Restructuring of Companies and Employment Security

Laleta, Sandra

Varazdin Development and Entrepreneurship Agency
in cooperation with:

- **Faculty of Law, University of Split**
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22nd International Scientific Conference on Economic and Social Development – "The Legal Challenges of Modern World"

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CONTENTS

THE LEGAL CHALLENGES OF MODERN WORLD

ECONOMIC AND SOCIAL DEVELOPMENT

RESTRUCTURING OF COMPANIES AND EMPLOYMENT SECURITY

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ABSTRACT
The restructuring of a company often results in changes to the terms and conditions of employment. Today, it is widely accepted that restructuring should be socially responsible and take into account not only employment security, but also the interests of the society as a whole. With this in mind the author analyses some measures of Croatian law that guarantee employment and job security as an alternative to dismissal, while paying special attention to atypical work.
Keywords: *atypical work, employment security, restructuring*

> "So far, I haven't seen a single company which produces great ideas while people are afraid of their future or their job."
>
> *Fred Langhammer, CEO Estée Lauder*[1]

1. INTRODUCTION

Restructuring activities within companies often cause changes to employment terms and conditions, as well as the employment status of an employee. It is commonly accepted that restructuring should be socially responsible. In the EU, the request for anticipative and proactive restructuring is promoted by the European Commission in its Communication on EU Quality Framework for anticipation of change and restructuring.[2] European directives on information and consultation of workers contributed to restructuring through the involvement of workers' representatives in the restructuring process. Three directives on collective redundancies, on transfers of undertakings and on a general framework for information and consultation of workers "generally relevant, effective, consistent and mutually reinforcing … seem to have contributed to cushioning the shock of the recession and mitigation the negative social consequences of restructuring operations during the crisis."[3] The weak points are seen in the exclusion of small enterprises, public administrations and seafarers from the scope of application of the directives. Moreover, some negative factors, such as low incidence of representative bodies and the quality of their involvement, insufficient awareness of rights and obligations contribute to a reduced effectiveness of the directives. Equally important however is the culture of social dialogue.[4] The International Labour Organization continuously highlights the importance of established minimum standards on restructuring and gives new proposals to this effect in its documents.[5]

[1] Rogovsky, N., Socially Sensitive Enterprise Restructuring (ILO/SSER) ILO, Geneva, available at: http://www.abird.info/webcontent/images/stories/materiali/seminar_20_05_2010/SSER.Bulgaria.pdf, 27.5.2017.
[2] EC, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 13.12.2013 COM(2013) 882 final (herein: EC Communication 2013), p 4.
[3] EC Communication 2013, p 5.
[4] Loc. cit.
[5] http://www.ilo.org/empent/areas/social-responsible-enterprise-level-practices/lang--en/index.htm, 27.5.2017.

Restructuring should be done carefully in order to encompass both the economic and social dimension, i.e., it must taking into account the interests of all stakeholders, especially the employees and management, to the greatest extent possible to achieve the final aim of restructuring, namely, either promote the competitiveness of the company or enable its survival. Socially responsible restructuring takes care about employment security, on one side, and wider societal interests, on the other. The concept of employment security can be defined as "some form of regulatory intervention designed to protect workers against arbitrary managerial decision-making",[6] i.e., rules and provisions that regulate valid cause and fair procedure that restrain the employers' discretional decision to terminate the employment contract. Employment security is deeply threatened in a world of work characterized by atypical, flexible, new forms of employment that create a new class of precarious workers: precariat.[7] Instead of employment security, the notions of employability[8] and capability[9] are used. With respect of worker's rights, three levels of restructuring are discerned: first, restructuring without cutting of labour costs; second, restructuring with cutting of labour costs but without dismissals; and third, the reduction of the number of employees albeit in a socially responsible way, by using particular tools in order to help both employees and "survivors".[10] Likewise, socially responsible restructuring includes the possibility of re-employment of dismissed workers in light of the fact that every dismissal can be a new burden for the state.

