Directive on Preventive Restructuring promotes a "light-touch" approach, which aims to establish a flexible, minimally formal, and cost-effective process that is fundamentally uniform and equally accessible across all Member States.[33]

In the Czech framework, according to the Directive on Preventive Resructuring, courts are expected to facilitate rather than dominate the restructuring process. Their primary role is to oversee specific legal and procedural aspects, particularly those where creditor and debtor interests may conflict or where significant rights are at stake. For

[29] Article 34 of the Directive on Preventive Restructuring.
[30] ZEMANDLOVÁ, *c. d.*, p. 63
[31] SCHÖNFELD, *c. d.*, p. 33
[32] ZEMANDLOVÁ, *c. d.*, p. 65
[33] PONDIKASOVÁ, T. – ZEMANDLOVÁ, A. Preventivní restrukturalizace – procesualistický pohled [Preventive restructuring – a proceduralist view]. *Právní rozhledy* [Legal Proceedings]. 2022, Vol. 30, No. 20, pp. 702–708.

instance, the court shall be involved in evaluating creditor voting rights and classifications, which is crucial to ensure fairness in decision-making. Proper classification prevents manipulation or undue advantage being given to specific creditor groups, thus safeguarding the equity of the process. Similarly, judicial oversight is required for the confirmation of restructuring plans, which is essential for their binding nature. The court must assess whether the plan complies with statutory requirements, respects the interests of creditors, and has the potential to avert insolvency while ensuring the debtor's long-term viability. This includes conducting a "best-interest-of-creditors" test to determine whether creditors would receive a better outcome under the plan than in a liquidation scenario. Additionally, the Directive on Preventive Restructuring obliges Member States to empower courts with the discretion to reject a restructuring plan if it fails to prevent the debtor's imminent insolvency or secure the viability of their business.[34]

The Act on Preventive Restructuring also allows courts to enforce cross-class cramdowns, enabling the approval of restructuring plans even if some creditor classes dissent, provided all groups are treated fairly and no one is disproportionately disadvantaged. Additionally, courts manage stays on enforcement actions, which temporarily suspend creditors' claims to give debtors time to negotiate and create a restructuring plan.[35]

3.5 THE RISKS OF PREVENTIVE RESTRUCTURING

The success of preventive restructuring is inherently tied to managing a host of risks. These risks arise from uncertainties in financial planning, operational execution, and external economic factors, each of which can significantly impact the outcomes of a restructuring effort.

One of the most prominent risks is the implementation of cost-saving and restructuring measures. These measures often lead to conflicts among stakeholders with differing interests. For example, employees, creditors, and shareholders may have conflicting priorities, making it challenging to reach consensus on critical decisions.[36]

Another central challenge lies in achieving key financial targets, particularly those tied to operating performance. Metrics like EBITDA are vital benchmarks for recovery, but risks arise at two levels: achieving positive EBITDA, which is essential for financial stability, and reaching the required EBITDA margin to sustain operations and meet creditor expectations. Failure to hit these targets raises doubts about the restructuring's feasibility, especially considering the high transaction costs involved. If profitability remains unattainable, creditors may favor liquidation as a more predictable recovery option.[37]

Cash flow generation presents another critical area of vulnerability. Shortfalls in cash flow to meet ongoing obligations risk pushing the company into insolvency and

---

[34] Ibid.
[35] Ibid.
[36] HAVEL, B. et al. *Zákon o preventivní restrukturalizaci: komentář s ekonomickým průvodcem preventivní restrukturalizací* [Preventive Restructuring Act: commentary with an economic guide to preventive restructuring]. Prague: Wolters Kluwer, 2024, p. 405.
[37] Ibid., p. 405.

undermine the entire premise of preventive restructuring. Risks can include immediate liquidity shortages and an overall failure to restore financial stability. While temporary cash flow gaps may be bridged through additional investment from stakeholders or third parties, such interventions require careful assessment of their economic rationale.[38]

Finally, it is crucial to recognize that each company undergoing restructuring also faces unique risks. Industry-specific risks, competitive pressures, and market conditions often outweigh broader economic concerns. Identifying these risks thoroughly and addressing them transparently within the restructuring plan is essential.[39]

3.6 IMPLEMENTATION STRATEGIES IN OTHER EUROPEAN UNION COUNTRIES

The implementation of the Directive on Preventive Restructuring frameworks has revealed slight diversity across Member States, shaped mainly by their distinct legal traditions. This chapter explores the implementation approaches in France, Germany, and Slovakia, exploring their strategies, innovations, and challenges.

