Chapter 15
Greece: case studies of a mechanism for company 'exit' from a crisis-ridden country

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1. Introduction

Since the onset of the financial crisis, there have been a number of prominent cases of companies 'exiting' Greece through an effective transfer of their registered headquarters to another country. These have been complex, multi-stage processes, particularly in the cases in which the companies were listed on the Athens stock exchange, thus engaging securities law as well as company law. This chapter analyses three of these cases, the relocation of the metals group Viohalco to Belgium, the dairy company FAGE to Luxembourg and the Coca-Cola Hellenic Bottling Company to Switzerland. The Cross-border Mergers Directive played a direct role in the first two cases, both of which involved forming a subsidiary in another Member State and then merging the parent company into that subsidiary. The third case used a similar mechanism, however, as the transfer was to a country outside of the EU (Switzerland), the Directive was not used specifically. Significantly, in all three cases the mergers were one component of 'in-house' restructurings rather than the joining together of truly independent companies.

These three cases had very different impacts on labour and labour relations. The first case analysed – the merger of the metals group Viohalco SA Group into a Belgian listed holding in 2013 – was received positively by the trade union and the workers' side. There were no direct negative implications for employment relations in the group of companies involved and affected by the Cross-border Mergers Directive. The two other cases, however, illustrate that cross-border restructurings can have very negative impacts for workers. These two case studies – the dairy company FAGE and the Coca-Cola Hellenic Bottling Company (or CCHBC for short) – highlight the use of European legislation to support restructuring at an advanced stage of the financial crisis. This is a new aspect of the Greek crisis, which indicates that there has been little room for exploring worker involvement rights in the context of long established adversarial industrial relations. Indeed, in the third case (CCHBC) 'Europeanisation' itself is considered as part of the problem, although the restructuring took place partially outside the EU legal framework as the company seat was transferred to Switzerland.

In this context, the question of worker involvement and labour rights related to and arising from EU company law is of interest to company and national trade unions. Although worker representation on the board was not an issue in any of these cases, the information rights provided in different pieces of legislation (for example, the Cross-border Mergers Directive and, where an EWC was present – Coca Cola HBC – the

European Works Councils Directive) were not fully utilised. While in the past the Greek unions were not really active in exploring their rights arising from the EU framework, in the current crisis the extent to which they are aware of and may make use of the existing machinery is an open question.

The trade union role can be characterised in terms of a chicken and egg situation. In the past, before the crisis, unions were fairly reluctant to exercise their information and consultation rights, precisely because they were minimal and considered of marginal importance. In the same period, the developments pertaining to the Cross-border Mergers Directive were unusual and unfamiliar. In the national context trade unions were able to use other means based on national legislation and national systems of industrial relations (collective bargaining, strikes and so on). Similar to the case of the EU Takeovers Directive (Ioannou 2016), the information rights were considered inadequate and thus not fully utilised.

2. Viohalco SA/NV: a case of exit with a 'neutral' impact on labour

Viohalco is a group of companies active in steel, copper and aluminium production, processing and trade, as well as in real estate development. Viohalco was the largest metals group in Greece. Through its production facilities in Greece, Bulgaria, Romania, Russia, the former Yugoslav Republic of Macedonia and the United Kingdom, the Group's subsidiaries specialised in the manufacture of steel and steel pipes, copper and cables, and aluminium products, generating annual revenue of €2.9 billion in 2013 and employing approximately 8,000 workers worldwide. More than 60 per cent of its productive capacity was in Greece and it is noteworthy that the group's exports alone accounted for almost 10 per cent of the country's exports.

Up until 2013, Viohalco was organised through a holding company, Viohalco Hellenic Copper and Aluminium Industry SA (Viohalco Hellenic, for short), which had been listed on the Athens stock exchange since 1947, and held shares in approximately 90 companies. In 2013, Viohalco effectively transferred its seat from Athens to Brussels through a cross-border merger. In May it established a Belgian limited liability company, Viohalco SA/NV, as a subsidiary. In September 2013 the board of directors of Viohalco Hellenic and Viohalco SA/NV approved a cross-border merger. Through a 1-to-1 share exchange, shareholders' ownership was transferred from Viohalco Hellenic to Viohalco SA/NV. Simultaneously, a domestic merger was approved between Viohalco SA/NV and Codifin SA, a Belgian holding company which held shares in Viohalco-affiliated companies. In November 2013, Viohalco was listed on the regulated market of Euronext Brussels. According to the prospectus for admissions to Euronext trading, out of the group's 8,000 employees, only two were employed directly in the holding company Viohalco SA/NV, and it was anticipated that another two would be transferred in due course.[1]

1. This information is contained in the Prospectus for 'Admission to trading and listing of all shares on Euronext Brussels in the context of the mergers by absorption of Viohalco SA/NV of Viohalco Hellenic Copper and Aluminium Industry SA and Cofidin SA', available at: http://www.viohalco.com/Files/Documents/Document15.File1.Original.pdf (downloaded 24 July 2017).

