REORGANIZATION AND FINANCIAL RESTRUCTURING OF COMPANIES - CASE OF CROATIA AND NORTH MACEDONIA

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Abstract
The reorganization of the companies, as a worldwide accepted concept of avoiding liquidation, is perceived as very complex issue, both in academic environmental and the circle of practitioners and government bodies.
The complexity of this issue primarily derives from its multidisciplinary and multifunctional influence, in a broader social context. Nowadays, the reorganization is perceived as the most suitable model to increase cross-border investments, to reduce the percentage of unemployed persons and to cut the risk of loans in banking sector.
For this purpose, in the last ten years, numerous and diverse changes have occurred in the field of insolvency law, particularly in the EU. Most of these changes are related to the promotion of the concept of preventive financial restructuring, as a new concept for avoiding insolvency.
The Republic of Croatia (hereinafter RC) and the Republic of North Macedonia (hereinafter RNM), are not exceptions with regards to this trend. Under the influence of EU insolvency policy, the RC and other countries in the region, including the RNM made certain changes in their laws.
In this article, the main research is the concept of "reorganization" as an established model of avoiding liquidation of debtors and "financial restructuring of debts". The focus will be on Croatian and Macedonian law and practice.

***Key words**: Liquidation, insolvency, reorganization, restructuring, debtors.*

1. The purpose and methodology of the research

The main purpose of this research is to analyze the concept of "reorganization" and "financial restructuring" of the debtors in RC and RNM. This study encompasses material and procedural legal aspects of "reorganization" and "financial restructuring", the effects of legislative changes and amendments and new insolvency policy accepted in EU.

To achieve this aim, the subject of survey also includes the EU most recent policies related with reorganization, i.e. financial restructuring of debts. The analytical descriptive method, the comparative method, the method of analysis and synthesis, and the method of induction and deduction were used to analyze the subject matter for this article.

2. Hypothetical framework of the research

The RC and the RNM have well-established legal framework of insolvency law. In order to avoid liquidation of the companies, the insolvency acts in both states provide the opportunity of pre-insolvency settlement and reorganization of the debtors in opened insolvency procedure.

In the RNM, the reorganization of debtors is hardly achievable. Despite the fact that many changes have been made in this field, the situation in practice is the same. The insolvency procedures take too long, the creditors cannot charge their claims and the assets of the company/debtor is usually devalued.

The RC enacted several changes in insolvency law. The main goal of these changes was to save the debtors from liquidation and to put a stop to the lose of jobs. Nevertheless, nowadays, the insolvency procedures in both states have not been reduced or shortened, nor have the detrimental legal consequences been prevented. Both states have further tasks to do, if they want to help the economy. This specially refers to the RNM.

3. Introduction

Reorganization as a method of avoiding liquidation of the debtor's assets is one of the most discussed topics in academic circles and among practitioners of insolvency law. Since the beginning of the 21st century, this topic has become atractive in the political circlesas well. In the last two decades, the creators of the EU and global economic policy constantly express their willingness to conduct policy for avoiding liquidation, prevention of job lose and giving a second chance to companies that are deepy in debt.

Although pursuing the same idea and goal, the governments of different states in Continental and Anglo-American systems generate different programs, measures and strategies for the implementation of the concept of reorganization. The separated legal systems in Europe have taken steps forward in this field, creating a legal basis for the implementation of special

modalities of the classic concept of reorganization, including the "preventive restructuring of debts", as one of the most perceptive (at least in theoretical terms) concepts to avoiding insolvency.

In the practice of corporate and insolvency law, the concept of "reorganization of debtors and "financial restructuring" of debts, not rarely are used in the same legal context. It's undisputable that as measures of recovery and sustainability of a debtor's business ventures, these concepts lead to the same goal. But, it's also an undisputible that these are two diffrenet concepts. In concreto, it's a fact that "reorganization" and "financial restructuring" of the debtors and debts, are conducted with different instruments, in separate time-frame of financial crises of the debtors, under different terms and different procedures.

The main purpose of the concept of reorganization is to ensure the maintenance of the debtors in opened insolvency procedure. Contrary to this, the concept of "restructuring" implies implementation of set of measures, preventive actions in the stagewhen the debtor is facing financial difficulties, but, in a formal sense, the conditions for opening insolvency procedure, under applicable law, are not meet yet.

Different legal systems accept different criterias for determination of the notion of reorganization, such as: "reorganization", "restructuring", "rehabilitation", "rearrangement" etc. (Malbašić, 2005, p. 16). In theory, and in practice, the possibility of overlapping some of the measures typical for the reorganization of the debtors or restructuring of the debts of the debtors, it's not excluded (Garrido, 2012, p. 51). But, in our opinion, any terminological identification of the terms "reorganization" and "restructuring", may create confusion, dilemmas, and practical problems.

In practical terms, very often the measures taken for conducting reorganization of the debtors are part of the content of the plan for financial restructuring of the debtor's debts. Yet, in a substantial sense, restructuring means taking measures that refer only to arrangement of the legal relations between the creditor and the debtor, beyond the insolvency procedure, in the stage in which the debtor is faced with financial difficulties (Shultz).

Unlike the reorganization of the debtors, which, among other measures, encompass the possibility of changing corporate structure of the debtor's, conducting merger and acquisition as a way of consolidation of the compaies, restructuring refers to the arrangement of the creditor-debtor legal relationship, primarily by postponing the payment of the debt, settlement of the claims, converting the debt into shares, facilitating the payment conditions for the debtor, etc. In a legal sense, restructuring of the debtor's debts, should be perceived as a "preventive restructuring", which conducts out of court procedure.

In summary, the measures for implementation of the reorganization plan can be divided into a method of changing to corporate structure of the debtors, or organizational changes of the insolvency debtor, and methods fromobligational legal nature, or related to property law. Contrary to this, restructuring does not include changes of debtor's corporate structure, but it's only related to arrangement of the obligational legal content, which derives from the debtor-creditor relationship.