3.6.1 FRANCE

France's approach to transposing the Directive on Preventive Restructuring benefited from its pre-existing framework, which featured well-developed tools for pre-insolvency restructuring. The French model is built on the principle of a "second chance" for debtors, cultivated over decades.[40] Core mechanisms, including *"mandat ad hoc"*,[41] *"procédure de conciliation"*, and *"procédure de sauvegarde"*, were already aligned with many of the requirements by the Directive on Preventive Restructuring, emphasizing voluntary negotiation, debtor autonomy, and minimal court involvement, which allowed for an easy adaptation process. The access to these restructuring tools is directly linked to the financial state of the debtor.[42]

3.6.2 GERMANY

Germany adopted an innovative model with its Stabilization and Restructuring Framework (**"StaRUG"**), introduced on 1 January 2021 under the SanInsFoG law. StaRUG reflects a "toolbox approach", providing debtors with a suite of restructuring tools that can be applied flexibly without requiring a unified judicial proceeding.[43] This approach minimizes formalities which makes it aligned with the goal of reducing procedural burdens, set out in the Directive on Preventive Restructuring.

---

38 Ibid., p. 406.
39 Ibid., p. 409.
40 ZEMANDLOVÁ, *c. d.*, p. 33.
41 Ad hoc mandate. In: *République Française: Enterprendre.service-Public.fr: Le site officiel d'information administrative pour les entreprises* [online]. [cit. 2024-12-02]. Available at: https://entreprendre.service-public.fr/vosdroits/F22290?lang=en.
42 ZEMANDLOVÁ, *c. d.*, pp. 33–36.
43 Ibid., p. 44.

Debtors can initiate measures when insolvency is likely within 24 months but once insolvency occurs, they must file for bankruptcy, unless continuation of the restructuring serves creditors' interests.[44] StaRUG's hallmark is its reliance on the debtor's initiative and responsibility, emphasizing the principle that proactive management is crucial to successful restructuring, as well as mandating that corporate boards recognize financial distress early.[45] Judicial oversight is limited to key interventions, such as plan confirmation or the issuance of stays on enforcement actions.[46]

3.6.3 SLOVAKIA

Slovakia's Act No. 111/2022 Sb., on resolving imminent insolvency, introduced a dual framework of public and non-public preventive restructuring.[47] Public restructuring requires greater transparency, involving court approval, creditor committees and temporary protections,[48] while non-public restructuring allows debtors to negotiate discreetly with select creditors (which have to be regulated by the Slovak National Bank).[49]

The Slovak public model is characterized by procedural rigor and requires a submission of restructuring plan at the outset, which later has to be approved by the creditors.[50]

Although the Slovak model aligns with the goals set out in the Directive on Preventive Restructuring, its strict eligibility requirements and procedural complexity may limit access for a significant number of businesses.[51]

3.6.4 COMPARATIVE INSIGHTS

The implementation of the Directive on Preventive Restructuring across member states reflects a dynamic interplay between harmonization and local adaptation. France leveraged its mature restructuring framework, requiring only minor adjustments, while Germany introduced innovative models emphasizing debtor autonomy and flexibility. Slovakia, in contrast, adopted more formalized frameworks and balanced procedural rigor with creditor protections.[52]

---

44 Ibid., p. 44.
45 Ibid., p. 44.
46 Ibid., p. 48.
47 SCHÖNFELD, *c. d.*, p. 126.
48 Ibid., pp. 126 and 127.
49 Ibid., pp. 129 and 130.
50 Ibid., p. 128.
51 Ibid., p. 131.
52 ZEMANDLOVÁ, *c. d.*, p. 51.