The merger and transfer of seat of Viohalco from Greece to Belgium attracted wide publicity and became a topic for public debate in Greece. The announcement of the move created concerns, in the early stages of the merger, about the future of production sites and employment in the group's subsidiaries in Greece.

However, through information procedures involving employees and company unions – in the few cases these were present at company level (for example, Sidenor, Fulgor) and represented in the metalworkers' federation (POEM) – these concerns were eased. Through these procedures, which are based on national provisions on informing trade union representatives and employees about restructuring, the company management explained that the main reason for the merger and the transfer of seat of the holding company was the credit crunch. Through this move the company would no longer be classified as an 'emerging market' company and would thereby have both easier access to and cheaper credit. The estimated reduction in interest payments by more than 2 per cent in the period when the merger took place amounted to more than €60 million annually. A further reason given was that only about 15 per cent of the group's sales were accounted for by Greece, the other 85 per cent coming from abroad.

The implementation of the cross-border merger procedure followed the provisions of the transposed Directive in a context in which unionisation levels in the group's many companies varied, as only a minority of production sites were unionised. The group management followed an information procedure that was directed straight to the employees, as well as to the leaders of the metalworkers' federation (POEM), since the Viohalco Group accounted for a large share of the POEM union membership. However, it appears that neither the many non-unionised employees nor the unionised segments of the Group were aware of the full provisions of the Cross-border Mergers Directive as transposed in Greece. In fact, it was the group's minority shareholders who became active, criticising it for not fully meeting its obligations under the Directive. This view was shared by the Hellenic Capital Markets Commission (the HCMC) with regard to Viohalco SA.[2]

3. Controversial 'exodus': FAGE Group and Coca Cola Hellenic Bottling

3.1 Two cases of cross-border restructuring

FAGE Group SA and Coca Cola Hellenic Bottling Company are two other prominent cases that indicate use of the possibilities arising from the EU company law provisions as a means for initiating company restructuring. Unlike the Viohalco case, however, the

2. In a press release of Viohalco SA/NV, issued in Brussels, 23 September 2014 (with regulated information as defined in the Belgian Royal Decree of 14 November 2007 regarding the duties of issuers of financial instruments which have been admitted for trading on a regulated market) it was stated: 'The Belgian company Viohalco SA, the controlling holding of the Viohalco group announces the decision that has been notified to it by the HCMC further to the cross-border merger through which Viohalco SA absorbed the Greek company Viohalco Hellenic Copper and Aluminium Industry SA and the Belgian company Cofidin SA. The HCMC believes that pursuant to Greek law, Viohalco SA should have launched mandatory tender offers on its seven subsidiaries that are listed on the Athens stock exchange as a result of the merger transaction. As a sanction for Viohalco SA's non-compliance with this obligation, the HCMC decided to impose a total fine of 230,000 euros on Viohalco SA.'

emigration of these two companies in 2012 has had wider implications for employment relations, becoming the subject of protracted conflicts at the company and group levels.

These companies both operated at a multinational level and had their registered seat in Greece. FAGE SA is a leading internationally-active Greek dairy company, with most of its sales (about 70 per cent) outside Greece. Coca-Cola Hellenic Bottling Company, which was the largest company listed on the Athens Stock Exchange, is the second-largest bottler of Coke in the world, with the bulk of production and 95 per cent of its sales (in a total of 27 countries) outside Greece.