In restructuring different tools are used, such as voluntary redundancies, internal and external job search help, establishment of SMEs, mobility, early retirement, vocational training, part-time work or other alternative measures designated to keep the worker employed; subcontracting, flexible leave, psychological help, severance packages etc. Since SMEs have difficulties in developing socially responsible practices on their own, they need stronger support. Publicly funded strategic arrangements and regional partnerships proved especially efficient in this regard.[11] In the last decade and a half the frequency of restructuring has increased due to the economic crisis. According to the European Restructuring Monitor, since 2002 to date there have been approximately 18.000 cases of restructuring. This statistics includes only those cases in which, due to restructuring, at least 100 positions were lost or created or it influenced the employment or employment relationship of at least 10% of employees in companies employing at least 250 workers.[12] Since cases of smaller-scale restructuring are not included, the true number is in all likelihood higher. Restructuring in the public sector is often realized through outsourcing.[13]

[6] Deakin, S., Morris, G.S. (2012), Labour Law, 6th ed., Hart Publishing, Oxford, p. 418.
[7] Standing, G. (2011), The Precariat: The New Dangerous Class, Bloomsbury Academic, London.
[8] Supiot, A. (2005), Beyond Employment (Changes in Work and the Future of Labour Law in Europe), Oxford University Press, New York, pp. 140, 210.
[9] Zimmermann, B. (2014), From Flexicurity to Capabilities, in: Destructing Flexicurity and Developing Alternative Approaches (ed. M. Keune and A. Serrano), Routledge, New York, London, p. 138; Salais, R. (2014), Labour, Capabilities and Situated Democracy, in: Destructing Flexicurity and Developing Alternative Approaches (ed. M. Keune and A. Serrano), Routledge, New York, London, p. 120.
[10] Rogovsky, N. et al. (2005), Restructuring for corporate success: A socially sensitive approach, International Labour Office, Geneva.
[11] CEDEFOP (2010), Socially responsible restructuring (Effective strategies for supporting redundant workers), Luxembourg, Publications Office of the European Union, p. 1.
[12] European Restructuring Monitor, https://www.eurofound.europa.eu/hr/observatories/european-monitoring-centre-on-change-emcc/european-restructuring-monitor, 20.5.2017.
[13] In Croatia, the reform of ancillary activities in the public sector in 2014-2015 was announced based on a single model of in-house improvement of efficiency. However, this model included the possibility of outsourcing to a great extent. Senčur-Peček, D., Laleta, S., Kraljić, S. (2017), Labour law implications of outsourcing in public sector, *Lex localis* (forthcoming).

The consequences of restructuring for workers can be dramatic, as in the case of French Telecom that was privatized in 2004 and restructured in line with the NeXT recovery plan (2006-2009). In total, 22.000 positions were abrogated and 10.000 positions modified, resulting in a number of suicides of workers affected by these changes.[14] However, such a scenario of large-scale restructuring is not one-of-a-kind in EU Member States. The recent European Parliament Resolution highlighted the importance of "more sophisticated EU outplacement rules",[15] in connection with two cases of restructuring, Caterpilar and Alstom.[16] The most recent Croatian case should be analysed in the light of this document. The case in question concerns the concern Agrokor, a multinational company that faced difficulties with liquidity because of high debts. The Croatian Government and Parliament intervened by enacting a special act, the so-called *lex Agrokor.*[17] With this Act the implementation of the Insolvency Act and other rules otherwise applicable in such situations was postponed for up to 15 months. This intervention caused an eruption of negative reactions from the scientific, professional and wider public.[18] The process of restructuring and fight for the 60.000 workers of Agrokor is inevitable. Such cases confirm the importance of preliminary rescue or restructuring plans and, even more so of the development of one or more models of restructuring. Although the latter do not exist in Croatia, there are good models in our EU neighbourhood that may be endorsed.[19] In the following sections some instruments of restructuring used in Croatia are analysed.

2. THE CROATIAN LABOUR MARKET AND RESTRUCTURING

The Croatian labour market is highly segmented, with low labour force mobility.[20] Relatively high real wages, institutional rigidity, supply and demand imbalances due to education and competencies issues account for the key obstacles to a more dynamic labour market.[21] In addition, there is a lack of normative flexibility and high taxes on labour.[22] In the last decade, the number of the employed has constantly decreased, whereas the number of unemployed increased. Croatia has a relatively low activity and employment rates, particularly for women, youth and older persons. What more, it has a high share of retired persons of working age. Despite some decreasing trends marked at the beginning of 2017, Croatia remains a country with the highest unemployment rate in the EU, amounting to 11.3 %, and with a particularly high youth unemployment rate of 43.0%. The share of long-term unemployed amounts to 58.4 %. In 2016, the employment rate was 56.9 %.

