

ПРАВО ЄВРОПЕЙСЬКОГО СОЮЗУ ТА ЄВРОПЕЙСЬКА ІНТЕГРАЦІЯ

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Iryna Butyrska,
*PhD in Law, Associate Professor,
Associate Professor of the Department of Procedural Law,
Yuriy Fedkovych Chernivtsi National University, Ukraine
E-mail : i.butyrska@chnu.edu.ua
ORCID: <https://orcid.org/0000-0002-6827-9939>*

HARMONIZATION OF UKRAINIAN BANKRUPTCY LEGISLATION WITH EUROPEAN UNION STANDARDS

The article examines current issues related to the adaptation of Ukrainian bankruptcy legislation to the standards of the European Union in the context of ongoing European integration processes. It is established that the adoption of the Code of Ukraine on Bankruptcy Procedures constituted an important stage in the reform of the national insolvency regulatory framework and significantly aligned Ukrainian legislation with European standards. Particular attention is paid to the analysis of the introduction of personal bankruptcy procedures and their significance for the development of a modern system of protection of the rights of debtors and creditors.

The study explores the main provisions of Directive (EU) 2019/1023 on preventive restructuring frameworks, debt discharge, and measures to increase the efficiency of insolvency procedures. It is noted that an important step toward the implementation of this Directive was the introduction in Ukraine of a preventive restructuring procedure aimed at preventing insolvency before the commencement of bankruptcy proceedings. The article also reviews scholarly approaches to assessing the compliance of the new provisions of the Code of Ukraine on Bankruptcy Procedures with the requirements of European legislation.

Special attention is devoted to issues of cross-border insolvency and the significance of Regulation (EU) 2015/848 on insolvency proceedings. The article examines the mechanisms designed to prevent abuses in the choice of jurisdiction for opening insolvency proceedings, as well as the criteria for determining a debtor's centre of main interests (COMI). It emphasizes the importance of taking these approaches into account in the further improvement of Ukrainian legislation, particularly in light of the growing number of cross-border insolvency cases associated with martial law and migration processes.

The provisions of Directive (EU) 2026/799 on the harmonization of insolvency procedures are also analyzed, and its significance for the formation of a modern model of insolvency law in Europe is determined. The implementation of the relevant reforms will contribute to increasing the efficiency of the national bankruptcy system, strengthening investor confidence, and creating appropriate conditions for the post-war recovery of Ukraine's economy.

Key words: *bankruptcy, insolvency, preventive restructuring, European integration, Directive (EU) 2019/1023, Regulation (EU) 2015/848, Directive (EU) 2026/799.*

Бутирська Ірина. Гармонізація українського законодавства про банкрутство зі стандартами Європейського Союзу.

У статті досліджуються актуальні питання адаптації законодавства України про банкрутство до стандартів Європейського Союзу в умовах сучасних євроінтеграційних процесів. Встановлено, що прийняття Кодексу України з процедур банкрутства стало важливим етапом реформування національної системи правового регулювання неплатоспроможності, а також суттєво наблизило українське законодавство до європейських стандартів. Особливу увагу приділено аналізу впровадження інституту банкрутства фізичних осіб та його значенню для розвитку сучасної системи захисту прав боржників і кредиторів.

Досліджено основні положення Директиви ЄС 2019/1023 про рамки превентивної реструктуризації, списання боргів та заходи щодо підвищення ефективності процедур неплатоспроможності. Зазначено, що важливим кроком на шляху імплементації положень цієї Директиви стало запровадження в Україні процедури превентивної реструктуризації, спрямованої на запобігання неплатоспроможності ще до відкриття провадження у справі про банкрутство. Відзначено наукові підходи щодо оцінки відповідності нових положень Кодексу України з процедур банкрутства вимогам європейського законодавства.

