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A PLAIDOYER ON STATE BANKRUPTCY: BETWEEN ECONOMIC REALITY AND LEGAL IMPOSSIBILITY

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Abstract The history of financial crises and their serious consequences have made them a key interest for both academics and policymakers. During periods of economic growth, bankruptcy was mainly viewed as a mechanism to eliminate uncompetitive firms. However, current global economic conditions, including inflation, decreased demand, rising production costs, the energy crisis, and financial collapses in certain markets, have made it difficult for many companies to service their debts. Outdated bankruptcy regulations have worsened the situation. In the context of globalization and the internationalization of business, modernizing bankruptcy laws has become essential. Various international institutions have advocated for reforms, including redefining the concept of state bankruptcy. This paper aims to analyze the role of the state in bankruptcy, focusing not on its role as a commercial creditor or debtor but as a potential subject of bankruptcy itself.

Keywords
financial crisis,
bankruptcy,
regulations,
state,
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1 Introduction

Bankruptcy Act embodies the capitalist principle *par excellence*: the creation of a collective mechanism that allows bankruptcy creditors to identify and choose the best option for recovering the amounts owed to them. Bankruptcy is therefore an exceptional example of economic rationalization accompanied by a fascinating legal and bureaucratic evolution. What has remained constant throughout history, however, is the fact that bankruptcy maintains a fragile, often unstable interaction between legal rules and individual interests, market legality and general (public) interest. This paper therefore begins with a definition of the terms *state* and *bankruptcy*, which is in need of improvement. This is because the semantic content of these terms is far from exhausted with the definition of the legal terms regarding state and bankruptcy. This ambiguity allows everyone to choose an interpretation that suits them and to focus on the topic that interests them most. The main debates in this area are presented later on in the paper. From a research perspective, the literature is (more or less) unanimous on the positive effects of recent bankruptcy act reforms, but also on the problems and limitations of the functioning of the existing legal framework.

Ultimately, the more relevant texts for this paper that analyze the issue of state bankruptcy are extremely modest, which is unusual since the source of these controversies in legal theory stems primarily from the fact that this issue is not clearly resolved in the regulation, which consequently may lead to different judicial decisions and positions. We find that the existing literature does not provide an answer or useful explanations and appropriate approaches to this issue. Therefore, this paper will be the first systematic and scientifically based analysis. After defining the terms, reviewing the literature and presenting the methodological framework, the analysis concludes with recommendations suggesting possible solutions to the previously identified problems.

2 Defining the terms

Given the complexity and timeliness of the problem we are dealing with in this paper, and for the sake of precision and clarity, we thought it important to make, or at least attempt to make, a terminological distinction between the terms - state and bankruptcy.

When we speak of the state, we mean the totality of relations in a polity, not just its administrative structure and the actions carried out by the government. In most literature on the role of the state, its legal and economic aspects dominate. The reason for this is probably the fact that legal and economic moments are perceived as processes that are more complex. Therefore, the attempt to define the concept of the state empirically and in legal-literary terms inevitably leads to the need to examine different conceptions of the democratic-constitutional character and the role of the state and to analyze some aspects of its legal, economic and social functioning, which is far beyond the scope of this paper. Thus, we can conclude that, apart from the interesting history (of the concept) of the state, it is not easy to define the concept of the state in a methodological-definitive context (Tilly, 1975). However, in the multiplicity of determinants of the state *in extenso*, when it comes to the state's position as a party or participant in civil proceedings, two situations can be distinguished according to previous theoretical and empirical experience. On the one hand, the state acts as an economic subject according to the rules of civil law (*iure gestionis*); on the other hand, the state acts authoritatively as a public law entity (*iure imperii*). In the first case, the state is, or should be, completely equal (coordinated) to other legal subjects, while in the second case it is a matter of the relationship between the public authority and the persons subordinated to it.