[14] The labour inspectorate criticized severely the entire restructuring process. Finally, a criminal process for "bullying and inappropriate risk assessment" was initiated, and as a result the employer was obliged to additional assessment and prevention of psychosocial risks. Eurofound and EU-OSHA (2014), Psychosocial risks in Europe: Prevalence and strategies for prevention, Publications Office of the European Union, Luxembourg, p. 62ff.

[15] Hiessl, C., Laleta, S. (2017), Implementation problems of the Collective Redundancies Directive and their consequences: the Croatian example, *Europäische Zeitschrift für Arbeitsrecht* (forthcoming).

[16] European Parliament Resolution of 5 October 2016 on the need for a European reindustrialization policy in light of the recent Caterpillar and Alstom cases (2016/2891(RSP)), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0377+0+DOC+XML+V0//EN&language=GA, 15.5.2017.

[17] Zakon o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku, Official Gazette (herein: OG), no 32/2017.

[18] E.g. http://www.jutarnji.hr/vijesti/hrvatska/pravni-strucnjaci-o-utemeljenosti-lex-agrokora-sanja-baric-zakon-krsi-europsko-pravo-i-ustav-te-otvara-put-anarhiji/5868850/, 10.5.2017

[19] CEDEFOP (2010).

[20] Bilić, A. (2011), Fleksibilnost i deregulacija u radnim odnosima (PhD thesis), Pravni fakultet, Split, p. 263

[21] Bejaković, P., Gotovac, V. (2011), Aktivnosti na gospodarskom oporavku u Republici Hrvatskoj s naglaskom na tržište rada, *Revija za socijalnu politiku*, vol. 18, no. 3, pp. 331, 340.

[22] Opinion of D. Nestić in: Sočković, K., Crgić, I. (2015), Zaposlenost mora biti prioritetni nacionalni cilj, *Privredni vjesnik*, no. 3901, 9.11.2015, p. 6.

Approximately 16 % of workers had a fixed-term contract and 86.000 workers had a part-time job or temporary job. In 2014, grey economy represented 28 % of the GDB, what is 10 % above the EU 31 average rate.[23] Restructuring within companies that includes reduction of workforce occurs often in Croatia. According to the statistics, collective redundancies involve on average 100 workers per case.[24] This has severe economic and social impact on the economy.[25] In 2015, 74 notifications of collective redundancies were made to the Croatian Employment Service, comprising 9.014 workers.[26] Compared to 2014, the number of redundancies increased by 35.8%.[27] Workers who completed secondary education were made redundant the most (51.5%), a third of them were older than 50 and more than a quarter aged 40-50. Most severely affected were workers employed in electricity, gas, steam and air-conditioning supply (33.5%) and manufacturing (29.3%), and finance, wholesale and retail trade. In the period from 2011 to 2015 there were 608 companies in insolvency proceedings and the Agency for Insurance of Workers' Claims in Case of Employer's Bankruptcy payed off 21.144 claims to workers whose employment contracts were terminated due to insolvency.[28]

Let us single out two most important issues that had a strong influence on the achievement of efficiency or socially responsible restructuring in Croatia. A serious problem is the "formal" implementation of the European directives on collective redundancies, transfer of undertakings and insolvency in the Croatian legislation.[29] Consequently, it is likely that various situations that should have been covered by the scope of the directives according to settled case law of CJEU are excluded and presumably, a large number of workers deprived of their benefits.[30] The second problem is posed by an underdeveloped social dialogue in Croatia.[31]

3. THE FLEXIBILIZATION OF THE CROATIAN LABOUR LEGISLATION AND ITS IMPACT ON EMPLOYMENT SECURITY

Under the recommendations of the IMF, European Commission and World Bank, Croatian labour legislation has been further liberalized. The Labour Act adopted in 2014[32] introduced more flexicurity.[33] Some of the introduced novelties have an impact on the process of restructuring. The employers who employ 20 and more workers ("big" employers) no longer have a duty to try to find another position for a redundant worker within the company and a duty to attempt to educate or train a worker in order to enable him work in another position within the company. It seems that cancelled duties[34] did not have a significant impact on