4. IMPLEMENTATION ISSUES IN PREVENTIVE RESTRUCTURING

4.1 INDIVIDUAL MORATORIUM: CONCEPT AND LEGAL FRAMEWORK

4.1.1 PRELIMINARY MEASURES

Preliminary measures are temporary legal instruments designed to address urgent situations within judicial proceedings. Their purpose is not to conclusively resolve disputes but to prevent harm, stabilize conditions, or preserve the ability to enforce rights until a formal court decision is made. These measures rely on swift action and are based on a lower standard of evidence than that required for a final court decision, emphasizing their provisional and immediate nature.[53]

Unlike a final court decision, a preliminary measure does not resolve the legal relationship between the parties or retrospectively address past violations. It focuses on mitigating the threat or violation of the applicant's rights and their primary function remains limited to temporary protection and leaves the full examination of facts and the final decision to the main judicial proceeding.[54]

Importantly, this approach does not constitute a violation of the principle of legal predictability. Transparency and consistency in applying the law remain intact, because the temporary and exceptional nature of preliminary measures is clearly defined within the legal framework. Their purpose is solely to provide immediate protection or maintain the status quo, ensuring that neither party's rights are unfairly compromised while the case is still pending.[55]

The rules that apply to a general moratorium also extend to an individual moratorium, but with certain modifications set out by the Act on Preventive Restructuring. For instance, according to Section 87 of the Act on Preventive Restructuring, Section 77a of the Civil Procedure Code is not excluded. Under this provision, the applicant is required to compensate for any damage caused if the preliminary measure ceases to exist for reasons other than the satisfaction of their action.[56] Nevertheless, a critical distinction exists between the two types of moratoria (as described below). An individual moratorium is further governed by the rules on preliminary measures outlined in the Civil Procedure Code,[57] with certain provisions being explicitely excluded by the Act on Preventive Restructuring.[58]

This combination of moratorium rules with preliminary measures introduces an untested approach in practice, likely to generate interpretative uncertainties.[59]

---

53 ŠÍNOVÁ, R. – HAMUĽÁKOVÁ, K. *Civilní proces* [Civil process]. 2nd ed. Prague: C. H. Beck, 2020, pp. 140 and 141.
54 Ibid., pp. 140 and 141.
55 Ibid., pp. 140 and 141.
56 KUČERA, V. *Předběžné opatření v civiliním procesu sporném* [Preliminary measures in civil litigation]. Prague: Leges, p. 153.
57 Section 74 et seq. of the Act No. 99/1963 Sb. on Civil Procedure [in Czech: Občanský řád soudní].
58 SIGMUND, A. et al. *Zákon o preventivní restrukturalizaci* [Preventive Restructuring Act]. Prague: Wolters Kluwer, 2023, Section 87.
59 Ibid., Section 87.

4.1.2 MORATORIA

Under the Act on Preventive Restructuring, moratoria serve as essential safeguards in the entire restructuring process. Their importance lies in their dual impact: providing strong protections for debtors while significantly restricting creditor rights. This inherent tension between debtor protection and creditor limitation underscores the need for a unified and coherent regulatory approach to moratoria.

The Act on Preventive Restructuring introduced moratoria as vital mechanisms for stabilizing a debtor's financial position during critical periods. Far from being mere procedural measures, they play a central role in the restructuring process by protecting the debtor from creditor actions and creating a controlled space for negotiation. Such protections closely resemble those triggered by the initiation of insolvency proceedings. These include preventing creditors from initiating insolvency petitions, suspending enforcement and execution actions, and halting the realization of secured assets. Furthermore, moratoria restrict creditors from establishing new security interests, terminating underperforming long-term contracts, or refusing performance under such agreements.[60]

4.1.3 DIFFERENCE BETWEEN GENERAL AND INDIVIDUAL MORATORIA

The Act on Preventive Restructuring establishes two types of moratoria: general and individual. This division reflects the flexibility provided by Article 6(3) of the Directive on Preventive Restructuring.

