****

**A Developing Threat to West Balkan Economies: The *Agrokor* Insolvency**

“It is too big to fail”!

After the Greek economic and migrant crises, since April 2017, the *Agrokor* case has become the main concern for the governments of the states of the former Yugoslavia. Once the biggest Croatian company and economically very significant, it has become a serious problem for the Croatian Government. Its systematic importance for the country and the region recently required a legislative solution to be found for its problems.

*Agrokor* was engaged in the production and distribution of food and beverages as well as retail and other activities. Its operations were carried out not only in Croatia, but also in Serbia, Slovenia, Bosnia and Herzegovina, Montenegro and Hungary by means of three distinct business groups with several dozen joint-stock and limited liability companies under the collective umbrella, employing over 60,000 employees in the West Balkan region. After acquiring control over the Slovenian *Mercator Group* in 2014 (supported by a loan from the Russian *Sberbank*), *Agrokor* subsequently took control over the Serbian *Idea* chain as well as other companies, thus significantly expanding its market. Experts have been warning for a while that the group is at risk of illiquidity, but it was not till the beginning of 2017 that *Agrokor* faced a significant crisis when its debts and the debts of its affiliated and subsidiary companies were estimated as being at over EUR 1 billion.

Faced with enormous liabilities and almost certain illiquidity of the company, the Croatian Government tabled a special draft law in Parliament in order to save the company. As a result, a Special Law on “a procedure of extraordinary administration in companies of systemic importance” was adopted on 6 April 2017. This was immediately dubbed the “*Lex Agrokor*”. The law was a particularly interesting example of legislation for its introduction of new insolvency proceedings titled “extraordinary administration”. The passing of the law also occasioned questions to be posed about the impact of such legislation in the case of cross-border insolvency proceedings both within and outside the European Union. A few days after the law was passed, *Agrokor* submitted a petition to the Commercial Court in Zagreb (Ref. St.1138/17 of 10 April 2017) and the court opened an extraordinary administration procedure in respect of the group.

Once proceedings began, however, numerous different stakeholders came into light, some with potentially dubious interests. The Croatian Government’s strategy, to begin with, was not only to rescue the company and its assets throughout the Balkan region, but also to acquire control over it. This was especially visible through the prerogatives of the extraordinary trustee, who, though formally appointed by the court, was in fact a government official. Creditors at risk, mainly *Sberbank* and the Italian bank, *Intesa Sanpaolo SpA*, filed law suits to prevent the sale of the debtor’s assets. This was despite *Sberbank*, together with *VTB Bank*, initially supporting the rescue plan towards which they had pledged financial support to the tune of more than EUR 100 million. The outcome was especially important for the Croatian Government, given the more than 60,000 employees whose fate depended on the outcome of proceedings.

Since the onset of proceedings, the case has also revealed a potential for political scandal, particularly in light of the fact that the current Minister of Finance in the Croatian Government, Zdravko Marić, was the Executive Director for strategy and capital markets for *Agrokor* between 2012 and 2016. In fact, when the extraordinary administration proceedings were first initiated, the extraordinary trustee, Ante Ramljak, engaged Price Waterhouse Coopers to prepare a revised consolidated report of *Agrokor*’s business results. The report submitted to the extraordinary trustee was presented in October 2017 and revealed fraud alleged to have occurred over the past few years.

At present, the liabilities of *Agrokor* are estimated to be EUR 1.93 billion greater than its assets. The report also revealed that *Agrokor* trading losses in 2016 amounted to EUR 1.46 billion, EUR 1 billion more than in 2015. The scale of fraud can be estimated by comparisons with the previous consolidated report, in which the company was said to have made a total of EUR 6.5 billion profit, while its assets were estimated as worth some EUR 7.1 billion. At present time, *Agrokor* is likely to be closer to a bankruptcy outcome than to rescue, given that its equity represents only 14.5% of its financial resources.

The extraordinary administration procedure is urgent and limited to 15 months. As one of its outcomes, the legislation provides for the possibility of a settlement between debtor and creditors. If settlement is the solution envisaged, the extraordinary trustee must provide a proposal within 12 months from initiation of the procedure, though the court may postpone the deadline for a further 3 months. The form a settlement takes is essentially that of a contract certified by court, similar to the one in a reorganization during bankruptcy proceedings. As such, it is a privileged type of reorganization for companies in financial distress within a limited time. It differs from pre-bankruptcy and bankruptcy proceedings due to the specialization of the courts and the exclusive competence of a single commercial court, because it is urgent and limited to a definite time, as well as because of the process of appointing an extraordinary trustee. The law’s provisions clearly indicate the influence of the government in resolving crises involving systemic companies, but also an aspiration to keep control over them in case of failure.

Though the extraordinary administration procedure has only been going for just over six months, it is quite possible that bankruptcy proceedings may be initiated before its end, which would trigger cross border bankruptcies in affiliated and subsidiary companies in all states of the West Balkans. The consequences of it would be the loss of employment for tens of thousands of employees and severe stress on the already weak economies of the affected countries. However, if this were to occur, it is by no means certain that a coordinated outcome could be achieved across the group. In fact, there has already been conflict in the responses of courts outside Croatia. While the Ljubljana District Court (Slovenia) has issued a decision in July recognising the procedure of extraordinary administration in Zagreb under the Recast EIR, in August, the Belgrade Commercial Court (Serbia) rejected the petition of *Agrokor*’s extraordinary trustee and instead approved measures restraining the company from alienating and encumbering its assets so as to protect the applicant creditors, *Sberbank* and *Intesa Sanpaolo SpA*.

At time of writing, with the conflict between the company and its creditors unresolved, the end of the crisis is still not in sight. One solution could be agreement with the creditors with a partial debt forgiveness and some element of a debt-equity conversion. Another solution could well be the bankruptcy of the concern and its subsidiaries. However, the case also raises the possibility of a conflict between courts, which will make the achievement of a coordinated solution that much more difficult, though the interests of the employees will depend on such a solution being found.

The *Agrokor* case is an example of the rise and fall of a former Yugoslavian company which was, in many ways, granted privileges by the state, even though it was privately owned. The attempts by the group to obtain credit for expansion and to also survive economic difficulties illustrates the difficulties such businesses have had in making the transition to the private sector. It will be interesting to see, not only what outcome now awaits the *Agrokor* group, but also what other companies with similar state origins may face difficulties in the future.

Dr Djuro M. Djuric

Lecturer, College of Applied Studies for Economics and Administration, Belgrade

<djuro.mdjuric@gmail.com>

and

Dr Vladimir M. Jovanovic

Associate Professor, University Business Academy

Faculty of Economics and Engineering Management, University of Novi Sad

<jovanovicvld@gmail.com>