[23] http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics, 27.5.2017.
[24] Croatian Employment Service, Yearbook 2015, 2016, p. 55.
[25] Potočnjak, Ž. (2016), Neki problemi primjene Direktive o kolektivnom otkazivanju ugovora o radu u hrvatskom zakonodavstvu i praksi, in: Aktualnosti hrvatskog zakonodavstva i pravne prakse, 23, Organizator, Zagreb, p. 229ff.
[26] Croatian Employment Service, available at: http://statistika.hzz.hr/Statistika.aspx?tipIzvjestaja=2, 6.4.2017.
[27] Croatian Employment Service, Yearbook 2015, p. 58.
[28] http://www.aorps.hr/dokumenti-agencije/, 20.4. 2017.
[29] Potočnjak, Ž. (2016), pp. 229-277; Senčur-Peček et al. (2017); Smokvina, V. (2017), Collective Dismissal in Croatia, in: Collective Dismissal in the European Union: A Comparative Analysis (ed. R. Cosio et al.), Kluwer Law International, Alphen aan den Rijn, pp. 35-49.
[30] Hiessl, C., Laleta, S. (2017).
[31] Grgurev, I., Vukorepa, I. (2015), Uloga sindikata u doba gospodarske krize u Hrvatskoj, *Zbornik Pravnog fakulteta u Zagrebu*, vol. 65, no. 3-4, pp. 387-408
[32] *Zakon o radu*, OG, no 93/2014.
[33] See more in: Grgurev, I. (2013), Labour Law in Croatia, Kluwer Law International, Alphen aan den Rijn
[34] In a Draft proposal of the LA the Ministry of labour and pension system explained it in terms of the need to make the process of employers' restructuring faster.

protection of workers in case of dismissal[35] and a number of labour disputes in which the court has found a dismissal unlawful due to the fact that the employer did not fulfil these duties was insignificant.[36] On the other hand, they were not only a tool to avoid a dismissal, but also a tool of the implementation of the *ultima ratio* principle as the main principle of Croatian dismissal legislation, at least thus far. This "significantly undermines the social dimension of employment relationship" and means that the *ultima ratio* principle is almost abandoned.[37]

It should be highlighted that in case of economic dismissal the "big employer" still has a duty of so-called social choice, i.e. to take into account several criteria[38] in order to dismiss the worker who will be in a position to most easily bear the negative consequences of the dismissal.[39] For the dismissed worker a certain level of security represents a duty of the employer to offer the same vacant position in the company within six months after the economic dismissal to that worker was effectuated. Due to the flexible approach of the courts, this duty is just of relative importance: if the employer violates a duty, the employment contract with a new worker is valid and the dismissed worker is only entitled to indemnity.[40] The LA prescribes that the employer is responsible for a serious offence.[41]

4. TEMPORARY OUTPLACEMENT OF A WORKER TO AFFILIATED COMPANY

Temporary outplacement of a worker to affiliated company is a novelty in Croatian labour law introduced by the Labour Act (2014). According to the Art. 10 par. 3, when the employer has no need for work of specific workers, he may temporarily assign a worker to a company affiliated with him, for a maximum period of six consecutive months, based on an agreement between the affiliated employers and written consent of the worker. The notion of *an affiliated company* is defined in the Companies Act as *lex specialis*.[42]

The agreement between the affiliated employers should contain data concerning: 1) names and seats of affiliated employers, 2) full name and residence of the worker, 3) dates of commencement and termination of temporary outplacement, 4) place of work and tasks to be performed by the worker, 5) wage, bonuses and payment periods, and 6) duration of a regular working day or week.

The written worker's consent to the mentioned agreement forms an appendix to his/her employment contract, in which a fixed-term outplacement of the worker to the affiliated

[35] Potočnjak, Ž. (2015), Novine i dvojbe u svezi s otkazom i drugim načinima prestanka ugovora o radu, in: Zbornik 53. susreta pravnika Opatija. Hrvatski savez udruga pravnika u gospodarstvu, Zagreb, pp 115; Milković, D. (2014b), Novi Zakon o radu, in: Aktualnosti hrvatskog zakonodavstva i pravne prakse, 21, Organizator, Zagreb, p. 179.

[36] Milković, D. (2015), Sporna pitanja novog Zakona o radu, in: Aktualnosti hrvatskog zakonodavstva i pravne prakse, 22, Organizator, Zagreb, p. 165; Milković, D. (2014a), Članak 115, in: Detaljni komentar novoga Zakona o radu (ed. K. Rožman), Rosip, Zagreb, p. 412.