On the other hand, the legal-lexical homogenization of the term bankruptcy is much easier. Indeed, the Bankruptcy Act (hereinafter: BA) as a *lex generalis* regulation regulates the conduct of bankruptcy proceedings in detail (Official Gazette – OG, No. 71/15, 104/17, 36/22). In the legal sense, bankruptcy is a non-contentious *sui generis* judicial procedure in which a collective satisfaction of all creditors from the assets of an insolvent debtor takes place, either through liquidation bankruptcy proceedings or through a reorganization model (bankruptcy plan or pre-bankruptcy proceedings). Although this overview has certain differences, it points to two basic objectives of bankruptcy, namely the satisfaction of creditors and the realization of their property claims, but also the termination of a company that is unable to fulfill its obligations (Clark, 1977). The Consumer Bankruptcy Act (hereinafter: CBA) was implemented based on the postulates of financial rehabilitation (OG, No. 100/15, 67/18, 36/22). In the institute of bankruptcy plan and pre-bankruptcy proceedings as an alternative to liquidation bankruptcy, certain similarities can be observed with the bankruptcy proceedings on consumer assets, since the "economic recovery" of the consumer, as the subject of the proceedings is the primary objective (Article 2

of the BA). Nevertheless, consumer bankruptcy proceedings have a specific substantive objective related only to the debtor's recovery, which is a *differentia specifica* compared to corporate bankruptcy proceedings.

3 Literature review and contribution of the paper

Since the crisis of the early 1970s, the world has been dominated by Milton Friedman's theory of monetarism and the belief in the omnipotence of the free market mechanism. However, in late 2008, when anarchy due to excessive deregulation triggered the financial crisis, part of the economic literature started to revisit the always-interesting idea of John Maynard Keynes, who developed the theoretical basis of state interventionism in his work.[1]

Considering that the Keynesian doctrine and its instruments are no longer able to solve effectively the emerging problems, various neoliberal economic theories are also being developed.[2] From this brief review of past experience and practice, it is clear that the ideas of (neo)liberalism and interventionism are constantly present in the literature and in professional discussions, both at the practical and theoretical levels, and that their application in practice depends on the specific conditions and circumstances in which markets and societies are encountered. Moreover, much of what might conditionally be called philosophy and the broadest methodology of the social sciences as a whole can be reduced over the last seventy years or so to a major dialog between these two dominant but opposing worldviews.

To decide in favor of one or the other alternative is by no means easy, for then their coexistence would not be possible, and one would have long since largely supplanted the other. In all these theoretical discussions, the modernization of bankruptcy and even the discussion of sovereign default are at the forefront. Even if approaches to this issue differ especially on the crucial question of what is the indicator that shows that a state is bankrupt (i.e., what is the indicator that apostrophizes that the state is no longer able to refinance maturing credit liabilities in the globalized market).

[1] An article by Stigler (1971) entitled The Theory of Economic Regulation is considered a classic in the formulation of the theory of economic regulation. For further readings, see also Stigler (1974) and Posner (1971).
[2] In parallel with the introduction of economic regulation, criticism of it grew. Priest (1993) provided an overview of the major papers published in the Journal of Law and Economics that have helped raise awareness of the impact of regulation on the economy.

In the last two decades, however, various international institutions such as the International Monetary Fund - IMF (1999), World Bank (2021), United Nations Commission on International Trade Law – UNCITRAL (2005) or The American Law Institute – ALI (2012) have pointed two basic indicators that show the country belongs to the risk group. The first is the high ratio of public debt to GDP and the second is the modest forecast of medium-term economic growth, which is a consequence of the economy's low competitiveness. Recent debates analyze the pressure resulting from the unstable situation in the American market, on the one hand, and from the slowdown of economic growth in the leading EU countries, Germany and France, on the other, suggesting that the world is heading towards a new recession that eventually leads to the idea of introducing sovereign default schemes becoming topical again.

Literature analysis shows that there are questions and even more factors that influence possible correct answers, leading to a variety of opinions and the impossibility of creating and formulating a unified concept and model of bankruptcy act for states. From the research point of view, the literature is unanimous in reporting the problems of states that are unable to refinance their overdue debts. It is pointed out that the rehabilitation of the state budget requires:

a) radical, long-term and painful reforms;
b) necessary reduction and reorganization of large and inert central state apparatus;
c) reorganization of the expensive and fragmented structure of local governments;
d) reduction of oversized social rights to a realistic framework;
e) review of massive subsidies that do not contribute to increasing efficiency;
f) review of spending huge sums on large investment projects that do not have an adequate economic impact.