4.1.4 GENERAL MORATORIA

General moratoria are declared by public notice and are broad in scope, impacting the rights of all creditors. They are typically invoked once preventive restructuring proceedings have commenced.[61] However, their public nature carries inherent risks, particulary reputational harm to the debtor, which can lead to difficulties in maintaining business operations: *"Negative publicity further worsens the entrepreneur's access to credit financing and weakens the position of the entrepreneur's business brand in the relevant market, as potential new business partners logically take into account (and reflect in pricing) the increased risk of failure."*[62]

---

[60] KAČEROVÁ, L. Prodloužení moratoria [Extension of the moratorium]. *Bulletin advokacie* [Advocacy Bulletin]. 2024, Vol. 54, No. 1–2, p. 36.

[61] Ibid., p. 36.

[62] In Czech: *"Negativní publicita dále zhoršuje přístup podnikatele k úvěrovému financování a zhoršuje postavení obchodní značky podnikatele na relevantním trhu, neboť eventuální noví obchodní partneři logicky zahrnují do úvahy (a promítají do ceny) zvýšené riziko selhání"* (Důvodová zpráva k zákonu o preventivní restrukturalizaci [Explanatory memorandum to the Act on Preventive Restructuring]. In: *Poslanecká sněmovna Parlamentu České republiky* [Chamber of Deputies of the Parliament of the Czech Republic] [online]. P. 49 [cit. 2024-12-02]. Available at: https://www.psp.cz/sqw/text/tiskt.sqw?O=9&CT=371&CT1=0).

4.1.5 INDIVIDUAL MORATORIA

Conversely, individual moratoria offer a more tailored solution. They can be invoked even before preventive restructuring proceedings begin[63] and are limited to specific creditors[64] chosen by the debtor. This targeted application minimizes the disruption to the debtor's overall business relationships and avoids the negative publicity[65] associated with general moratoria. Importantly, individual moratoria align with the debtor's need for strategic flexibility, particularly during the early stages of restructuring efforts.[66]

Individual moratoria do not provide all the legal effects of general moratoria – for example, they do not suspend the debtor's obligation to file for insolvency. Furthermore, they are procedurally more accessible, as their use is permitted even before preventive restructuring proceedings are formally initiated, that is, before a restructuring plan has been prepared.[67]

Given the greater risk of abuse associated with individual moratoria (greater, in fact, than that posed by general moratoria) it is imperative that the fulfilment of each individual condition of a petition for an individual moratorium be assessed with particular rigour, with regard to its intended purpose.[68]

It follows that individual moratoria could benefit from more thorough and comprehensive treatment within the Czech legal framework, with a view to preventing ambiguities, misinterpretations, and potential misuse of the legal instrument, as illustrated by the Liberty Ostrava case discussed below. The statutory prerequisites for the granting of an individual moratorium are not clearly or sufficiently delineated in the current legislation, which may give rise to inconsistent judicial practice and undermine legal certainty.

4.2 CASE STUDY ANALYSIS OF INDIVIDUAL MORATORIUM

4.2.1 INTRODUCTION

I chose to focus on the preventive restructuring case of Liberty Ostrava, a. s. (**"Liberty Ostrava"**) because I had the unique opportunity to observe it firsthand during my internship at a law firm, where we represented one of the creditors – or, in the language of preventive restructuring, a "concerned party" [in Czech: *dotčená strana*].

4.2.2 FACTUAL BACKGROUND OF THE CASE

On 28 November 2023, Liberty Ostrava, facing significant financial difficulties, petitioned the Regional Court in Ostrava for an individual moratorium against its energy supplier, TAMEH Czech, s. r. o. (**"TAMEH"**). This measure was sought

63 Section 85 art. 3 of the Act on Preventive Restructuring.
64 Section 86 art. 1 of the Act on Preventive Restructuring – maximum of 3 creditors.
65 Section 53 art. (2)(a) of the Act on Preventive Restructuring.
66 KAČEROVÁ, *c. d.*, p. 37.
67 SPRINZ, P. – JIRMÁSEK, T. – ZOUBEK, H. a kol. *Zákon o preventivní restrukturalizaci* [Preventive Restructuring Act]. Prague: C. H. Beck, 2025, p. 442.
68 Ibid., p. 441.

under the Act on Preventive Restructuring to safeguard the company's operations while preparing for preventive restructuring.