[37] Potočnjak, Ž. (2015), p. 115; Laleta, S. (2017), Individual Dismissal in Croatia, in: Transnational, European, and National Labour Relations (ed. G. G. Sander et al.), Springer Verlag, Heidelberg … [etc.] (forthcoming).

[38] The criteria are seniority of the worker, worker's age and worker's legal duties of alimentation (Art. 115 par. 2 LA).

[39] Potočnjak, Ž. (2007), Prestanak ugovora o radu, in: Radni odnosi u Republici Hrvatskoj (ed. Ž. Potočnjak), Pravni fakultet u Zagrebu, Organizator, Zagreb, p. 397ff.

[40] Supreme Court, Revr-763/07 (21.11.2007), Revr-1913/09 (8.12.2009).

[41] The prescribed fine ranges from 31.000 to 60.000 HRK that is approximately 4.150 – 8.040 Euros.

[42] "In accordance with Art. 473 CA, affiliated companies are legally independent companies that in terms of relationship may be defined as: (1) a company that has major share in the capital or in voting rights of the other company, (2) a dependent and dominant company, (3) „konzern" company, (4) companies with mutual shareholders, (5) companies affiliated with entrepreneurial agreements." Čulinović, E., Zubović, A. (2016), Cash-Settled Derivatives and Their Role in Companies' Takeovers, in: New Europe – Old Values? (Reform and Perseverance) (ed. N. Bodiroga-Vukobrat et al.), Springer, Heidelberg, pp. 235-268.

employer is stipulated. Temporary outplacement does not represent temporary agency work and therefore the provisions of LA regulating temporary agency work do not apply.
According to LA, the affiliated employer for whom the worker performs work has all the duties of the employer provided for by the LA, as well as the duties regarding safety and health at work protection, as regulated by the relevant laws and regulations.
In the Croatian literature, temporary outplacement to the affiliated company is considered *ad hoc* employee sharing.[43] According to the Eurofound's classification, *ad hoc* employee sharing is one type of employee sharing (beside the strategic employee sharing[44]) as a new form of employment. Its main aim is to cushion the negative social effects of restructuring. However, it should be highlighted that the Eurofound's study has found that employee sharing between the employers that are affiliated by ownership, as in the case of Croatian temporary outplacement to affiliated company or, similarly, in the Hungarian model of employee sharing represent an older type of employment that has not become increasingly common. Therefore, this model was explicitly excluded from the analysis of *ad hoc* employee sharing.[45]
Nevertheless, the temporary outplacement to an affiliated company could have numerous advantages as an instrument of flexicurity. It can be used as an alternative to dismissals or reduction of working time; an instrument to prevent partial unemployment what is especially important in times of crisis; in the case of restructuring in the same group of companies or in case of redundancies as part of the social (or retention) plan. On the other hand, there are disadvantages too. First, similarly to temporary agency work, it is a complex three-sided relationship and as such creates legal uncertainty and insecurity, especially for the worker. Furthermore, the provisions of Croatian LA on temporary outplacement are unclear and fragmentary, leading in turn to legal uncertainty.
The most critical issues of the temporary outplacement in Croatian legislation are the length of the period of assignment (outplacement), possibility to change the employment terms and conditions during the outplacement and rights, duties and responsibilities of the employer and affiliated employer.
The LA limits the temporary outplacement to six consecutive months. There are no other limitations, e.g. the number of outplacements per year or the period between each outplacement. Therefore, it seems that Croatian employers can easily assign workers almost uninterruptedly, with their consent, using a very short period between each outplacement (e.g. two days).[46]
The second issue concerns employment terms and conditions of the outplaced worker. From the LA provision on data that should be included in an agreement between the employer and affiliated employer (company) concerning the place of work, worker's tasks, wage and bonuses and working day (week), it is not clear whether the working conditions stipulated in the employment contract may be changed (and if yes, how) because of outplacement. Therefore, different interpretations are possible. According to one opinion, the worker should be guaranteed the same or better job and wage. The inevitable modification of the employment terms and conditions in case of outplacement itself is detrimental to the