Nowadays, these two concepts of avoiding insolvency are well known in many legal systems across the world. In most of them these concepts are established due to the influence of the European reforms in insolvency law, and the whole ambience of "rescue corporate culture" present in the business sector and government policies (Bodul & Vuković, 2015).

Nevertheless, the main conception of these changes in EU insolvency law, originated from the concept of "reorganization of debtors" and "financial restructuring of debtor's debts" accepted in USA. Therefore, guided by the solution envisaged in par. 1101.-1174., Chapter 11of the American insolvency code, the majority of the legal systems anticipated procedures for restructuring of insolvency debtors by implementation of "per pack" and "pre-negotiated" models of avoiding insolvency and liquidation (Živković, Bodul, & Živković, 2014).

The world financial crisis putted business sector in unenviable position. Companies faced with many financial problems and real danger of insolvency. In order to decrease the number of insolveny procedures and to mitigate the consequences from the crisis, EU started reforms of the insolvency law, and implemented the concepts of restructuring of debtors' debts. A great part of these reforms weremade on the base of the concepts provided in American Insolvency code.[1] The concept of "preventive financial restructuring" of debtors' debts were exemplary.

Guided by these EU tendencies for reformation of insolvency law, several significantreforms were made in the Western Balkan countries. Yet, briefly after the implementation of these reforms, many experts expressed their negative criticism with reasonable arguments (Uzelac, 2016). Firstly, they pointed out the uncertainty and imprecision of the anticipated solutions. Secondly, they highlightthat the problems that affect the current economy, problems that also existed before the reformation of the insolvency law. So, in practical sense, things have not changed much. The situation is not far different in the all countries in the region. The number of lost jobs due to the opened insolvency procedures is huge; long insolvency procedures exist; and there is still low percentage of creditor's claims being resolved.

[1]See: https://www.law.cornell.edu/uscode/text/11, [accssed on 07.11.2019].

The criticisms of the insolvency law offered by exerts represent one more confirmation that the bare adoption of comparative provisions does not mean the inevitable achievement of positive results in any economy.

The success in this field is conditioned by the situation in the tax law system, accounting standards, legal regime applicable to registration of the real estate rights, enforcement law, etc. More accurately, the efficiency of the insolvency procedures depends on overall efficiency of the legal regime of the whole legal system.

This is not a case with the latest legislative interventions in RNM. A suitable example is the adoption of the law on the out-of-court settlement (*hereinafter* LUCS).[2] Since 2014, only two out of court reorganization procedures have been conducted under the LUCS. The practice revealed that insolvency trustees in RNM have no interest in conducting this procesure under LUCS. [3]

Under the influence of these trends, the RC enacted Financial Operations and Pre-Insolvency Settlement Act (hereinafter FOPBSA).[4]For a short period of time, the FOPBSA has garnered many negative critics, which led to many changes in existing 2015 Banruptcy act (Garašić, 2017). Hence, for a very short time, the new concept of "preventive restructuring" of debtor's debts was anticipated in the existing law of insolvency (Vilašević, 2014, p. 67).

Following the examples from the countries in the region, the Republic of Serbia intervened in out-of-court settlement procedures for restructuring of debtor's, in 2011.[5]Republic of Serbia, adopted the Law on Consensual Financial Restructuring in 2011, among the first countries in the region (hereinafter LCFR). After 4 years of the enactment of the LCFR, in 2015 new law of on Consensual Financial Restructuring was adopted.[6] This law came into force on November 4, 2015.

[2] See: "Official Gazette of the Republic of North Macedonia" no. 12/2014, (hereinafter LUCS).

[3]Project activities: Strengthening the administrative capacities for implementation of the legal framework for insolvency and liquidation of companies in Republic of North Macedonia, The European Union's Instrument for Pre-accession AssistanceIPA, TAIB, 2017.

[4]Full version of the act available from: https://www.zakon.hr/z/543/Zakon-o-financijskom-poslovanju-i-predste%C4%8Dajnoj-nagodbi, [accessed on 25 February, 2018].

[5]Full version of the act available from: http://www.paragraf.rs/propisi/zakon_o_sporazumnom_finansijskom_restrukturiranj.html,[accessed on 15 May, 2019].

[6] ("Official Gazette of RS "No. 89/2015).

Despite ambitious enforcement of this legislation, and a great expectation that they would contribute to improvement of the situation in this field, since 2011, only 37 procedures for restructuring beyond insolvency procedure were initiated.[7] Following the Serbian legislation, in 2015, the Republic of Montenegro adopted the Law on Consensual Financial Restructuring of the debts to financial institutions.[8]

The reformation of insolvency law in Western Balkan states generally derives from the politics and reforms that the EU did take in last decade of 21 century. Of course, the financial crises in EU and worldwide also affected on these reforms.

RC and RNM were not exception in this regard. Following the reforms in republic of Croatia, several solutions, especially for pre-banrkuptcyproceding and preventive restructuring, were incorporated in the states from region. Yet, according to conducted surveys, neither of them achieved the set goal.

4. Legal frame of the concept of reorganization and financial restructuring of the companies in Repubic of Croatia

Starting from 1996 and the entry into force of Bancrupty act on 1-st of Octomber1997[9] till today, the RC is in a constant process of reformation of the bankruptcy laws. Through amendments and supplements of existing laws, as well as through the enactment of a new legal regime, the RC attempted to build a regime that would provide legal certainty for Croatian and foreign investors, especially when they faced financial difficulties.