Окрему увагу приділено питанням транскордонної неплатоспроможності та значенню Регламенту ЄС 2015/848 про провадження у справах щодо неплатоспроможності. Розкрито зміст механізмів запобігання зловживанням під час вибору юрисдикції для відкриття провадження у справах про банкрутство, а також особливості визначення центру основних інтересів боржника. Наголошено на важливості врахування цих підходів у процесі подальшого вдосконалення українського законодавства, особливо в умовах зростання кількості випадків транскордонної неплатоспроможності, пов'язаних із воєнним станом та міграційними процесами.

Проаналізовано положення Директиви ЄС 2026/799 про гармонізацію процедур банкрутства та визначено її значення для формування сучасної моделі права неплатоспроможності в Європі. Реалізація відповідних реформ сприятиме підвищенню ефективності національної системи банкрутства, зміцненню довіри інвесторів та створенню належних умов для повоєнного відновлення економіки України.

Ключові слова: банкрутство, неплатоспроможність, превентивна реструктуризація, євроінтеграція, Директива ЄС 2019/1023, Регламент ЄС 2015/848, Директива ЄС 2026/799.

Introduction. The legal regulation of bankruptcy traces its historical origins back to the emergence of monetary and credit relations, as wherever debts exist, there are always individuals or entities unable to repay them. One of the requirements for Ukraine's accession to the European Union is the adaptation of its national legislation to EU law, including the legal regulation of insolvency and bankruptcy.

With regard to Ukrainian bankruptcy legislation, the adoption of the Code of Ukraine on Bankruptcy Procedures (hereinafter – the CUBP) in 2018 represented a major step forward in regulating insolvency and bankruptcy relations. It significantly expanded the scope of bankruptcy legislation by providing for the possibility of declaring bankrupt not only legal entities and individual entrepreneurs but also natural persons, thereby introducing the institution of so-called “consumer bankruptcy” into Ukrainian law. This

development constituted an important step in the harmonization of Ukrainian legislation with EU law, accession to which remains one of Ukraine's strategic objectives.

Bankruptcy acquires particular importance under martial law, when many Ukrainians have lost their homes and jobs or have been forced to relocate abroad. As regards citizens who left Ukraine because of hostilities, the harmonization of Ukrainian bankruptcy legislation with the corresponding legislation of the European Union becomes especially significant, since issues arise concerning the legal status of their property, sources of income, and matters of cross-border insolvency.

Thus, the relevance of this study is determined by the need to improve bankruptcy mechanisms in Ukraine in light of European experience, ensure a balance between the interests of debtors and creditors, enhance the efficiency of judicial procedures, and create favorable conditions for restoring the solvency of business entities. These issues are of particular importance in the context of economic challenges associated with martial law and the need for the post-war recovery of Ukraine's economy.

The aim of the article is to analyze the main directions of adapting Ukrainian bankruptcy legislation to EU standards, identify key problems in legal regulation within this sphere, and outline prospects for the further harmonization of national legislation with European Union law.

Literature Review. Among the scholars who have devoted their research to bankruptcy issues, it is worth mentioning O. Belyanevych, O. Biriukov, O. Vaskovskyi, I. Vechirko, L. Hrabovan, A. Danilov, V. Dzhun, Yu. Kabenok, L. Nikolenko, B. Poliakov, R. Poliakov, P. Pryhuza, V. Radzyviliuk, and others. In particular, in his monograph *Comparative Legal Analysis of Bankruptcy (Insolvency) Procedures in Ukraine, England, Germany and France*, R. Poliakov conducted a comparative legal study of the institution of bankruptcy (insolvency) in Ukraine and Germany, including the genesis of insolvency proceedings, certain elements of modern bankruptcy procedures, and specific aspects of insolvency proceedings involving natural persons [1].

At the same time, despite the considerable contribution made by these scholars to the development of insolvency (bankruptcy) law, the study of current issues related to the adaptation of Ukrainian bankruptcy legislation to EU standards remains highly relevant.