Therefore, considering that the state is a multidimensional phenomenon and the analyzed legal economic component is only one of several, it is necessary to further study and monitor the state as a subject in bankruptcy proceedings, in order to reconcile and coordinate the economic and social factors resulting from the interconnection of European and national policies (Paulus, 2022).

4 Methodology

We consider it important to point out that the space available here does not allow for a detailed breakdown, so we are forced to limit ourselves exclusively to some aspects of the title topic. A complete evaluation/analysis of the success of any changes, including those that should accompany the adoption of a new subject solution, requires a comparison of what has been achieved with two points of reference. The first (I) is the current situation and the second (II) is the target goal, i.e., the desired outcome of the adoption and application of state bankruptcy regulation.

4.1 The current (and historical) situation – measures available if the state is unable to meet its obligations

The history of state bankruptcy is as old as the developed credit system and the effect of borrowing, which is the basis of all pre-bankruptcy procedures. From the mid-19th century to the present day alone, some two hundred countries, mostly less developed Latin American and African countries, filed for bankruptcy.

It is a little-known fact that Great Britain experienced its first "national bankruptcy" in 1340. It was a consequence of the poverty of the island nation, which lived mainly on the production of high-quality wool, the price of which fell on the market. Wars, the equipment of the army and the expensive maintenance of the royal court made the debts to the Italian bankers-creditors constantly increase. The English king Edward III eventually had to admit that the state was not able to repay the loans taken.

During the reign of the Ming Dynasty (1368-1644), the bankruptcy of the state was caused by enormous inflation. Thus, in 1425, paper money fell to a value of only one percent of its basic purchasing power. The reason for the financial collapse was the appearance of large quantities of counterfeit money in circulation. The example of China is considered by experts to be an early example of so-called covert state bankruptcy. China experienced financial collapse two more times: in 1921 and 1939.

The world record for state bankruptcies is held by Spain. This country has been insolvent 13 times. Little is known that Spain had to declare its financial incapacity four times during the reign of Philip II.

In 1998, the Russian ruble stopped working - the fifth time in the history of this country. The reason: the collapse of oil prices in 1997, the withdrawal of capital by foreign investors and the taking out of numerous short-term loans. The ruble depreciated by as much as 71%, and its peg to the U.S. dollar was removed. Russia was unable to pay its $40 billion debt. Russia emerged from the financial crisis in 2006.

In June 1971, for example, the U.S. went (almost) bankrupt because of the excessive amount of dollars in circulation (i.e., spending on the Vietnam War), so it removed the exchangeability of dollars for gold that had been in force until then. This broke down the system of fixed exchange rates pegged to the dollar that had been established in 1944 by the Bretonwood Agreement.

Even Germany, whose economy had been the concept of a successful economy for decades, experienced complete financial collapse in 1923 and 1945. State bankruptcies are not, as German economic analyst Christian Neff wrote, just a scientific concept, but as the case of Argentina and Russia in 1998 made clear, a real financial category.

A well-known example is Mexico, which announced in August 1988 that it could no longer service its debt, whereupon the United States quickly came to the country's aid. Many countries that already had major problems went bankrupt. In the late 1990s, Asian economies also went bankrupt.

Another (recent) example includes Argentina's bankruptcy in 2002, when the country announced that it would not repay its debts and was punished by being banned from participating in the international capital market (Kindleberger and Aliber, 2005).

What is particularly disturbing about the example of Greece is the fact that this country is unable to service its financial obligations for the fifth time since its independence (1829). Analyzes have shown that the Greek government can save as

much as it wants, but it cannot significantly reduce the debt mountain of 350 billion euros. The way out was seen as Greece's exit from the eurozone and a return to the weak drachma to rebalance the economy. Some thought that bankruptcy, paradoxical as it sounds, would calm the crisis in Europe. After all, Greece is a country that is a constant source of turmoil. Every quarter, auditors from the EU Commission, the European Central Bank and the IMF came to Athens. And each time, their findings worried the markets repeatedly because of the evidence of inability to service the increased financial obligations. They believed that the appearance of the financial crisis in Greece alarmed other EU countries, i.e., that increased risks threatened other countries - Portugal, Spain, Ireland and Italy. They believed that this could be overcome with the immediate "bailout umbrella".

