

# REORGANISATION AND WINDING-UP OF CREDIT INSTITUTIONS IN THE EUROPEAN COUNTRIES: A LEGAL ANALYSIS

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**1. Introduction.** It is impossible to build up an efficient banking and financial systems in a country without an in-depth study of theoretical aspects, experience of other states worldwide, the best practices available in the given country as well as development prospects of this system.

The goal of this research is to analyze legal frameworks for reorganization and winding-up of credit institutions in the European states. The authors sets the following objectives for this publication: to analyze the frameworks for reorganization and winding-up of credit institutions in the EU, the SR, Poland, the Czech Republic and Austria; to identify basic divergences (to describe their positive and negative peculiarities); and, to produce scientific and practical recommendations *de lege ferenda* for the financial sphere.

The Treaty on the Functioning of the European Union provides for support of harmonized and coherent development of economic activity in the Union in general via removing of any obstacles to the freedom to found and the freedom to supply services by credit institutions inside the EU. In the course of its activity a credit institution and its branch offices constitute one indivisible economic entity for monitoring by relevant government authorities of the state granting authorization for such activity valid throughout the whole territory of the EU. A special attention should be paid to such unity between the institution and its branch offices when it is necessary to take reorganization measures or to initiate the winding-up procedure.

The EU law sets forth the principle of obligatory coordination of actions by administrative and judicial authorities within reorganization measures and winding-up procedures of the branch offices of the credit institutions with headquarters outside the EU and located in different member states.

Under the applicable laws of the EU and other states of Europe a credit institution (bank) as a legal entity terminates its activity via winding-up or reorganization.

## **2. Reorganization of credit institutions: principles and measures**

Reorganization measures of credit institutions with headquarters registered inside the EU have to be applied in accordance with the laws, norms and procedures applicable in the state of origin.

Reorganization measures are applied by administrative and judicial authorities of the state of origin. Relevant authorities are entitled to make decisions independently as to applying of one or more reorganization measures to a credit institution, including its branch offices located in other member states. Reorganization measures shall be applied within the territory of the EU after they become effective in the member states, they were taken in. When implementation of the reorganization procedure according the decision made that may effect third-party rights in the receiving state and when one may submit an appeal against the decision about such measures, the administrative or judicial authorities in the state of origin, administrative officer or any other person authorized to implement this procedure in the state of origin will have to publish an abbreviated version of such decision in the Official Journal of the European Union and two national periodicals of each receiving country. The notice must contain: the goal and legal grounds for the decision made, time frames for appeal, the deadline and complete address of the authorities or court authorized to handle the appeal.

The reorganization measures have exclusive force as to creditors whereas the administrative or judicial authorities of the state of origin or the laws of the state applicable to these measures do not provide for any other procedures.

It is worth to mention that if the laws of the state of origin require to put in a claim in order to be acknowledged as a creditor or provide for obligatory notification on such measures of creditors, who have registered seat, place of permanent residence or headquarters in this state, the administrative or judicial authorities of the state of origin or the administrative officer have also to inform the known creditors with registered seats, places of permanent residence or headquarters in other member states. Furthermore, whereas the laws of the state of origin provide for the right of creditors with registered seats, places of permanent residence or headquarters in this state to put in a claim or to submit their vision of the claim the creditors who have registered seats, places of permanent residence or headquarters in other member states have such a right as well.

## **3. Legal frameworks for winding-up of credit institutions in the EU**

When EU credit institutions (usually banks) with branches in multiple EU countries fail and go through bankruptcy, certain principles defined in Directive 2001/24/EC ensure that a single bankruptcy procedure can be applied across all countries involved.

The directive establishes that the laws of the EU country where the credit institution has its registered office (the 'home country') should be followed in bankruptcy and winding-up proceedings.

It requires that creditors be informed of bankruptcy proceedings and reorganisation measures. It also clarifies the impact of bankruptcy proceedings in relation to contracts and certain legal rights.

Directive 2001/24/EC only applies to credit institutions with branches in other EU countries and does not apply to banking groups.

**4. Conclusion.** Thus, in order to improve legal regulations of financial relations and based on the results of the comparative law research of the EU's best practices and summarizing the observations above and *de lege lata*, the respondent reached the following conclusions and developed *de lege ferenda* the followings: to introduce the following principles into the laws applicable to reorganisation and winding-up of credit institutions: a) the principle of equal treatment of creditors; b) the principle of mutual recognition by the member states of measures taken in each of them for financial rehabilitation of a credit institution granted authorization to carry out activities; d) the principle that the laws of the state of origin set forth the results of the reorganization measures or winding-up procedures of both the procedural and substantive ones; e) a credit institution has to be wound up in accordance with the laws, the EU directives and procedures applicable in the state of origin, etc.

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