

# A wake-up call for sleepy companies?

*Niculina Somlea, Co-Chair of the EECC reports on the group's recent online conference which focused on zombie companies and a view of the airline industry*

The pandemic has been ongoing for two years now and the world seems used to a new, uncomfortable mundane. Some companies, in particular, seem to be in a sleep-like state, slowly shutting down. Trying to better understand emerging trends, the latest EECC Conference on 25 November, titled "A wake-up call for sleepy companies?" looked at the zombie company phenomenon.

Prior to this, INSOL Europe's newly anointed President, **Frank Tschentscher** (Deloitte, Germany) together with **Evert Verwey** (Clifford Chance, Netherlands) gave the welcome address, while **Catherine Bridge Zoller** (Legal Transition Team, EBRD) gave the keynote address, detailing the final EBRD Assessment Results. A unique project, supported by INSOL Europe, the report soon to emerge will dive deep into the restructuring regimes of more than 40 jurisdictions uncovering examples of best practice as well as insolvency principles that require strengthening.

Returning to zombie companies, numbers have increased dramatically since the last financial crisis, affecting about a fifth of US companies and a sixth of enterprises in Germany. While it is easy to blame COVID-19, data from Germany, Bulgaria, Czech Republic, and Poland, presented by the moderator for the first panel, **Roman-Knut Seger** (BDO Restructuring GmbH, Germany), and the speakers: **Stela Ivanova** (bnt Neupert Ivanova & Kolegi, Bulgaria), **Ernst Giese** (Giese & Partner, Czech Republic) and **Michal Barlowski** (Wardyński & Partners, Poland), points to low or zero interest rates, state aid, inflation, growing cost of raw materials, and, in general, structural weaknesses of national economies, as causes for zombification. As much human capital is bonded in these nonperforming companies,



thus unavailable for the job market and more innovative enterprises, these zombies will infect other viable companies in the distribution chain.

Implementing the Directive on Restructuring and Insolvency gives us a fighting chance, as the German StaRUG, in force at 1 January 2021 shows. This law is aimed at avoiding a higher number of insolvencies in the slipstream of the pandemic by offering tools that help individual negotiation with creditors for a haircut and with the help of the court, if needed. Implementing a simplified regime designed to quickly restructure viable zombies or move them into liquidation is another way to go. So too, reviewing current legislation to avoid misuse of COVID-19-related funds, while keeping close oversight of the banking sector.

The first panel was followed by a view of the airline industry, which has certainly taken a hit, the pandemic further exposing systemic flaws. The panel, moderated by **Omar Salah** (Norton Rose Fulbright LLP, Netherlands), presented data for global airline failures 2014-2020, using the Condor insolvency, presented by **Marlies Raschke** (Noerr Partnerschaftsgesellschaft

mbB, Germany), and the Carpatair case, presented by **Ramona Faraianu** (RTZ, Romania), as examples. In each case, COVID-19 was not the cause of failure, but certainly affected their operations. Condor, a subsidiary, part of the Thomas Cook Group, had provided cross-group guarantees that were called in prior to the group's meltdown. Key elements in Condor's restructuring were that, for the first time, the German authorities permitted (an insolvent airline) to keep their flying permit and they received a loan of €380 million backed by a state guarantee. By contrast, Carpatair's insolvency was rooted in a commercial conflict with Timisoara airport, their hub, over unfair competition and significant taxes owed to the airport for each passenger.

Last but not least, the event welcomed **Georges-Louis Harang** (Hoche Avocats, France, New Co-chair, EECC), who presented the closing remarks, focusing on the EECC's plan for the next year.

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