The main idea of these legal changes was to reduce the number of insolvency proceedings and lost jobs, as well as to abridge the timeframe for carrying out the opened insolvency proceedings. As an EU member state, the RC followed the EU reforms of insolvency law, and had tried to implement the European values and principles of work, considering the global strategy for EU development. However, there were almost no amendments which were excluded due to criticisms and controversies. With special referenceto the concept of out-of-court settlement, the experts, judges and lawyers,

[7] Radulović B., Luka, A., Agreeable Financial Restructuring - Comparative Legal and Empirical Analysis, Harmonization of Serbian Business Law with EU Law, 2015, p. 148

[8] Full version of the act available from: http://www.privrednakomora.me/sites/pkcg.org/files/multimedia/gallery/files/2012/09/zakon_spor_fin_dugova_fin_instit.pdf, [accessed on 25May, 2019].

[9] Full text available from: https://narodne-novine.nn.hr/clanci/sluzbeni/1996_06_44_852.html, [accessed on 1 May, 2019].

questioned the constitutionality and compliance with Article 6 Paragraph 1 of the European Convention on Human Rights (Uzelac, 2016, p. 5).

The conducted reforms in RC insolvency law are mainly related with incapability of the companies to pay debts, non-profitability, the lack of and productivity and with the call for reducing the job lost. Hence, the focus of the reforms was on the concept of reorganization of debtors, financial restructuring of their debts and the effectiveness of bankruptcy plans.

In 1996, RC enacted Law on bankruptcy (hereinafter LBRC). This law provided the possibility of reorganizing debtors only in opened bankruptcy procedure, according to Chapter VI of the Law. According to LBRC art. 213 paragraph 1, "after the opening of the bankruptcy procedure, a reorganization of the debtor on the basis of a bankruptcy plan may be carried out".[10] The reorganization of debtors under 1996 BARC, may be executed by transferring part or all of the debtor's property to one or more existing entities or entities to be established, saling part or whole property of the debtor, with or without creditors with segregation rights, determining the mode of payment of the debts, reducing or delaying the fulfillment of obligations towards creditors by converting the debtor's obligations in the loan, securing the creditors claims through a guarantee or other models of insurance, allowing the debtor to work for the purpose or part of his property to fulfill his obligations to creditors, etc. (art.213/2).

Under 1996 BARC, insolvency plan must be submitted to the insolvency council.[11] The right to submit insolvency plan has the insolvency trustee and a debt individual. The principle of "equal treatment towards all creditors" must be implemented in the insolvency plan and any other behavior in the sense of guaranteeing any kind of convenience to any of the creditors, entails nullification as a legal consequence. Under the precisely determined conditions provided for in Art 22 paragraph 1, the Insolvency Council has right to reject the submitted plan for reorganization.

The Insolvency Council discusses and votes for the reorganization plan, on the hearing that must not be held before the hearing for the inspection of the creditor's claims. 1996 BARC eventually allows for the merger of proceedings. After the insolvency plan has been accepted by the creditors, it must be confirmed by the insolvency council.

This model of continuing the debtor's business venture is typical for the classical concept of reorganization, known in comparative legal systems, and until recently, the only acknowledged model of saving insolvent debtors. This model of reorganization is conceptually represented by the German model of

[10]See: https://www.iiiglobal.org/sites/default/files/5-_Croatia_Law_on_Bankruptcy.pdf, [accessed on 1 October 2019].

[11] BARC, art. 231.1.

reorganization, which serves as the basis for the Croatian and Serbian model of reorganization (Malbašić, 2005, p. 26). Acording to the market conditions and comperative practices from that period, the 1996 BARS establishes a proper model of reorganization. The criticisms of the 1996 BARC mainly referred to to its practical implementation.

In order to increase the efficiency of the insolvency procedures, the RC amended and supplemented its bankruptcy law seven times prior to the adoption of the new 2015 Bankruptcy Act (hereinafter BARC). With the entry into force of 2015 BARC, the provisions from Financial Operations and the Pre-Insolvency Settlement Act related to pre-insolvency settlement were abolished.

Before the enactment of 2015 BARC, in 2012 Republic of Croatia enacted Financial Operations and the Pre-Insolvency Settlement Act (hereinafter FOPBSA), the one that entered into force on 1 st of October 2012. During FOPBSA drafting, there was a certain impact from Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act of the Republic of Slovenia (ZFPPIPP).[12]

Alongside with the enactment of FORBSA, amendments to the1996 BAOfficial Journal, 133/2012) were done. These changes had eliminated the possibility of reorganizing debtors after the opening of insolveny procedure.[13]These amendments mainly included the Insolvency plan, which was previously envisaged as a plan for continuation of debtor's business venture, after the opening of the bankruptcy procedure. In the legal literature and in practice, this solution faced numerous criticisms that the creditor's interests are crucial in the bankruptcy procedure, and that according to these solutions there were no opportunity to submit a plan for reorganization in the open bankruptcy procedure, nor in pre-bankruptcy according to FOPBSA.

The Governement of Croatia elaborated the enactment of FOPBSA as a proper way of reducing insolvency procedures, avoiding liquidation and preventing legal concequences of it. Preciously, FOPBSA was perceived as a "saving model of reorganization" compatible with EU concepts of reorganization. This refers to the concepts incorporated in the 2014/135/EU:

[12]Uzelac A., Was the arrangement of pre-insolvency proceedings in accordance with the constitution? Post festum analysis of several unresolved procedural and constitutional problems, p. 2., available from: file:///D:/materijali%20za%20reorganizacija%20na%20kompaniite%20vo%20EU%20i%20WBC/E18_Predstecajni%20postupak_ustavnost(1).pdf, [accessed on 1 June, 2019].

[13]See more: Garašić, J., *op.cit.* p. 42. Available from: file:///C:/Users/User/Downloads/Garasic.pdf, [accessed on 10 May, 2019].

Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency. [14]

The main idea FOPBSA was to enable corporate restructuring of the debtors in out-of-court procedure. The severe criticism that derived due to the enactement of FOPBSA was primarily associated with involvement of administrative body in conducting this procedure, in concreto, the involvement of the Financial agency in Croatia (FINA). The lack of trust and existence of doubts in the expertise of the authority of FINA went a long way toward the abolition of the provisions of the pre-insolvency procedure. This administratve procedure was carried out under stringent monitoring of the Ministry of Finance.[15] Yet, the numerous critics relating the possibility of abuse and fraud of the debtors, the pressure from the scientific and proffesrional public, creation of fictitious creditors in order to escape the real creditors, contributed to enactment of 2015 BARC and repealing these provisions from FOPBSA.

The 2015 BARC almost completely restored the classic concept of reorganization in the insolvency procedure. In the modified mode it also implemented the concept of pre-insolvency settlement. Compared to previous decisions, the new Bancruptcy law suggests far more sustained solutions, and makes for better public confidence. The fact that the provisions for pre-insolvency procedure in front of FINA, were abolished, was quite enough to support the 2015 BARC. According to 2015 BARC, reorganization or restructuring of the debts may be carried out in pre-insolvency procedure. The main objective of the pre-insolvency procedure is to ascertain the debtor's legal position, his or her relationship with the creditors, and to maintain his or her business venture.[16]

Pre-insolvency and insolvency proceedings may be applid to a legal person and the property of an individual debtor, unless otherwise provided by law. An individual debtor, for the purposes of this Act, shall be considered as a natural person liable for personal income tax as defined in the Personal Income Tax Act and a natural person liable for income tax under the provisions of the Income Tax Act. Beside the subjects excluded from the possibility of opening insolvency procedure, the 2015 BARC envisage that pre-insolvency cannot be applied to a financial institution, a credit union, an investment firm and an investment fund management company, a credit

[14] See: https://op.europa.eu/en/publication-detail/-/publication/3d2631f9-ab55-11e3-86f9-01aa75ed71a1/language-en, [accessed on 11 October 2019].
[15] See: Garasic, J., New insolvency law in Croatia, Eurofenix, 2016, p. 36.
[16] BARC, Art 2, paragraph 1.

institution, an insurance and reinsurance company, a leasing company, a payment institution and an electronic money institution.[17]

2015 BARC envisages the threat of "payment incapability" or "insolvency" as the only reason for opening pre-insolvecy procedure. According 2015 BARC, the threat exists when the Court is convinced that the debtor would not be capable of paying his debts. This is a very imprecisely solution. In practice, is very hard to make accurate estimation that the debtor will not be able to pay the debts. Even this task is in the hands of the judges, it leaves room for abuse of the judge's position, by creating a situation in which the debtors/debtor will fall to submit a proposal for opening a pre-insolvency procedure.

A proposal for opening a pre-insolvency procedure may be filed by the debtor or the creditor, if the debtor agrees with the creditor's proposal.[18] The main idea of the prosecution procedure is to attempt to restructure the debtor's debts, to regulate the relations with the creditors, as regards to the debtor. The proposal for avoiding liqudation of the debtor's must be submitted by debtors or creditors, if the debtor agrees with the proposal of cretidtor's.

The 2015 BARC also provides for the possibility of reorganization and continuation of the debtor's occupation, after the opening of the insolvency procedure. The reorganization is carried out through one of the prescribed legal measures, such as conversion of loan obligations, reaching an agreement on the manner and order of settlement of obligations, settlement or change of security rights, creation of a status change of the debtor, assignment of a share or shares debt relief. Under the 2015 BARC, in pre-insolvency procedure the FINA has the role of technical character. Its work is under the supervision of the Commercial Court.

Anayzing the adopted 2015 BAs, we are of the opinion that Croatia has harmonized its insolvency legislation with EU insolvency law. The harmonization does not include the new 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, due to the fact that Directive yet has pending notification status, or not yet in force. Nevertheless, after perceiving the effects from the adoption of the FOPBSA), Croatia strengthen the insolvency law, forseeing two alternatives for avoiding liquidiation, both of them under authority of the Court, and with possibility of pre-insolvency reorganization and reorganization in opened insolvency procedure.

[17]BARC art.3, paragraph 6.
[18] BARC, art 25, paragraph 1.

Even though the EU Directive 2019/1023 is not yet in force, the Croatia insolvency law is familiar with the concept of "preventive restructuring", which put debtors in a better position.[19] But, analyzing the situation in practice, Croatia has yet much to do in this field, especially in the enforcement of the laws and combating the insolvency criminal. Certain statistical data reveal that insolvency in Croatia is "big business"[20]. Recent research data displayed that the Croatian insolvency system annually, on average, processes cases with a total value of approximately 10 billion HRK (1.33 billion €) (Sajter, 2019).

5. Legal frame of the concept of reorganization and financial restructuring of the debtors in Republic of North Macedonia

Guided by the European insolvency policies and Western Balkan insolvency policies, the RNM approached the wave of reforms in EU Insolvency law, and made many changes accepting the EU trend in insolvency law. According to Law on Bankruptcy of RM (hereinafter LBRM), [21] the reorganization procedure prior to the initiating of the bankruptcy procedure may be conducted only if the debtor, submits the proposal for initiating a bankruptcy procedure and reorganization plan together. In this case, the reorganization procedure shall be conducted in accordance with the provisions of this Law which regulates the conducting of such procedure. The basic idea contained in article 215-a from LBRM, is to create a possibility for the debtor's, through the preparation of reorganizational plan in which creditors are not involved, to ask for court protection of their business ventures, submitting the plan for financial restructuring alongside with proposal for opening insolvency procedure.[22]

Prior to the amendments and changes from 2013, there was only one way to reorganize the debtor, so the reorganization plan was possible onlyin opened insolvency procedure. This was applicable even in the cases when the

[19]See more: Wallace, I., Pilkington, C., Restructuring across Europe – a new Era? 2019, available from: https://www.whitecase.com/publications/alert/restructuring-across-europe-new-era,[accessed on 10 June, 2019].