The opposing view at the time was that the announcement of the Greek state insolvency would only bring the full force of the crisis to Europe. Nervous financial markets feared new bankruptcies. While the debts of Ireland, Portugal and Spain were kept under control, in the case of Italy's bankruptcy, the resources of the "bailout umbrella" were not sufficient. Meanwhile, France was also tackled, losing its highest credit rating and thus reducing its role in saving the eurozone. That leaves only Germany, which is like a great savior - simply overstretched. Accordingly, one country after another is falling into the trap of bankruptcy. The result: the final breakup of the Eurozone.

Analysis has shown that financial institutions had more than two years to prepare for a Greek bankruptcy. Many did so by increasing the proportion of their equity and refusing to accept Greek government bonds. Admittedly, others were "bled dry" as a result, especially the European Central Bank and, of course, the taxpayers who paid the final bill. Some commercial banks got into serious trouble, but they were "covered" by the protective shell that was created, avoiding the expected new financial crisis. Opponents of such pro-thinking warn of a very different problem: commercial banks hedged their role through credit default swaps (CDS). However, no one has a complete view of where these CDS securities are located. Who will end up paying for Greece's bankruptcy? Ignorance about this segment certainly contributes to the general uncertainty. At the time, there was a real danger of a new global financial crisis. The first one was caused by the American bank Lehman Brothers, and the other one (could be) by Greece.

The above cases do not represent isolated episodes, but are expressions of a deeper, fundamental review of economic doctrines. Based on previous experiences, as well as the experience of Greece and the fact that the financial and economic crisis of 2008 and 2011 revealed fundamental problems and unsustainable economic trends in many European countries, it became clear that EU economies are dependent on each other, but also on global trends (Ribnikar, 2011; Sever, 2009; Stojanov, 2009). In addition, the EU recorded two unusual experiences in 2020: the pandemic COVID-19 and Brexit on January 31st, 2020.

EU responses to the Greek crisis and the financial crisis of 2008 and 2011

The financial, fiscal and economic crisis that began in 2008 demonstrated that the EU needed a model of economic governance that was more effective than the previous economic and fiscal policy coordination (Dumičić and Pečarić, 2016). It was thought that better harmonization of economic policies across the EU was needed to solve the problem(s) and promote growth and job creation in the future. For this reason, the system of bodies and procedures related to the economic management of the EU was revised and improved.[3]

Among the achievements in the field of economic management are the increased coordination and monitoring of fiscal and macroeconomic policies and the creation of a framework for the management of financial crises. In order to ensure the stability of the Economic and Monetary Union, it was deemed necessary to establish a sound framework for the maximum avoidance of unsustainable public finances. At the end of 2011, a reform entered into force, amending the Stability and Growth Pact. At the beginning of 2013, another reform in this area came into force, the Intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, which also includes a fiscal treaty. In addition, in May 2013, the Regulation on the evaluation of draft national budgets entered into force.

In this context, the institutions of the Economic and Monetary Union are largely responsible for defining European monetary policy, the rules for issuing the euro and price stability in the EU. These institutions are the European Central Bank

[3] See the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal C 326, October 26th, 2012.

(ECB), the European System of Central Banks (ESCB), the Economic and Financial Committee, the Eurogroup and the Economic and Financial Affairs Council (Ecofin). The ESCB consists of the ECB and the national central banks of all EU member states. The main objective of the ESCB is to maintain price stability. To achieve this main objective, the Governing Council of the ECB bases its decisions on an integrated analytical framework and implements both standard and nonstandard monetary policy measures. The main instruments of the standard monetary policy of the ECB are open market operations, continuously available options, and the holding of minimum reserves. In response to the global financial crisis, the ECB also changed its communication strategy by providing guidance on the future interest rate policy of the ECB, which depends on price stability forecasts, and took a number of nonstandard monetary policy measures. These measures include the purchase of securities and government bonds in the secondary market with the aim of maintaining price stability and the effectiveness of the monetary policy transmission mechanism.