[43] Novaković, N. (2016), Novi modeli fleksibilnih oblika zapošljavanja, *Radno pravo*, no. 6, p. 4; Grgurev, I., Vukorepa, I. (2017), Flexible and New Forms of Employment in Croatia and their Pension Entitlement Aspects, in: Transnational, European, and National Labour Relations (ed. G. G. Sander et al.), Springer Verlag, Heidelberg … [etc.] (forthcoming)
[44] This form of employment would be interesting for Croatian employers who employ seasonal workers.
[45] Eurofound (2015), New forms of employment, pp. 7, 22; available at: https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1461en.pdf, 30.5.2016.
[46] Rožman, K. (2014), Članak 10, in: Detaljni komentar novoga Zakona o radu (ed. K. Rožman), Rosip, Zagreb, p. 55.

contractual relation. However, it is just an exception that is in line with the purpose of the institution of temporary outplacement, namely to guarantee the efficiency of business activities of affiliated companies, as a temporary solution when the employer does not need a worker. Therefore, the other employment terms and conditions should not be modified. At the same time, there is reason for concern about possible, though unacceptable broad interpretation, according to which the wage and other working conditions during the period of outplacement may be worse comparing to those stipulated in employment contract because the worker has given his consent.[47] Such interpretation could easily become a common practice.[48] Consequently, the misuses of the institute are likely to happen in practice. However, in my opinion, until we have unclear rules, the broad interpretation regarding the modification of the working conditions to the worse is acceptable because security of employment must be a priority. Most likely, the courts will have to draw a line between misuse and necessary modifications.

Furthermore, the status of temporary outplaced worker becomes more complex due to the unclear provisions about the rights and duties of employer and affiliated employer. The majority opinion is that, as a rule, the wage is paid by the (initial) employer,[49] but it is not excluded that based on the agreement between the employer and the affiliated employer that duty can be imposed on the latter. It is doubtful whether the outplaced worker may claim termination of his/her consent if the affiliated employer does not fulfil his duties. The question to be answered is what is the nature of the worker's consent that becomes integral part of the employment contract? The problem also arises concerning the procedure of dismissal with or without notice in connection with the employee's conduct. Moreover, there are no specific rules regulating compensation for damage caused to the worker or to the affiliated employer by the worker. The affiliated employer has the duty to make the worker familiar with the necessary professional competencies and skills, as well as with the risks concerning safety and health at work protection and to train him for safe work.

In short, it may be concluded that an urgent modification is needed to the praiseworthy institution and which may be not only a guarantee of security of employment, but also a tool in restructuring procedure.

5. EMPLOYMENT PROMOTION MEASURES OF THE CROATIAN EMPLOYMENT SERVICE

Croatian Employment Service (CES) could play an important role in the process of restructuring. In case of projected collective redundancies, according to the Art. 127 LA, the employer should notify CES of consultations with the works council on possible redundancies. The notification must contain information about relevant data,[50] about the duration of consultations with the works council, outcomes and conclusions resulting therefrom, with a written statement of the works council, if such a statement has been delivered. The works council can provide CES with comments and suggestions in connection with the made consultations. Within a period of 30 days from the notification, CES may request the employer to postpone dismissals of all or some of the redundant workers for the next 30 days. The prerequisite for this is that CES can ensure the continuation of employment

[47] Milković, D. (2015), p. 139.
[48] Rožman, K. (2014), p. 56.
[49] Potočnjak, Ž. (2014), Najznačajnije novine koje donosi novi Zakon o radu, *Hrvatska pravna revija*, 9, p. 17, Milković (2015), p. 139, Rožman, K. (2014), p. 56ff.
[50] The reasons for the projected redundancies, the number of workers normally employed, the number and categories of workers to be made redundant, the criteria proposed for the selection of the workers to be made redundant, the amount and method for calculating any redundancy payments and other pays to the workers, and the measures designed to alleviate the consequences of redundancy for workers.

for workers during this extended period. To that purpose, CES has different measures at its disposal. Some of the active employment policy measures (AEPM) carried out by CES serve as an alternative to dismissal. This part analyses measures directed to employers in difficulties trying to preserve jobs. In 2016, there were only 82 beneficiaries of subsidy for preserving employment. Compared to other AEPM measures, this one had the smallest number of beneficiaries.