[21] Official Gazette of the Republic of Macedonia" nos. 34/2006, 126/2006, 84/2007, 47/2011, 79/2013, 164/2013, 29/2014, 98/2015 and 192/2015.

[22]To improve the existing legal regime, in 2013, several interventions in Macedonian Insolvency law have been made, such as: electronic sale of insolvency estate, insolvency procedure for insolvency estate from small value, electronical appointment of insolvency trustee, etc.

debtor or creditor have submitted the reorganizational plan, along with the proposal for opening insolvency procedure. [23]

Apart from the previously prepared reorganization plan, aprerequisite for pre-insolvency procedure is to prove that the debtor is insolvent. In terms of LBRM, this means that the debotor must make it probable that he will not be able to fillfull his obligations. These two conditions have aprocedural character and are the presumption for initiating procedure for financial restructuring (Kostovski, 2014, p. 652).

The amendments from 2013 do not refer only to the enforcement of pre-insolvency procedure. In a few very important segments, they intervene in the part of the reorganization during the insolvency procedure. All these interventions are related to the reduction of the procedural costs, shortening the time-frame of the procedure, and securing greater benefits for the creditors. Specifically, with precise legal formulation, five new titles, and five new articles were added, in the part of: a) the persons authorized to submit the plan for reorganization (Article 215-a); b) content of the reorganization plan prepared by the debtor (Article 215-b); c) submitting a plan for reorganization (Article 215-c); preliminary procedure for determining the conditions for initiating aninsolvency procedure in accordance with the prepared plan for reorganization (Article 215-d); a hearing for deciding upon the proposal for opening a procedure in accordance with the prepared reorganization plan (Article 215-d). Among all these interventions, it is worthwhile pointing out that the solutions from article 215-a, LBRM will abate the time-frame for the execution of the procedure. Reorganization may be conducted in open insolvency procedure, only if the plan is submitted at least 15 days before the reporting meeting of the creditors.[24]

Comparing and analyzing the provisions for reorganization in insolvency, and reorganization in pre-insolvency procedure, in theoretical and practical terms, pre-insolvency procedure is a simplified procedure, conducted in a shorter time-frame, with lower costs, and what is more important, it is a proper instrument for avoiding insolvency and its legal consequences. Thus, the benefits are understandable, and as a legal solution, this concept is in the spirit of the "rescue corporate culture",[25] that is high on the priorities of the EU and world economy.This concept has been particularly actualized with the adoption of the Proposal Directive 2016/0359 (COD), which encompasses a broader and deeper conception of the early restructuring of the debts, and

[23] See: BLRM art. 215, paragraph 2.

[24] See: BLRM art. 215, paragraph 2 and 3.

[25]See: Instrument of the European Law institute, Rescue of business in insolvency law, 2017, p. 304-342.

imposing an obligation for securing minimum standards for conducting this rescue concept for avoiding insolvency.

This concept of "preventive restructuring" promoted by the Proposal Directive 2016/0359 (COD), exceeds the existing concept of reorganization. The Proposal Directive 2016/0359 (COD) foresees the new concept of saving debtors assets, recognized as a concept of "early restructuring and second chance for entrepreneurs". Within the European framework, these goals are placed high on the list of priorities, and in this regard, in the past couple of years, the EU has been facing much turmoil. Today the Directive has been adopted by EU parliament, EU council and EC. Its main task is to save jobs, avoide insolvency and give second chance to the debtors with financial difficulties.

As a supplement of these solutions, Regulation 2015/848 was adopted. Aware of the substantial differences in the existing national insolvency legal regimes, the EU Commission approached the promotion of this concept, explaining that its enforcement will contribute to avoiding insolvency, and will save many debtors and jobs.[26] Due to the prevailing recommendations for supporting and promoting the concept of "rescue corporate culture" in EU, in 2014 RM adopted the Law of out-of-court settlement (hereinafter LOCS). In the procedure for the adoption of the law, referent bodies in RM, including the Chamber of Commerce, the Commission of the economic issue in the Assembly of RM, the Chamber of insolvency trustee, the Ministry of economy, and other relevant experts for insolvency law, pointed out the positive effects from the adoption and implementation of this law.[27]

The Commission for Economic Affairs in the Macedonian Assembly highlights that Law on out-of-court settlement will prevent the opening of numerous insolvency procedures, and will secure the liquidity of the debtors. According to the Commission, LOCS wil contribute to the reduction of the number of jobs lost. LOCS was adopted before the adoption of the Proposal Directive, but, in the atmosphere of strong support of the concept of "preventive restructuring" in the EU, based on the Recommendation 2014 for restructuring and second chance for the honest entrepreneurs. In essence most of the ideas contained in LOCS are taken from FOPBSA of Croatia. The main aim of the LOCS is to achieve the state of liquididity and solvency of the debtors, beyond the insolvency procedure, or reorganization within the

[26]Bruegel event: Debt restructuring through better insolvency standards - 18 January 2017., available from: https://www.youtube.com/watch?v=92rDDyDTX7M, [accessed on 5 June 2019].

[27]http://www.sobranie.mk/2013-fc804ba9-48ef-467b-a620-b7f755f1f9d4-ns_article-39-sednica-na-komisijata-za-ekonomski-prashanja-2-12-13.nspx, [accessed on 6 January, 2018].

framework of the insolvency procedure. According to LOCS, the procedure should secure out-of-court restructuring, through the conclusion of an agreement between the debtor and creditors, beyond the insolvency rules, and out of the jurisdiction of the court.[28]

According to LOCS, initiating the procedure out-of-court settlement is obligatory. Unlike the article 51, paragraph 8 and 9 from BLRM [29] which oblige the management body to initiate a proposal for opening insolvency procedure in the circumstances when the debtor is insolvent, LOCS provides a debtor's obligation to initiate the procedure for out-of-court settlement, within the timeframe of 30 days of the occurrence of the state of insolvency of the debtor. This obligation of the debtor arises in circumstances in which, the undertaken measures for financial restructuring beyond the procedure for out-of-court settlement, does not create a state of solvency for debtor. This solution from LOCS is created to highlight the importance of the arrangement of the debtor-creditors relationship, and to achieve a settlement for the accomplishment of the basic obligation, which is the main purpose of all these legal interventions in insolvency law regime.