Results and Discussion. Strengthening economic stability within the European Union requires effective legal mechanisms for overcoming financial difficulties faced by businesses. Recognizing that honest entrepreneurs experiencing financial distress should be able to restructure their debts at an early stage, the European Union has focused significant efforts on harmonizing legislation in this field [2].

One of the key directives whose implementation is mandatory for Ukraine's successful accession to the EU is Directive (EU) 2019/1023 on preventive restructuring frameworks, debt discharge and disqualifications, and measures to increase the efficiency of restructuring, insolvency and discharge procedures (hereinafter – Directive (EU) 2019/1023) [3]. The Directive is generally aimed at establishing uniform legal foundations for preventive restructuring systems, ensuring a "second chance" for debtors, and improving bankruptcy procedures in order to increase their effectiveness throughout the EU Member States. Its principal objective is to ensure the proper functioning of the EU internal market by removing legal barriers to restructuring and reducing economic losses resulting from insolvency [4].

Ukraine is already moving toward the implementation of Directive (EU) 2019/1023. An important step in this process was the entry into force on 1 January 2025 of amendments to the CUBP introducing a preventive restructuring procedure designed to prevent

insolvency at an early stage. Accordingly, the CUBP was supplemented by an entirely new Book Three entitled “Preventive Restructuring.” Under its provisions, the procedure may be initiated by a debtor that is a legal entity or an individual entrepreneur, except for legal entities against which bankruptcy proceedings may not be initiated under the Code, as well as legal entities providing financial services.

Creditors, members of the debtor’s governing bodies (executive bodies, supervisory boards, etc.), or an employee representative who possess information regarding the debtor’s insolvency or the threat thereof are entitled to propose that the debtor initiate preventive restructuring proceedings. The parties to preventive restructuring include the debtor, the affected creditors, and, in the case of state-owned and municipal enterprises, the owner of the debtor’s property (or the body authorized to manage such property), as well as employees represented by their representative where the preventive restructuring plan establishes, modifies, or terminates their rights and interests.

Book Three also introduces a new participant in the proceedings—the preventive restructuring administrator, who may be an insolvency practitioner appointed to organize and facilitate the preventive restructuring procedure.

Regarding the introduction of preventive restructuring, R. Poliakov and B. Poliakov have concluded that, in certain respects, the Ukrainian preventive restructuring procedure does not fully comply with the provisions of Directive (EU) 2019/1023, which it was intended to implement. They suggest that unless the identified shortcomings are addressed, the procedure is unlikely to gain widespread use and may eventually share the fate of its predecessor by falling into disuse [5].

Preventive restructuring was introduced into Ukrainian legislation relatively recently; therefore, it is still premature to assess its effectiveness and practical outcomes. Nevertheless, the incorporation of the relevant provisions into the CUBP undoubtedly represents an important step toward harmonizing Ukrainian bankruptcy legislation with EU law.

In the context of harmonizing Ukrainian bankruptcy legislation with EU law, it is also necessary to mention Regulation (EU) 2015/848 on insolvency proceedings [6]. This document introduces a number of concepts, approaches, and jurisdictional coordination mechanisms that are relatively new to the Ukrainian legal system, particularly in relation to cross-border insolvency proceedings, including measures aimed at preventing “forum shopping” (so-called bankruptcy tourism within the EU).

As regards “bankruptcy tourism,” bankruptcy is an extreme measure resorted to by debtors who are unable to satisfy their obligations to creditors. Naturally, once a debtor decides to take such a serious step, they often begin searching for ways to improve their position and secure the most favorable conditions for debt discharge. One of the most common methods of changing the applicable conditions of bankruptcy proceedings is the relocation of the debtor’s place of residence, since bankruptcy cases are generally heard by courts located in the debtor’s place of residence or principal establishment [7].