Liberty Ostrava's petition highlighted the urgent need to stabilize relations with TAMEH and avoid a potential insolvency filing from them. The company argued that insolvency proceedings would hinder its ability to implement necessary restructuring measures, harm its reputation, and jeopardize thousands of jobs at its facilities and related operations in the region. The petition emphasized that securing protection through an individual moratorium would allow Liberty Ostrava to initiate preventive restructuring and preserve the company's going concern value.[69]

On 29 November 2023, the Regional Court in Ostrava granted the individual moratorium for a period of three months. The court confirmed that Liberty Ostrava fulfilled all the statutory conditions under the Act on Preventive Restructuring – it confirmed the company's eligibility for protection as a commercial corporation that had not yet initiated insolvency or preventive restructuring proceedings. The court noted that Liberty Ostrava had declared its intent to commence preventive restructuring soon and demonstrated that it met the qualifying criteria for such proceedings, including compliance with obligations toward the Commercial Register, the provision of a liquidity statement showing a minimal coverage gap, and the identification of a single creditor, TAMEH, impacted by the moratorium. The court clarified that the individual moratorium serves as a temporary measure and does not require prior commencement of restructuring proceedings. The ruling took immediate effect upon delivery to TAMEH and included an order for Liberty Ostrava to begin restructuring proceedings within 30 days. While the decision granted targeted protection to Liberty Ostrava from TAMEH, other creditors were not initially affected by this measure.[70]

The individual moratorium gave Liberty Ostrava a brief window to negotiate energy supply conditions with TAMEH under standard market terms. However, in early December 2023, a general moratorium was issued, extending insolvency protection to all of Liberty Ostrava's creditors for three months. During this time, TAMEH appealed the moratorium with the High Court in Olomouc.[71]

On 14 December 2023, TAMEH, the energy supplier subject to Liberty Ostrava's individual moratorium, was forced to file for insolvency due to Liberty Ostrava's failure to pay outstanding debts. TAMEH, which served as Liberty Ostrava's sole energy provider, reported that it was owed nearly 2 billion CZK, with approximately 1.2 billion CZK overdue. Designed specifically to meet Liberty Ostrava's energy needs, TAMEH's business model left it highly exposed to Liberty Ostrava's financial instability.[72]

---

69 Individual Moratorium filing by Liberty Ostrava against TAMEH dated 28 November 2023.

70 Usnesení Krajského soudu v Ostravě ze dne 29. 11. 2023, č. j. 12 Nc 1/2023-9 [Order of the Regional Court in Ostrava of 29 November 2023, No 12 Nc 1/2023-9].

71 Moratorium ochrání huť Liberty před věřiteli [Moratorium will protect Liberty from creditors]. In: *idnes.cz* [online]. 21. 12. 2023 [cit. 2024-12-02]. Available at: https://www.idnes.cz/ostrava/zpravy/hut-liberty-tameh-sedivy-jednani-krize-dluhy-ostrava-vyroba.A231221_093736_ostrava-zpravy_palj.

72 Vyčerpali jsme všechno. Tameh míří do insolvence, ostravská huť mu přes půl roku nezaplatila [We've exhausted everything. Tameh is heading for insolvency, the Ostrava steelworks has not paid him for over half a year]. In: *Novinky.cz* [online]. 15. 12. 2023 [cit. 2024-12-02]. Available at: https://www.novinky.cz/clanek/ekonomika-vycerpali-jsme-vsechno-tameh-miri-do-insolvence-ostravska-hut-mu-pres-pul-roku-nezaplatila-40454351.

