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**Inside Story – August 2018**

**Positive Outcome for the *Agrokor* Case agreed after Legal and Political Moves**

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*Introduction*

On 4 July 2018, a temporary creditors’ council adopted the settlement agreement, marking the end of the first phase of the extraordinary administration procedure involving the CroatianAgrokor Group. A majority of creditors with claims amounting to 80.2% of the total debt agreed to the proposal submitted by the extraordinary commissioner. The Commercial Court in Zagreb subsequently confirmed the creditors’ settlement agreement in its decision dated 6 July 2018.[[1]](#footnote-1)

Since the extraordinary administration procedure started over the Agrokor Group in April 2017, this case has become the most significant economic and political issue in Croatia and the West Balkans region. With over 60,000 employees and assets estimated as worth some EUR 7.1 billion, the group was considered “too big to fail”. That is why the Croatian Parliament adopted a special Law on “a procedure of extraordinary administration in companies of systemic importance” on 6 April 2017 in order to save the company, the text immediately being dubbed the *Lex Agrokor*. Its purpose was chiefly to avoid ordinary bankruptcy proceedings being opened over companies in the Agrokor group.[[2]](#footnote-2)

*Law, Politics and Diplomacy*

Over the past 15 months, diplomatic moves have intervened to try to resolve the problem in reaching agreement with the group’s main creditors, the Russian banks *Sberbank* and *VTB*. The Croatian President, Kolinda Grabar-Kitarović, visited Moscow, where she discussed the matter with her colleague, President Putin, to try and obtain the support of Russian creditors for the *Agrokor* settlement agreement. However, this case did not proceed without problems. After almost one year in post, upon the request of the Croatian government, the Commercial Court in Zagreb recalled Ante Ramljak from his duty as extraordinary commissioner in the *Agrokor* case. His replacement, by Fabris Perusko on 28 February 2018, was approved by the Commercial Court in Zagreb, although the episode attracted numerous criticisms in professional and political circles.

*The Settlement Agreement*

Although the agreement between Agrokor’s extraordinary administrator and its creditors seemed impossible after several attempts in 2017, on 10 April 2018, the new extraordinary administrator announced that the main creditors, Russian *Sberbank* and *VTB*, had consented to become new shareholders of the Agrokor Group. Incidentally, only a few days after the agreement was announced, the Westminster Magistrates Court in London approved the extradition of Agrokor’s owner Ivica Todorić to Croatia, where he faces questioning in connection with the debt crisis and financial fraud involving the group. As his defense has now appealed the decision, the outcome of the extradition procedure has been postponed for some 4 to 6 months.

The debt-to-equity settlement agreement adopted by the temporary creditors’ council on the hearing at the Zagreb Commercial Court on 4 July 2018 provides for the amount of the claims of the creditors to be converted into shares in the capital. According to the agreement, following the Agrokor restructuring, Russian creditors will be the largest shareholders, holding 46.7% of shares (*Sberbank* with 39.2% and *VTB bank* with 7.5%). Thesecond largest group of shareholders in the Agrokor group will be the bond-holders (US funds) with 24.9%. After this, the third group of shareholders will be local banks (with 15.3%), followed by other foreign financial institutions (7.7%), suppliers (4.7%) and residual creditors (0.7%).

As the majority of creditors who voted for the settlement agreement proposal had claims to the value of HRK 27.08 billion (EUR 3.6 billion) out of a total of HRK 33.76 billion (EUR 4.3 billion), the majority amply reached the 2/3rds requirement for adoption of the settlement agreement.[[3]](#footnote-3) The settlement agreement provides that approximately 60% of suppliers’ claims will be paid out as well as approximately 20% of the claims of financial institutions and other creditors.[[4]](#footnote-4) However, it remains unclear why Russian banks agreed to a lower settlement rate although their claims would have allowed them to convert their debt into more than 50% of the shares in the Agrokor Group.

*Confirmation by the Court*

The decision by which the Commercial Court in Zagreb confirmed the settlement agreement also determines supervision over progress and implementation of the settlement. The supervision will be performed by the court, an extraordinary commissioner and a temporary creditors’ council. Under the settlement agreement, the extraordinary commissioner will be required to inform the court and the council annually on the progress and implementation of the settlement.