In the context of the Greek financial crisis, in 2012 both companies decided to start procedures to relocate their corporate seat outside Greece. As indicated in company and press reports, the trigger for this process was the credit crunch in Greece and ratings based on 'country risk'. Both companies financed their activities in part by issuing corporate bonds, whose risk ratings and interest rates are based not only on company-specific factors but also – in part – on factors pertaining to the country in which their parent company is registered. FAGE had been considering internal restructuring designed to enhance the efficiency of its corporate structure and to better reflect the increasingly international nature of its business. A threatened ratings downgrade in 2012 due to the location of its headquarters in Greece triggered a restructuring of the corporate group, which aimed at reducing bondholders' exposure to economic developments in Greece. The anticipated benefits of the favourable tax environment of Luxembourg also played a role in selecting that country for relocation of the company seat. Coca Cola HBC had also been given a negative rating outlook because of the crisis, and in 2013 it was estimated that its interest costs had increased to about €500 million annually. With this move, CCHBC expected to increase its credit capacity and draw more funds at a lower cost. Its 'exodus' was organised through the possibilities made available for implementing a cross-border merger and a transfer of seat. The legal procedures for their emigration had to operate through Greek company law as adapted to EU company law.

Although both groups effectively relocated their seats outside Greece, they used different mechanisms to do so. The relocation was less complex in the case of FAGE, as it was not listed on the stock market and thus capital market law was not involved. The FAGE Group relocated from Greece to Luxembourg as part of a corporate restructuring programme completed on 1 October 2012. FAGE Dairy Industry SA, the former parent company of the Group, merged into its subsidiary, the Luxembourg-based FAGE International SA. The Group's operations outside Greece were, from then on, conducted through a newly formed Luxembourg subsidiary, FAGE Luxembourg S.a.r.l., which became a holding company for the Group's subsidiaries in the United States, the United Kingdom, Italy and Germany.

The Coca-Cola HBC transfer was more complex due to its status as a listed company. It shifted its seat to Zurich, Switzerland and obtained a listing on the London Stock Exchange. The vehicle for doing this was Coca-Cola HBC AG, a new holding company founded in the autumn of 2012 in Switzerland by Kar-Tess Holding, which held a 23.5 per cent stake in CCHBC. This holding became the group's parent company and to this end had to submit an optional public offer for the acquisition of the whole of

Coca-Cola Hellenic. In May 2013 the Hellenic Capital Market Commission approved the Coca-Cola HBC AG application to initiate the buy-out process pursuant to Article 27 of Greek Law 3461/2006 concerning the transfer procedures. The share exchange offer was launched by Coca-Cola HBC AG (Coca-Cola HBC) on 11 October 2012 to acquire all of the issued ordinary shares of Coca-Cola Hellenic, Coca-Cola HBC. On 29 April 2013, Coca-Cola HBC’s shares were admitted to listing on the premium segment of the UK Listing Authority and to trading on the Main Market of the London Stock Exchange. Following the completion of the squeeze-out in June 2013, Coca-Cola HBC ended up holding 100 per cent of Coca-Cola Hellenic.

3.2 Impact on labour and labour relations

In their press statements and successive legal statements both companies initially stated that they would maintain their production plants in Greece. These claims lacked any detailed specification of production volume and employment levels, or for that matter any time frame, as these specifications are not required by current EU company law, as transposed into national legislation.

However, following the initial stages of restructuring and FAGE’s transfer of seat to Luxembourg, FAGE Dairy Industry SA (which remained a corporation organised under the laws of Greece and became a subsidiary of FAGE International) continued its restructuring plans, which also affected employment relations. In Greece, it aimed at 20 per cent pay cuts, a shorter work week (80 per cent of full time) and job cuts. Not surprisingly the emigration of the parent company and the transfer of seat were not welcomed by the trade union side, as these further restructuring measures affected employment relations. Coca Cola HBC also undertook measures with a major impact on labour, closing two of its six production plants in Greece (in Patra and Thessaloniki), and some regional distribution centres in the latter stages of the restructuring process, just before announcing their planned transfer of seat in October 2012. The next round of restructuring and layoffs came in October 2013 by cutting another 33 jobs at the distribution centre in Thessaloniki, which caused a strike and a long boycott of CCHBC products.

In both groups, there was an established tradition of adversarial employment relations, which was typical for the company level in Greece. This meant that there was no tradition of information and consultation with the involvement of the plant and company-level unions. In the context of these adversarial industrial relations, the union side was also reluctant to explore the possibilities offered by the relevant provisions of EU company law as incorporated in its Greek transposition. The rationale for this reluctance was feasibility; it was unlikely to have any real impact on the development and outcome of the procedure. Therefore, in both cases restructuring evolved in the context of increasingly adversarial industrial relations.

In the case of FAGE, the conflict evolved around the pay cuts and shorter working week through successive strikes and legal disputes between the management and the unions, without any reference to the company law provisions about information rights and duties pertaining to the employees.