The economic governance model, which refers to the system of institutions and procedures established to achieve the EU's objectives in the economic field, in particular the coordination of economic policies to promote the economic and social progress of the EU and its citizens, has also been strengthened. The purpose of the European financial assistance mechanisms is to preserve the financial stability of the EU and the euro area, as financial difficulties in one member state can significantly affect macro-financial stability in other member states. The financial assistance is subject to macroeconomic conditions (it is a loan, not a financial transfer) aimed at ensuring the implementation of the necessary fiscal, economic, structural and supervisory reforms in the Member States receiving this assistance. The reforms are agreed and set out in specific documents (i.e., memorandums of understanding), that are published on the Commission's website and, if necessary, on the website of the European Stabilization Mechanism.

As part of the EU's response to the crisis triggered by COVID-19 disease, a number of additional financial instruments were introduced to help member states recover and make their economies more resilient to shocks. For example, the European System of Financial Supervision (ESFS) is a multi-layered system of micro- and macroprudential authorities whose goal is to implement coherent and harmonized financial supervision in the EU. It comprises the European Systemic Risk Board

(ESRB), three European supervisory authorities (i.e., the European Banking Authority-EBA, the European Insurance and Occupational Pensions Authority-EIOPA and the European Securities and Markets Authority-ESMA) and national supervisory authorities. The ESFS is constantly evolving to reflect changes in the environment in which it operates, in particular the introduction of the banking union, the goal of developing the capital markets union, and the United Kingdom's withdrawal from the EU.

4.2 The target goal or problems in the implementation of the state bankruptcy procedure

It is true that in some countries the respective national bankruptcy law declares the inadmissibility of state or provincial bankruptcy proceedings, as in Croatia. The list of persons against whom the proceedings can be conducted has been somewhat expanded by the reform of the Bankruptcy Act of 2015. In addition, pre-bankruptcy proceedings cannot be conducted against a financial institution, a credit union, an investment (fund management) company, a credit institution, an insurance/reinsurance company, a leasing company, a payment institution and an electronic money institution (Vuković and Bodul, 2012; Bodul, 2012).

Who would conduct the proceedings?

The legal regulation of bankruptcy proceedings alone is not sufficient to solve all the contradictions mentioned above and to ensure the smooth functioning of economic developments in a country. An effective system requires an institutional and regulatory framework. A proper approach to this issue, as well as some other important factors, can provide a good foundation and a basis for successful restructuring.

What would be the grounds for opening bankruptcy proceedings on the state assets?

If we go by the general statement that reorganization is an attempt to prevent bankruptcy by financially restoring the bankrupt debtor, which should continue to work, repay its debts (in full or reduced amount) and eventually become a solvent and profitable economic entity, then we cannot disregard the timing and situation leading to the formal opening of bankruptcy proceedings. The reason for bankruptcy

itself, as the financial condition of the debtor that triggers the opening and implementation of bankruptcy proceedings, represents the legally relevant fact that the debtor is no longer able to fulfill its due legal obligations.

The question of when the point of insolvency is reached is not uniformly regulated in practice, i.e., the criteria for determining insolvency, the existence of grounds for bankruptcy and the opening of bankruptcy proceedings are regulated differently in the various legal systems. Moreover, neither the IMF nor the World Bank or UNCITRAL, which deal with bankruptcy regulation, have a clear opinion on which of the financial and legal indicators is most appropriate for practical application. Therefore, permanent insolvency of the debtor, which manifests itself in the cessation of payment of due receivables, and overindebtedness, which exists when the assets of the debtor of a legal entity are less than the existing liabilities, are considered the general and most common grounds for opening bankruptcy proceedings. In this context, the question of when the state is insolvent is even more challenging, as democratic decision-making requires time and great political effort. Also, the amount of state assets that can be sold or pledged or the fiscal measures that can be taken in the event of a debt crisis are often not clearly defined, as they depend on potential political decisions.

Who would be authorized to initiate bankruptcy proceedings against the state?