The settlement agreement will end the first phase of the crisis and allow the *Agrokor* group to start the second phase, involving a restructuring procedure for the group. According to the new special advisor of the *Sberbank* Board for *Agrokor*, Maxim Poletaev, their objective is not to be long-term owners of the group, but to recover some EUR 1.1 billion of the loans lent to the Agrokor group before and during the crisis.[[5]](#footnote-5)

*Constitutional Challenge to the Settlement*

In the meantime, the *Lex Agrokor* was also the subject of challenge by 12 different applicants before the Constitutional Court of Croatia.[[6]](#footnote-6) The applicants asked the Constitutional Court to examine whether specific provisions of the law were in line with the Constitution. On 2 May 2018, the Constitutional Court of Croatia ruled on the conformity of the *Lex* *Agrokor* with the Constitutionby a majority (10:3).[[7]](#footnote-7) In a single decision responding to the various requests, the Constitutional Court of Croatia affirmed that the Government had the right to intervene by passing the special law in order to protect the social and economic stability of the country.[[8]](#footnote-8)

In doing so, the Constitutional Court noted that the procedure of extraordinary administration was not a regular bankruptcy procedure (closer to the pre-trial procedure in which the debtor continues to manage the company’s affairs), but a non-litigation procedure with a special purpose. It contains elements of the pre-trial procedure and the bankruptcy procedure in which a bankruptcy plan is proposed and accepted. In these proceedings, the court has a limited influence on the selection of the extraordinary commissioner or the insolvency administrator (who is usually chosen by random selection in ordinary cases). The Constitutional Court noted that, in the extraordinary administration procedure, the extraordinary commissioner carried out the business of the debtor acting in his capacity as part of the management of the company, while the role of the court, as in pre-trial proceedings, is not to dispute business decisions made by the extraordinary commissioner when managing the debtor’s operations in the place of its usual management.

Furthermore, the Constitutional Court noted that, if at any time during the extraordinary administration procedure, circumstances arise under which it is determined that there is no longer a probability of establishing economic stability and the continuation of the debtor’s business on a more permanent basis, the court may, at the request of the extraordinary commissioner and with the approval of the creditor council, decide to close the extraordinary administration procedure and instead open a bankruptcy procedure. However, the Court did not examine the compliance of the *Lex Agrokor* with the definition in the EU Insolvency Regulation (Regulation 848/2015).

*The Story doesn’t end there!*

Just a few days after the decision of the Constitutional Court was rendered, a political scandal surfaced in public. Private e-mail correspondence between the Croatian Deputy Prime Minister and Minister for the Economy, Martina Dalić, with the private consultants and lawyers who had worked on drafting the *Lex Agrokor* in early 2017 was published. It revealed that the work on drafting the *Lex Agrokor* was carried outwithout public knowledge and for fees amounting to several hundred thousand euros. The opposition parties challenged the Minister as well as the President of the Government, calling upon them to resign. On 14 May 2018, the Minister, Martina Dalić, officially resigned.

*Summary*

The Agrokor case continues to raise issues, not just at law, but also political ones. Now that the settlement agreement has been concluded, the next phase begins, under which there is an expectation that the group can be successfully restructured and the main creditors will be able to divest themselves of the capital they have taken in lieu of their debt. Nonetheless, the progress and implementation of the agreement will not be without difficulty and the case may well generate more surprises and publicity along the way.

1. Commercial Court in Zagreb (Ref. St. 1138/2017 decision of 6 July 2018), available at: <http://e-predmet.pravosudje.hr/>. [↑](#footnote-ref-1)
2. See the previous Inside Story feature (October 2017). [↑](#footnote-ref-2)
3. Law on a procedure of extraordinary administration in companies of systemic importance for the Republic of Croatia, *Narodne novine* Nr. 32/2017, art. 43. par. 14. [↑](#footnote-ref-3)
4. Minutes of the Voting Hearing on the Settlement Plan of Agrokor creditors held on 4 July 2018, E-bulletin board of the Commercial Court of Zagreb, available at: <https://e-oglasna.pravosudje.hr/sites/default/files/ts-zg-st/31067400.pdf> (5 July 2018). See also the announcement by the Agrokor group, available at: <http://www.agrokor.hr/en/news/settlement-plan-of-agrokor-s-creditors-voted-in-favor-by-80-20-per-cent-of-total-claims/> (5 July 2018). [↑](#footnote-ref-4)
5. RTL Croatia, *Poletaev on Agrokor Settlement Agreement*, available at:

<https://vijesti.rtl.hr/novosti/hrvatska/3222281/poletaev-ekskluzivno-za-rtl-direkt-o-nagodbi-mi-smo-se-s-amerikancima-vec-dogovorili/> (5 July 2018). [↑](#footnote-ref-5)
6. Constitutional Court of Croatia, Reference No. U-I-1694/2017, U-I-1793/2017, U-I-1817/2017, U-I-1857/2017, U-I-1859/2017, U-I-3320/2017, U-I-3791/2017, U-I-3848/2017, U-I-4991/2017, U-I-479/2018, U-I-501/2018, U-I-984/2018 (all dated 4 May 2018). [↑](#footnote-ref-6)
7. Announcement by the Constitutional Court of Croatia, available at:

<https://sljeme.usud.hr/usud/praksaw.nsf/NovostiO/C12570D30061CE54C125828700218350?OpenDocument> (4 July 2018). [↑](#footnote-ref-7)
8. *Re: No. U-I-1694/2017 and others*. [↑](#footnote-ref-8)