According to LOCS, if the debtor is not capable of paying his debts, or if he is overdue, he is obliged to initiate a procedure for an out-of-court settlement within 21 days from his insolvency. The out-of-court settlement procedure is based on the application of the principles of urgency, voluntariness, equal treatment of creditors, and acting in good faith. The out-of-court settlement is considered to be concluded, if the debtor and the creditors voluntarily accept the financial restructuring plan. The plan is considered to be accepted, if the majority of creditors vote for it, with claims over half of the value of all determined claims.[30]

The out-of-court settlement procedure must be completed within 120 days as of the day of its initiation. This solution reflects the application of urgent principle for completing the financial restructuring of the debtor. The out-of-court procedure may be opened only on the proposal of the debtor. The

[28]See more: Kostovski, D., Analysis of the out-of-court settlement procedure from the staff of the reorganization procedure under the supervision of the court, Laywer, 2014, p. 15.

[29]The persons and bodies authorized for management, representation and supervision of trade companies and other legal entities, shall be personally, jointly and unlimitedly liable for the damages caused to the creditors of the company or other legal entity – debtor, if they have not submitted a proposal for opening a insolvency procedure, although they knew or should have known about the indebtedness of the company or other legal entity. The personal responsibility for damages to persons and organs does not exclude or influence the possible criminal liability of those persons.

[30] LOCS, article, 47 paragraphs, 1.

procedure must be completed before the settlement council, composed from three members, appointed by the Minister of the Economy. As a body of the out-of-settlement procedure, the trustee is appointed by the settlement council. The trustee shall be appointed from the list of insolvency trustees. According to LOCS, until the procedure in front of the settlement council is not completed, the insolvency procedure under court jurisdiction must not be initiated. On the other hand, if the insolvency procedure is opened, the out-of-court settlement procedure is not allowed.[31]

The essence in the out-of-court settlement is the effectiveness of the measures for conducting the financial restructuring of debt. This set of measures should improve the state of liquidity and solvency of the debtor, and avoid the insolvency. According to LOCS, these measures encompass the reduction and delay of the due debts, the increase of the founding capital in capital companies, the repayment of installments, changes in the timeframe of the maturity of the debts, changes of interest rates and other conditions of loans, other claims or collateral instruments, cashing or transferring the property in order to settle claims, the writing-off of debt, writing-off of interest rates and change in interest rates, and the execution, alteration or cancellation of a pledge rights.

The measures for out-of-court settlement also include the additional investment in providing additional instruments for securing the creditor's claim, the transformation of the creditors' claims into the company's investment, connections with business partners to procure sustainability and development, recapitalization from the strategic partners, and other measures that enable the debtor to be liquid and solvent.

LOCS also anticipates effective measures with a procedural legal character. In this regard, it contains shorter deadlines for bringing decisions concerning opening out-of-court settlement procedure, and procedural obstacles for conducting the out-of-court settlement procedure. After the decision for opening this procedure become final, res judicata, one of the most important issues that arises refers to the legal consequences of this decision, on the conducting of the enforcement procedures and the procedure for securing claims of the creditors.

According to the LOCS, the enforcement procedures and the procedure for securing claims of the creditors that commenced before the opening of the out-of-court settlement procedure must be interrupted. So, while conducting the out-of-court settlement procedure, the asset of the debtor must not be an object of enforcement, nor the procedure for securing of claims of the creditors. Last, according to LOCS, during the out-of-court settlement

[31] LOCS, article 26, paragraph 3 and 4.

procedure, enforcement for the purpose of securing, or enforcement for the purpose of settling the claims under a previously adopted enforcement document cannot be allowed against the debtor.

The legal effects of the out-of-court-settlement are provided in the interests of the debtor. After the decision for out-of-court settlement become final, the debtor is released to pay a higher percentage of claim to creditor than the one determined in the out-of-court settlement, and the payment deadlines are postponed according to the out-of-court settlement. Within this framework, the debtor is exempted from the obligations towards the persons to whom the right of recourse (guarantees), belongs. Yet, if the debtor pays the amount above the percentage determined in the out-of-court settlement, he has no right to ask for that amount to be repaid.[32]

The executive titles (enforcement documents) that refer to claims from the out of -court settlement, lose the legal force towards the debtor, for the part for which they are settled. If the claims determined through the out-of-court settlement are not enforced in whole, the creditors whose claims have been settled in the out-of-court settlement are not oblige to pay back the received amount. The creditors that are settled with partial payment in the out-of-court procedure can declare for the rest of their claims in the regular insolvency procedure. From the elaboration of the material and procedural legal aspects of this issue, we stress that the LOCS anticipates a new concept for financial restructuring, typical for the debtors in financial crisis, with the obligation to initiate out-of-court procedure for the arrangement the debtor and creditors relations.

Comparatively, the solutions contained in the Macedonian legislation, do not differ from the solutions anticipated in the legal systems in the region and the general concept of "preventive restructuring" that the EU imposed. Beyond the interventions in insolvency legal regime, the RM also adopted other laws, and implemented other measures and actions to improve Macedonian economy. In this context, in 2013 RM adopted Law on financial discipline and made several changes in Law on trade companies.[33] Yet, it is

[32] LOCS, art.64 paragraph 2.