The definition of the legal interest in opening bankruptcy proceedings is not contained in the Bankruptcy Act itself. However, the mere fact that this institute has not been applied in the context of positive bankruptcy law does not mean that it has not been elaborated in detail in domestic legal theory and case law. It is clear from the positions of the case law that, according to the legal doctrine of civil procedure consistently followed by the legal practice, a person has no legal interest in initiating a lawsuit who has a simpler and cheaper remedy available to him before initiating civil proceedings or filing a particular lawsuit. The aforementioned principles from the doctrine of civil procedure may be applied to the bankruptcy proceedings themselves due to the subsidiary application of the Civil Procedure Act in the bankruptcy proceedings.
However, this is not only necessary, but also even required, since in the Bankruptcy Act itself the institute of legal interest is not elaborated at all. At the international level, however, the situation is even more complicated. Namely, in the context of

bankruptcy proceedings, all categories of creditors that may appear in these proceedings have the same interest: the protection of the right to realize their claims. However, within the framework of this interest, each of these categories has a different legally established way of realizing it and the position from which it acts. Theoretically, only privileged creditors would have the right to initiate bankruptcy proceedings over the state's assets under certain conditions. In fact, privileged creditors are those who have real insurance for their claims against the insolvent debtor.

Since they have security in rem for the assets or parts of the assets of the insolvent debtor, these creditors have the right to preferential satisfaction of their claims against the subject of their privileged right in the order in which they acquired their real insurance. It must therefore be assumed that privileged creditors have the right to be satisfied in priority to all other creditors. The legal interest of privileged creditors in initiating bankruptcy proceedings can be defined by analyzing their privileged position in the bankruptcy proceedings. Namely, privileged creditors may base their rights on enforceable and non-enforceable deeds. Therefore, it is possible that at the moment when their privileged right arises, the privileged creditor already has an executory deed that allows them to realize their right through judicial enforcement proceedings, without the need to obtain a special executory deed in civil or other proceedings.

If we follow the point of view of legal theory and court practice that the plaintiff who can realize his right in a faster and cheaper way does not have the right to initiate court proceedings, we come to the conclusion that the privileged creditor who has an enforcement title for the realization of his claim against the subject of real insurance has no legal interest in initiating bankruptcy proceedings. It follows that such creditors, although privileged, have a legal interest in initiating bankruptcy proceedings because such proceedings protect their rights more efficiently and quickly. Thus, such privileged creditors would have a legal interest in initiating both civil and bankruptcy proceedings (but not simultaneously), and they would decide in which of these two proceedings to assert their rights, depending on their interests.

Taking into account the above-mentioned, one could easily conclude that only the privileged creditor who does not have an enforceable title over his right (i.e., who has to obtain such title in civil proceedings) has the right to initiate bankruptcy

proceedings, as bankruptcy proceedings are a simpler, more efficient and less expensive way to enforce his right compared to the obligation to conduct both civil and enforcement proceedings. However, the previous classification of privileged creditors into those with and those without enforcement titles and the analysis of their positions is not sufficient to fully answer the question of whether privileged creditors have a legal interest in opening bankruptcy proceedings. To do so, it is necessary to consider the following. Namely, state bankruptcy is an informal (also called "voluntary") reorganization procedure. The Bankruptcy Act not formally and legally regulates it, but it is largely based on it.

The implementation and application of these procedures depend largely on the existence and availability of efficient bankruptcy legislation, as well as on an institutional framework that ensures the successful completion of these procedures. The origin and development of this type of reorganization were strongly influenced by the banking sector and the financial market in developed countries, as they represent an alternative to formal reorganization procedures under bankruptcy law. Initially, the use of informal procedures was mainly limited to cases where a large part of the liabilities of companies in financial difficulties are owned by banks and the financial sector, but this model slowly spread to the state bankruptcy model, as the example of Greece shows.

Property (and sovereignty)

The objective of bankruptcy proceedings is to realize the bankruptcy estate of the insolvent debtor for the simultaneous, collective and proportionate satisfaction of its creditors. Based on the objectives of bankruptcy proceedings, it can be said that the realization of the assets of the insolvent debtor is the most important stage of bankruptcy proceedings. However, the concept and problem of creating a bankruptcy estate is one of the central issues of any bankruptcy procedure. In Croatian law, the concept of bankruptcy estate is derived from the concept of property, which is defined in various regulations that mention certain elements of the concept of property (Bodul *et al.*, 2022). The aim of the disposition of state property is to secure control over natural resources, cultural and other heritage, important economic enterprises and other resources, as well as revenues that can be used for the common good.