TAMEH justified its insolvency filing with the Regional Court in Ostrava on several grounds. TAMEH emphasized that it primarily supplies Liberty Ostrava with critical energy and operational inputs under a long-term framework agreement.[73] Despite fulfilling its contractual obligations, TAMEH reported that Liberty Ostrava either failed to make payments or made partial payments with substantial delays. These defaults left TAMEH with significant outstanding receivables, totaling over 1.2 billion CZK.[74]

TAMEH described its operations as inherently tied to Liberty Ostrava. Its facilities are designed to provide energy products such as electricity, steam, and demineralized water exclusively to Liberty Ostrava, while also relying on high furnace and coke gases supplied by Liberty Ostrava for production.[75] This interdependence meant that the financial difficulties faced by Liberty Ostrava directly impacted TAMEH's ability to operate independently or secure alternative revenue sources.[76]

Efforts to resolve the situation amicably, initiated by TAMEH at the end of 2022, proved unsuccessful. Liberty Ostrava's commitments to settle its debts were not fulfilled, and payments for energy products remained overdue.[77] TAMEH further noted that this worsened its financial strain. Without sufficient cash flow to cover its own obligations, TAMEH was forced to scale down operations, which nonetheless failed to stabilize its deteriorating economic condition.[78]

Crucially, TAMEH argued that Liberty Ostrava's individual moratorium directly caused its insolvency. TAMEH contended that Liberty Ostrava misused the protective mechanism of the individual moratorium to harm its supplier while evading its own insolvency obligations. As a result, TAMEH was unable to procure essential coal supplies or maintain operations, which ultimately led to its complete shutdown.[79] TAMEH alleged that Liberty Ostrava, already insolvent,[80] misused the protective mechanism to shift the financial burden onto its supplier rather than addressing the challenges facing both companies constructively.

TAMEH filed an appeal against the decision of the Regional Court in Ostrava to grant a general moratorium on Liberty Ostrava's assets, but the High Court in Olomouc dismissed the appeal. The presiding Judge Martin Hejda ruled that TAMEH, along with Devimex and other creditors, lacked the legal authority to appeal the restructuring court's decision to declare the general moratorium.[81]

---

73 Insolvenční návrh [Insolvency proposal]. [online]. 14. 12. 2023, Clause 1 [cit. 2024-12-02]. Available at: https://isir.justice.cz/isir/doc/dokument.PDF?id=56766828.

74 Ibid., Clause 2 and 17.

75 Ibid., Clause 9 and 10.

76 Ibid., Clause 10 and 11.

77 Ibid., Clause 11.

78 Ibid., Clause 11 and 12.

79 Ibid., Clause 12.

80 And thereby not eligible for protection under preventive restructuring because they do not meet the conditions outlined in Section 4(2) of the Act on Preventive Restructuring.

81 Tameh ani Devimex nejsou oprávněni podat odvolání proti moratoriu na Liberty Ostrava [Tameh and Devimex are not entitled to appeal against the moratorium on Liberty Ostrava]. In: *irozhlas.cz* [online]. 30. 4. 2024 [cit. 2024-12-02]. Available at: https://www.irozhlas.cz/ekonomika/liberty-vrdchni-soud-ostrava-tameh-devimex-moratorium_2404301839_har.

The creditors had argued that Liberty Ostrava did not meet the conditions for the moratorium, alleging that the company was insolvent, thus failing to satisfy the requirement under Section 4 (2) of the Act on Preventive Restructuring, which excludes insolvent entities from initiating preventive restructuring. They further alleged that Liberty Ostrava acted in bad faith by initiating the preventive restructuring process.[82]

The court's legal interpretation raises broader concerns about the constitutionality of the restructuring process. Creditors like TAMEH, who are unable to challenge the moratorium through appeals, may argue that such a limitation infringes upon their right to a fair trial. This restriction effectively leaves creditors with limited legal remedies, potentially forcing them to pursue constitutional complaints [in Czech: *ústavní stížnost*] as their only mean of recourse. Such developments raise significant questions about the balance between debtor protection and creditor rights within the framework of preventive restructuring.