In the case of Coca Cola HBC, the dispute evolved through strikes and a years' long (from 1 October 2013) boycott of CCHBC products (which led to protracted legal disputes) with the demand 'reopen the Thessaloniki plant'. Several former employees of the company posted a resolution on the internet that called on the world to boycott the products of Coca-Cola and to exert pressure so that the company would rehire the workers, thus putting 'social responsibility' into practice.[3] The trade union's criticism was that the company had relocated production to a Bulgarian plant. In November 2013, the company sued the members of the Panhellenic Federation of Bottled Drink Workers (POEEP) and members of the trade union of the Thessaloniki plant, demanding €250,000 in damages allegedly inflicted on Coca-Cola because of protesters' complaints that the company had transferred facilities to countries with cheaper production costs. In a statement, the company denied the charges and argued that it 'will not allow anyone to deny its strong commitment to a stable and substantial presence in Thessaloniki and Northern Greece'.[4] Moreover, the company claimed that in case they won the legal battle, it would give the money to charity.

The trade union side accused Coca-Cola of hypocrisy as the company advertised corporate social responsibility programmes, while at the same time dismissing employees in order to maximise profits.[5] Coca-Cola sought to minimise or even stop the boycott in support of the dismissed employees in the courts and with a media campaign. It is noteworthy that the diverging views and attitudes that developed during this conflict had a common denominator in the CCHBC boycott campaign, within the framework of which the trade unions declared that 'these practices of multinational companies exploit the possibilities provided by European legislation, but what is legal is not always ethical'. Among other things a strand of Euroscepticism developed, although the transfer of seat and the related restructuring involved a non-EU Member State.

4. Conclusion

A number of years into the Greek crisis there have been several cases of major companies using EU company law directives as a means of initiating a 'Greek exit' and indeed as part of wider company restructuring in the context of the financial crisis. The three cases analysed here all involved a complex set of transactions that resulted in the transfer of the company's registered office to another country. Two of these cases explicitly used the Cross-border Mergers Directive, while in the third case a similar mechanism was used to effect a transfer outside the EU. Significantly, in none of these three cases was the cross-border merger between independent companies, which was the type of restructuring envisaged in the original cross-border mergers legislation.

The three cases show that experiences have been very mixed set regarding employee involvement in these company restructurings. In the case of the cross-border merger of

3. See https://el-gr.facebook.com/Coca-cola-apergia-238774946277939
4. See http://gr.coca-colahellenic.com/media/3296/gegonota-kai-sxetika-stoixeia.pdf and http://gr.coca-colahellenic.com/gr/drastiriotita/paragogikes-monades/topiki-paragogi/
5. See http://www.poeep.gr/index.php/el/coca-cola and http://www.poeep.gr/index.php/el/coca-cola/558------3-

the Viohalco SA Group, which became a Belgian listed holding company, employees and unions at Viohalco received information about the reasons and prospects of the move that resulted in the transfer of seat from Greece to Belgium. Worker representatives' actions and reactions were met by the management using formal 'international' (as provided for in the Cross-border Mergers Directive) and 'national' (to the metal workers federation POEM) information and informal and proactive (HR management initiated) information towards the employees. The management move was well received and fed back into consensual attitudes between management and employees representatives.

The case studies of FAGE and of the Coca-Cola Hellenic Bottling Company highlight that in the context of long established adversarial industrial relations there has been little interest in and no room for exploring the worker involvement rights arising from EU company law. On one hand, using these provisions seems to depend on other factors in the national employment relations system, and on the other, the occasional but increasing use of the EU company law machinery for transfer of seats and cross-border mergers is normally related to broader restructuring developments that present major challenges to the labour side. As stated in the Introduction, the minimal rights that existed under EU legislation were for the most part not used by the trade unions, not because they were not needed, but rather because they were considered to be too weak.

In Greece, this type of restructuring is new and may involve a large number of companies in the future. After the recent stage of the Greek crisis and the capital controls imposed since early July 2015, out of 300 Greek businesses surveyed between 13 and 17 July 2015, 23 per cent planned to transfer their headquarters abroad, and another 13 per cent had already done so (Endeavor Greece 2016). This is a major challenge to the employment relations system in Greece, and the trade unions do not seem prepared to explore the possibilities offered by EU legislation referring to various aspects of worker participation rights. This remains 'new territory' for trade unions, 'discovered' in emergency conditions. Making use of them remains exceptional, and therefore there is ample room for stakeholder alignment to basic (and new) rights emerging from the EU and national levels.

References

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