[33]Official Gazette of the Republic of Macedonia" No. 187/2013, 201/2014 and 215/2015), Law on Trade Companies ("Official Gazette of the Republic of Macedonia" No. 28/2004; 84/2005; 25/2007; 87/2008; 42/2010; 48/2010; 24/2011; 166/2012; 70/2013; 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015, 6/2016, 30/2016 and 61/2016), If the company during its the regular activities, and especially if according to the quarterly or semi-annual calculation, i. e., the annual account, display a new loss, more than 30% of the value of the company's assets, or 50% of the basic capital, the executive members of the board of directors, i.e. , the board of directors, must immediately prepare a written report in which the reasons for

worthwhile to point out that this assertion is based on our theoretical analysis. In practice, the situation is a bit different. Namely, according to the statement of the former Minister of The Economy, Driton Kuchi, in May of 2017, in timely Macedonia have 1800 insolvency procedures, which represent a serious risk for the Macedonian economy.[34]Since 2013, only two pre-insolvency procedures of reorganization, have been conducted in the terms of article 215-a from BLRM.

Considering the real situation in the Macedonian economy, we underline that Macedonia has a lot to do in this field, particularly in the part of practical implementation of the anticipated solutions. In theoretical and practical sense, Macedonia does not lag behind the countries from the region. Namely, each part of the governement in Republic of North Macedonia, through the Ministry of economy and other relevant institutions, clearly display the support of the "reorganization" and "preventive restructuring" instead of insolvency and liquidation of the debtors.

The support of the concept of "preventive restructuring" and "reorganization," has been displayed by several measures and actions of the state, particularly those related to legislative interventions in insolvency legal regime. In this context, several changes have been made such as selection of the insolvency trustee using the electronic method of selection, conducting special training of the judges, shortening the deadlines for undertaking procedural actions in the procedures, using electronic announcements for communication, and greater legal protection of creditors. Despite the various amendments and changes to the insolvency law, and great support for promotion of the concept of "reorganization" and "restructuring" of the debtors, the actual situation in this area is on an unenviable level. More precisely, the data from the relevant institutions display a different picture, compared with the promoted goals, ambitious and legal solutions in terms of "reorganization" and "restructuring of the debtors". For example, during 2015-2017 through the reorganization plans in opened insolvency procedure, only 38 debtors reorganized their business ventures. These 38 reorganizations were conducted in the frame of the open insolvency procedures, not on the basis of the previously prepared plan, with verification from the creditors.

the loss will be explained. The report is approved by the board of directors or by the supervisory board. Within 48 hours after the company has shown a loss, the management body convenes a meeting to inform the shareholders about the situation and taken measures.

[34]Eighth counseling of the project activities: Strengthening the administrative capacities for implementation of the legal framework for insolvency and liquidation of companies, The European Union's Instrument for Pre-accession AssistanceIPA, TAIB 2011, 2017.

For Republic of North Macedonia, and other countries which are not member states of EU, it is very important to perceive and understand that the rapid implementation of the reforms in the insolvency law, according to the examples from some developed economies in EU, is not always a successful model. This is particularly important for the countries that aspire to be a member state EU, so very often without deep and prior examination, they implement some measures which are not suitable for their system of values.

We have the same opinion about some countries in the region that are member states, and yet, they do not have legal values and standards in the spirit of German, Franch or other European law.

In reforming insolvency law, real circumstances in public and private sector should be taken into consideration. The business capacity of companies, the existing public law, government institutions and the state capacity in a broader context must not be ignored as factors of influence. Copying and implementing comparative concepts whose success is strongly related to existing legal system of values, and differs from state to state, often ends with failure.

6. The concept of reorganization and financial restructuring of companies in European Union

Since the beginning of 21st century, in the field of debtor's reorganization and financial restructuring of debtors' debt, EU has taken numerous and various measures and actions. As a very important issue, this issue was disscuesd outside the EU too, such as in the Asian countries, and other states around the world.

Expansion of the implementation of reorganization of debtors, and creation of "preventive restructuring of debts" as a"rescue concept" for business ventures, mostly is the result of financial crises that affected the world at the end of 2008. Despite the various measures, programmes, recommendations and initiatives of the EU Commission and Parliament, statistics indicate that 200,000 company's year go bankrupt each year. In other words, each day 600 companies go bankrupt, which result inemployment termination of 1.7 million workers.[35]These data are very bad for the economy, but, not surprisingly at all.

Since 2011, EU took certain steps for improving the situation, i.e. creating a legal basis for giving a second chance for honest debtors that faced

[35]Jourová, V.,Commission proposes new approach to business insolvency in Europe: promoting early restructuring to support growth and protect jobs, (22 November 2016), available at http://europa.eu/rapid/press-release_IP-16-3802_en.htm [accessed on 1 May, 2019].

financial crises. This was not only because of the need for remediation of the consequences of financial crises, but also because of the need to provide smooth functioning of the common European market. In this period, a top priority for EU was to prevent the reduction of business venture expansion beyond the borders of the EU, and to remove the obstacles forcross-border investments. Due to this situation, high on the list of EU priorities were the reforms in insolvency law, as a part of the Action Plan on Building a Capital Markets Union, COM (2015),[36]and the 'Five Presidents' report' of 22 June 2015 on Completing Europe'sEconomic and Monetary Union.[37]

In 2011, the European Parliament adopted a resolution on insolvency proceedings, which besides the proposal for harmonization of certain material aspect of insolvencylaw, embraced the proposal for changes in the part of debt restructuring, debtor's reorganization and company law.

In 2012, witnessing the differences among the insolvency legislations in EU member states, the European Commission approached to adoption of Communication from the Commission to the European Parliament, the Council and the European Economic and Social committee - A new European approach to business failure and insolvency. With this act, EU highlighted the inevitability of precise intervention in insolvency law, for securing smooth functioning of the EU market. For that purpose, in 2015 Regulation (EU) 2015/848 on insolvency proceedings was adopted, as a replacement of the Regulation (EC) No 1346/2000.