It must be emphasised that at the beginning of this year a new package of measures was adopted that reduced the number of measures, albeit to the purpose to achieve more clarity and availability. The measures are coordinated with the Ministry of Labour and Pension System.[51]

Job preservation measures are subsidies that aim to preserve the jobs under employers facing temporary decrease of the business activities and/or loss in business. Two measures for preserving jobs are subsidy for the reduction of working time and subsidy for worker's education. In both cases the employer should make an appropriate programme for job preservation. The programme must include data on past, present and planned measures for preserving jobs (e.g. revision of the business costs, wage reductions, reduction of wage, abolition of the remuneration for the members of the governing body and other measures), as well as data on expected number of preserved positions.

The novelty is that the measures can also use workers older than 50 employed by the employer facing difficulties or who cannot fulfil their working duties in full due to personal working or other characteristics. The maximum period for awarding the subsidy is six months for each worker. In case of reduction of working time, the subsidy is proportionate to the amount of wage for the number of working hours that were reduced (up to 40 % of reduction of working time and up to 40 % of the gross salary) up to the amount of the minimum wage, according to a special regulation.[52] The amount of the subsidy for the worker's education covers the total cost of education (that should be realized in the institution specialized for the education of adults). In case of reduction of working time and education of the worker employed with the employer who undergoes restructuring, the employer should present a restructuring plan adopted by the employer's governing body. The works council, resp. trade union and employer should sign an agreement on the acceptance of the programme on job preservation. If works council is not organized or trade union does not operate, the employer should inform the workers of the mentioned programme.

The permanent seasonal worker subsidy aims to support those workers who work only during the season. The measure can be used by employers in all branches of activities that due to the seasonal nature of activity have a period of decreased business activity. The condition that needs to be met is a continuous six-month employment by the same employer and the continuation of the employment for at least one (before: three) season. The duration of the subsidy is six months. The amount of the subsidy for employer is a 100% payment for the so-called prolonged pension insurance contribution for the first three months, and 50% for the next three months. The worker receives financial compensation up to six months and up to 70 % of the average wage paid in Croatia in the real sector for the first 90 days, and up to 35 % for the rest period. The employer can use this measure for a number of permanent seasonal workers that is equal to the number of workers employed on indefinite time.

CES also finances subsidies for the improvement of employability, useful especially for young new-employed workers and older workers who are at risk of job loss due to the modification of production process, introduction of new technologies or higher standards.

[51] Croatian Employment Service, Mjere aktivne politike zapošljavanja, available at: http://mjere.hr/, 29.5.2017
[52] Act on Minimum Wage (*Zakon o minimalnoj plaći*), OG no 39/13.

For the employers in difficulties or in a process of restructuring CES offers help through its mobile teams, established by the regional offices. The aim was to prepare the workers who are at risk of dismissal for the labour market and mediate for them while they are still employed, in order to prevent or reduce their entry into the register of unemployed persons. The team offers information for groups and individuals, individual consultation and help in assessing the working potential of the worker, help in recognizing the transferable and other skills necessary for employment in new positions, preparation of job search plan and psychosocial support.

6. CONCLUSION

The development of different strategies and policies, as well as the implementation of different institutions and measures represent important means to prevent and mitigate the negative impacts of company restructuring on workers and the wider community. Today, socially responsible restructuring means an anticipated planned and carefully managed restructuring.

This contribution has analysed some of the institutions and measures implemented in the process of restructuring in Croatia. Temporary outplacement of the worker to an affiliated company (employer) is a novelty introduced by new Labour Act in 2014. This form of atypical employment could significantly mitigate the negative effects caused by the fact that an employer temporarily cannot provide work for his workers. However, the rather unclear regulation demands modification *de lege ferenda* in order to achieve legal certainty and prevent possible misuses. The subsidies for job preservation and subsidies for improvement of employability as measures offered by the Croatian Employment Service and Ministry of Labour and Pension System, can be useful as individual measures in restructuring and improvement of workers competitiveness in the labour market. However, the best results can be achieved only by a strategic development of one or more models of restructuring as enforced by different EU Member States. The necessity to take a new direction is emphasised in the recent European Parliament's Resolution (2016), referring to two cases of large-scale restructuring. At the same time we have witnessed cases of large-scale restructuring in Croatia, unfortunately, without a timely response. A recent case in point Agrokor urges us to rethink company restructuring in Croatia.

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