TAMEH argued that Liberty Ostrava's prolonged financial mismanagement, combined with its failure to file its own insolvency petition despite clear indications of insolvency, created a domino effect that ultimately rendered TAMEH insolvent.[83] By December 2023, TAMEH was no longer able to generate sufficient income to meet its obligations to suppliers and creditors, leaving it insolvent under the Czech Act No. 182/ 2006 Sb. On Insolvency and Methods of its Resolution (**"Insolvency Act"**).[84] The company initially pursued reorganization, citing the economic and logistical impracticality of liquidation due to its interdependent operations with Liberty Ostrava.[85] However, these efforts were unsuccessful, ultimately resulting in TAMEH's liquidation.[86]

4.3 PRACTICAL APPROACHES TO OVERCOMING CHALLENGES

The core issue lies in the ability of a debtor, as seen with Liberty Ostrava, to trigger the insolvency of its creditors by merely filing for an individual moratorium. In my view, the current system lacks adequate protection for creditors, particularly since those affected by moratoria have no right to appeal the decision and are left with no option but to endure its consequences. In extreme cases, as seen in the case of TAMEH, this can result in the creditor's complete financial collapse.

To address this imbalance, courts should be required to carefully evaluate the potential impact of an individual moratorium on the targeted creditor(s) before approving it. If the consequences are likely to be severe, courts should have the authority to reject such applications. This is particularly important given that, as demonstrated in the Liberty Ostrava case, an individual moratorium can be sought even before the formal commencement of preventive restructuring proceedings, allowing it to arise unexpectedly and with potentially devastating consequences for creditors.

---

82 Ibid.

83 Insolvenční návrh [Insolvency proposal], Clause 3 and 12.

84 Ibid., Clause 19 and 20.

85 Ibid., Clause 26.

86 Usnesení Krajského soudu v Ostravě ze dne 9. 8. 2024, č. j. KSOS 34 INS 19874/2023-B-62 [Resolution of the Regional Court in Ostrava of 9 August 2024, No KSOS 34 INS 19874/2023-B-6] [online]. [cit. 2024-12-02]. Available at: https://isir.justice.cz/isir/doc/dokument.PDF?id=59120636.

Additionally, it would be beneficial to create a protective mechanism, similar to an appeal process, to challenge individual moratoria. The High Court in Olomouc's ruling underscores the absence of such recourse, leaving creditors with the burdensome and often impractical option of pursuing a constitutional complaint [in Czech: *ústavní stížnost*]. Adding an appeals process or similar safeguard would make the system fairer and give creditors a way to protect their rights. These changes would create a more balanced approach to restructuring and ensure that creditors are not left unprotected.

5. CONCLUSION

The article provides an in-depth examination of the Czech Republic's implementation of Directive on Preventive Restructuring, focusing particularly on individual moratoria as a novel and contentious aspect of the legislative framework. The analysis centers on the Liberty Ostrava case, which highlights the significant challenges posed by the individual moratoria within the preventive restructuring framework and emphasizes the gaps in creditor protections under the current Czech implementation.

The key challenge identified is the debtor's ability to trigger individual moratoria, which can result in severe consequences for affected creditors. The Liberty Ostrava case exemplifies how this mechanism, intended to temporarily protect a debtor, can lead to a creditor's financial demise. In the case of TAMEH, Liberty Ostrava's invocation of an individual moratorium led directly to TAMEH's insolvency, underscoring the imbalance inherent in the current system. The lack of an effective appellate mechanism further deepens this issue, leaving creditors with limited recourse to challenge the application of individual moratoria, a situation that raises concerns about procedural fairness and the right to a fair trial.

The article argues for critical reforms to address these shortcomings. In my oppinion, courts should be mandated to assess the specific impact of individual moratoria on creditors before granting them (such a procedure should be thoroughly defined and regulated by law) and reject applications where the harm to creditors outweighs the debtor's need for protection. Furthermore, introducing a review or appeal mechanism for decisions regarding individual moratoria would enhance procedural fairness and balance the interests of debtors and creditors more effectively.

In summary, the introduction of preventive restructuring in the Czech Republic represents an important step forward in the area of (pre)insolvency law. However, as this article has shown, the framework still needs adjustments to better achieve its goal of balancing the rights and interests of both debtors and creditors. Resolving key issues, especially those related to individual moratoria, is vital for creating a more fair, effective, and resilient restructuring system. Such improvements are not only critical for the Czech Republic but also for supporting the broader implementation and alignment of the Directive on Preventive Restructuring across the European Union.

Mgr. Hana Matoušková
White & Case, s. r. o., advokátní kancelář
hana.mat.work@gmail.com