Although in certain aspects the Regulation (EU) 2015/848 contributed to the promotion of the concept of "preventive restructuring" of debt (Preamble, paragraph 10), its focus is on solving conflicts of jurisdictions and applicable law in cross-border insolvency procedures, and securing acknowledgment of the judgments related with insolvency in EU. Regulation (EU) 2015/848, does not harmonize the material insolvency law, so the applicability of varies national legal regimes remains. Hence, the necessity of additional measures for securing common European market remains too.

In 2014, EU adopted Recommendation on restructuring and second change for debtors. Recommendation from 2014 contained an invitation for member states to prioritize and implement in their national legislation: a) effective pre-insolvency procedures; b) second chance provisions for entrepreneurs enabling them to have a discharge in no more than 3 years after

[36]See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0468, [accessed on 15 January, 2018].

[37]Completing Europe's Economic and Monetary Union', Report by Jean-Claude Juncker in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz (so-called Five Presidents'), 22 June 2015, p. 12.

insolvency. After conducted evaluation of the effects from Recommendation 2014, it was concluded that there are still many inconsistencies in the legislation, and that there are still countries in which business ventures cannot be restructured before insolvency procedure is opened. This situation caused various problems, and prevented occurrence of numerous cross-border deals, job growth, growth and development of the economy.

Due to these facts, in 2016, Proposal for a Directive of the European parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU was adopted. The Proposal Directive followed because of the partial implementation of the Recommendation for preventive restructuring 2014. In this context, business Europe director General, Sir Markus J. Beyrer pointed out, "it's high time for taking certain steps in this field. We need a procedure to separate the goods apples from bad apples."[38] The proposal is based on Articles 53 and 114 of the Treaty on the Functioning of the European Union (TFEU). The main purpose of this Proposal Directive is to contribute to strengthening European common market, eliminating the legal barriers for investments, achieving smooth circulation of daily investments, reduction of the costs and risks in cross-border transactions, and, finally, removing the fear in the business sector, that different legal regime in insolvency law, will put them in an unenviable position, with huge financial losses. In 2019, the proposal was accepted from all three EU bodies, even thoughitis not yet in force.

Following the European trends and the strong support for the implementation of the concept of "preventive restructuring" of debt in EU, the countries in the region, as a part of their reform process in insolvency law, approached to changes, amendments and adaptation of the existing law in the field of insolvency law. As a part of the EU, the RC developed its own legislation. Following this strong promotion and support of the concept of "early restructuring" of debt, the Republic of North Macedonia accepted the model of out-of-court-restructuring, in informal procedure, beyond the judicial jurisdiction, avoiding the insolvency and its legal consequences.

Conclusion

The concept of "reorganization" and "financial restructuring" of the debtor's debts, points out the complexity of insolvency law per se. From the above presented elaboration, it undoubtedly derives that the Republic of Croatia and the Republic of North Macedonia have a suitable legal base for

[38]See: Beyrer, M.J., New European initiatives for insolvency, available from: https://www.youtube.com/watch?v=ZeaeKm23kB4, [accessed on 1 June, 2019].

reorganization of debtors in opened insolvency procedure and restructuring in pre-insolvency procedure.

The explored data also displayed that the concept of pre-insolvency procedure did not give the expected results, especially in those procedures conducted in front of the administrative authority. The RC saw the problem earlier and abolished the pre-insolvency procedure in front of the FINA. This was not the case with North Macedonia and we are on the opinion the RNM have to do that too.

Regardless of the suitability of the existing legislations for rescuing debtors, today, a small number of debtors in Republic of North Macedonia have been reorganized, taking the opportunity to save their business ventures and avoid insolvency. This results from various factors, among which are the role of the creditors, particularly banking sector, their conviction that they will be charged to a greater extent by conducting reorganization in an open bankruptcy proceeding, rather than restructuring their debts out of bankruptcy proceedings, under the jurisdiction of an administrative authority. Accordint to the practice, creditors do not have trust in the reorganizational plan of the debtor's prepared out-of-court procedure, and it is very hard to convince them of the benefits of the approved reorganizational plan.

On the other hand, often the position of the bank sector and other are unreal, not applicable in practice, and that they will not contribute to better results compared with insolvency procedure. According to our opinion, this situation is a concequence of the lack of expertise and real will to avoiding liqudation.

As we mentioned above, the countries in the Balkan region, including the Republic of North Macedonia and the Republic of Croatia, should implement EU solutions, standards and values very carefully, on the base on the real circumstances in their economies, and according to the needs of most of the stakeholders in their national system. Many other factors such as the political will, legal regime in other segments, and the need of business sector must not be ignored. In this regard we must mention the small utilization of the Macedonian Law on out-of-court settlement and Croatian Law on financial operations and pre-insolvency settlement. For very short period, Croatia returned the concept of "preventive restructuring" to the insolvency law, under the jurisdiction of Commercial Court, with only technical support of FINA. Regarding the situation in Macedonia, the data display that only two procedures in front of the Chamber of Commerce have been conducted in period of three years.

In view of the requirements of the EU, it is undisputable that the Republic of North Macedonia should follow the European trends and practices. Despite the fact that Macedonia is not a member state of EU, the government must harmonize its legislation with EU, and be a part of common

European market. Macedonia does not have the conditions to implement some EU solutions, but the cross-border cooperation must prevail, i.e. must be priority in the Macedonian economy.

This is the only way of providing a secure field for foreign investments. For these reasons, our opinion is that Republic of North Macedonia should continue with the trend of harmonizing its legislation with EU legal regime. In order to accomplish this goal, Republic of North Macedonia must carry out some systematical changes, in many sectors, such as payment operations, registration of real estate rights, improvement of the expertise insolvency trustee, and other sectors related to the efficiency of the reorganizational and insolvency procedures. We should not expect success in the field of insolvency law based solely on the intervention in this area. This is an issue that requireschanges in many related sectors. So we have a lot to do in several areas. In terms of Croatia, the focus should be on implementation of Directive (EU) 2019/1023, and taking measures for combating criminal insolvency actions.

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