

The EU Member States, as well as many other countries, including the United States, Canada, Russia and others, have legislation which regulates the opportunity for opening insolvency proceedings for natural persons. Two bills were presented in the National Assembly of Bulgaria but no legislation on the personal insolvency was enacted.

A natural person is insolvent when the person can no longer meet his or her financial obligations and does not have sufficient assets to satisfy his or her creditors. When the creditors decide to act, the debtor may well turn into a “constant debtor” throughout his or her life. If this happens, debtors opt for joining the shadow economy so that to prevent the identification of their actual income and have no interest in pursuing business activities since the benefit would go to the creditors rather than to themselves and their families. As a result, the debtors do not increase their income and property and they do not pay taxes and social security contributions, which affects not only themselves and their families but also the taxation and social security system and society as a whole. Enforcement proceedings may be opened against such debtors and then creditors incur costs without any real chance of collection and the substantial costs incurred turn into an additional burden for the debtor.

As it is pointed out in the 2017 World Bank report *Towards Effective Enforcement of Uncontested Monetary Claims: Lessons from Eastern and Central Europe*, the personal insolvency regulation can enhance the fair distribution of payment among the collective of creditors, create the opportunity for a fresh start of debtors and their families, reduce wasteful collection costs, increase the production of regular taxable income, maximize economic activity and encourage entrepreneurship, and enhance the stability of the economy.

Of course, there are the risks of offering incentives for debtors to act irresponsibly, improperly gaining advantages of the insolvency system, or “stigmatizing” debtors.

A legislative act could strike a fair balance between the interests of debtors to have a fresh start and the right of creditors to collect the debts. That was not achieved through the bills which were tabled in the National Assembly in 2015 and 2017.

For the purpose of avoiding the possibility for collision of statutory provisions, the regulation of stabilization and insolvency could be set out in a separate law that could provide for the

insolvency of both natural and legal persons.

It is necessary to specify the preconditions for the opening of insolvency proceedings and the persons who are eligible to petition the court, i.e. the debtor and his or her creditors, as well as the relevant time limits. It is also necessary to determine the cases in which the petition should be granted and the cases in which it should be rejected, and to establish whether a debtor could resort to this type of remedy more than once.

The competent authority for such proceedings is the court of justice. Insolvency proceedings should be entered into the relevant register that would enable creditors to become aware of the opening of the proceedings in a timely manner and to file their claims accordingly. The legal framework should guarantee the right of each creditor to file a claim, no matter whether the debt is established by the court or not. Therefore it is necessary to introduce a procedure of court approval of creditors' claims and the relevant remedies available to the debtor and to his or her creditors.

The regulation should set out what would happen to the administrative and judicial enforcement against the debtor and the opportunity for appointing an administrator in the case of insolvency of natural persons. Furthermore, it is necessary to regulate the procedure of satisfying creditors' claims, the preparation and adoption of the debt repayment scheme and, ultimately, the conversion of assets into cash. The legal framework might cover also the options for out-of-court settlement, voluntary sale of assets to prevent the public sale, etc. It is necessary to establish the unseizable assets of the natural person, the commencement date of the inability to pay, the invalid and revocable transactions. The regulation should provide for partial or full exemption of the debtor from the unpaid debts after the seizable assets are exhausted. Some restrictions on the subsequent activities of the natural person should be introduced for a certain period of time. The time limit should be reasonable so that to avoid complete prevention of the natural person from engaging in business activities and to give the person the opportunity to engage in business and generate income.

The insolvency proceedings for both natural and legal persons could be reassessed from being the end of assets and operations into an opportunity for a fresh start after the debts

are repaid. Such a change would produce a positive impact on the economy and on society as a whole.