To prevent abuse and artificial changes of jurisdiction, Regulation (EU) 2015/848 introduced clear criteria for determining the debtor’s Centre of Main Interests (COMI), as well as mechanisms for verifying the good faith of any relocation. The Regulation is based on the presumption that insolvency proceedings should be opened in the state where the debtor’s principal economic interests are effectively concentrated and where the administration of those interests is conducted. Furthermore, the Regulation establishes specific temporal restrictions concerning changes of residence or registered office shortly

before the opening of proceedings, thereby preventing the artificial transfer of cases to more favorable jurisdictions.

It should be noted that certain elements of this Regulation are already partially reflected in the CUBP; however, they require further alignment with European standards.

Within the broader context of European integration processes, special attention should also be paid to Directive (EU) 2026/799 on the harmonization of insolvency procedures [8]. Although it has not yet been incorporated into Ukrainian legislation, it effectively determines the future direction of insolvency law development in Europe. As rightly noted by P. Pryhuza, Directive (EU) 2019/1023 and Directive (EU) 2026/799 of 30 March 2026 establish, for both EU Member States and Ukraine, at least the following objectives and common rules:

- ensuring that insolvency procedures provide for the orderly liquidation or restructuring of companies and entrepreneurs experiencing financial and economic distress;
- adapting national legal systems to the EU internal market and removing obstacles to fundamental economic freedoms, including the free movement of capital and the freedom of establishment and business activity;
- eliminating barriers and problems in investment activities among entities of Member States, as well as obstacles affecting business relations with counterparties outside Member States, discouraging entrepreneurship, and hindering the proper functioning of the internal market;
- ensuring appropriate safeguards for the accurate valuation of assets of insolvent companies and entrepreneurs and for the proper application of insolvency legislation [9].

An analysis of Directive (EU) 2026/799 demonstrates that its primary focus is not on regulating procedural mechanisms of bankruptcy proceedings. Rather, the Directive has a pronounced economic orientation, seeking to facilitate the free movement of capital, increase the predictability of insolvency procedures, and support entrepreneurial activity. Such an approach is natural, as bankruptcy in the European Union has long been regarded not merely as a legal mechanism but also as an important factor contributing to economic stability and investor confidence.

Conclusions. The development of bankruptcy legislation in Ukraine follows general European trends aimed at increasing the efficiency of insolvency procedures, protecting the rights of creditors and debtors, and ensuring the stability of economic relations. The analysis conducted demonstrates that the adoption of the Code of Ukraine on Bankruptcy Procedures and the subsequent amendments thereto, including the introduction of preventive restructuring in accordance with Directive (EU) 2019/1023, have constituted important stages in the harmonization of Ukrainian legislation with EU law.

At the same time, certain provisions of the current legislation require further improvement in order to ensure fuller compliance with European standards and the effective practical implementation of newly introduced legal mechanisms.

The study also demonstrates that adapting legal norms governing cross-border insolvency, jurisdiction, and the coordination of insolvency proceedings at the international level is of particular importance for Ukraine. Under conditions of martial law, significant population migration, and increasing economic integration with EU Member States, these issues possess not only theoretical relevance but also considerable practical significance. In this regard, the provisions of Regulation (EU) 2015/848 serve as an important guideline for the further development of Ukrainian legislation, as they are aimed at ensuring legal certainty and preventing abuses in the selection of jurisdiction for insolvency proceedings.

Furthermore, the analysis of Directive (EU) 2026/799 suggests that contemporary European bankruptcy policy is increasingly focused on economic objectives, particularly the creation of a favorable investment environment, the facilitation of the free movement of capital, and support for entrepreneurial activity. This approach reflects the transformation of bankruptcy from a mechanism for liquidating debtors into an important instrument of economic development and solvency restoration.

Accordingly, the further harmonization of Ukrainian legislation with EU law should be pursued comprehensively, taking into account both legal and economic aspects of insolvency procedures while preserving due consideration of the national context and the valuable achievements of Ukrainian insolvency (bankruptcy) law scholarship. The implementation of these objectives will contribute to increasing the effectiveness of Ukraine's bankruptcy system, strengthening investor confidence, and creating the prerequisites for the sustainable post-war recovery of the national economy.

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