However, all forms, especially state ownership, are variable categories, with the state registering ownership of new properties while others are made available, sold, and given away. These changes have taken place in several parallel processes, the most important of which are the nationalization of social property, followed by privatization, denationalization and restitution. For this reason, the system is changeable, which is why regular and transparent updating is important. For the system to function fully, a uniform methodology for recording, recognizing, and assessing the value of state property is needed. For example, in Croatia, the Ministry of Physical Planning, Construction and State Assets, together with the Restructuring and Sale Centre and Državne nekretnine Ltd., coordinates the implementation of some state property management measures. However, the consequence of the existing management methodology is the multiplication of responsibilities of institutions managing different forms of state property, and it is necessary to regulate and harmonize these responsibilities. From such a perspective, the scope of management of financial and non-financial assets is too large and the results are ineffective.

Croatia has a high level of state ownership. The state portfolio consists of more than one million properties (including 27,000 apartments and almost 11,000 commercial buildings) and more than 1,000 companies. State-owned enterprises (SOEs) play a significant role in economic activity, both in terms of employment (7% of total employment) and as a share of GDP (about 10% of GDP) - yet SOEs account for only about 1% of government revenues. The SOEs exist in all sectors of the economy, but their financial results are not impressive and their contribution to budget revenues is limited. In other words, Croatia has problems with the productive use of these assets (MRRFEU, 2023). In other countries, the question of the status of state property is one of those that has been an insoluble problem for years. Moreover, it is insoluble, among other reasons, because it is still not clear (either among the public or among interested international actors) whether it is primarily a legal or a political problem (Bodul *et al.*, 2022; Roje, 2011).

5 In lieu of a conclusion

The past decade has seen serious macroeconomic imbalances in the EU, exacerbating the negative consequences of the 2008 financial crisis, and large differences in competitiveness that have prevented the effective application of

common monetary policy measures. The EU has established a macroeconomic imbalances procedure - a surveillance and enforcement procedure designed to facilitate early identification and correction of macroeconomic imbalances in member states, with particular attention to those imbalances that could spill over to other EU members. The response to the financial crisis consists of two elements: a) Single Supervisory Mechanism (SSM) and b) Single Resolution Mechanism (SRM). The first mechanism directly supervises the euro area's largest and most important banks, while the goal of the second mechanism is the orderly resolution of failing banks at minimal cost to taxpayers and the real economy.

Therefore, many solvency problems faced by today's societies are not specific to only one country or region, but affect all citizens, not only in Europe, but also in the whole world, so finding solutions to (some) problems must also be done through the formalization of bankruptcy over state assets or through the institutional and regulatory framework. The reason for this is twofold. Any regulation, regardless of its form, which aims to regulate economic development, is at the same time part of the legal system and the economic system. A system whose basic characteristic is spontaneity under modern conditions must be provided with a legal framework within which it functions; the actors involved must be protected from legally impermissible actions by other actors, but also, as far as possible, from the consequences of their own economically wrong or irrational undertakings.

The equilibrium in this sense has always been difficult to establish, so that even today the discussions about the necessity or the harmfulness of the introduction of the state bankruptcy do not cease. Even in this "situation", there is no Pareto optimum (i.e., a solution that would be ideal and acceptable to all). Second, under current conditions, bankruptcy represents a barrier to irresponsible and economically harmful behavior, a means of maintaining financial discipline and security, and, through reorganization, a protective mechanism against the "blind hand of the market." The essence is that, through the application of various measures, the continuity of business operations is maintained and, on the other hand, creditors recover their claims, fulfilling two objectives at the same time. The first is to maintain financial discipline through the security of debt collection (which can be done through the liquidation of the bankrupt debtor or through the process of reorganization) and to prevent further deterioration of the economic entities that are

considered worthy of preservation, i.e., that have the perspective and purpose of continued existence.

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Povzetek v slovenskem jeziku (Abstract in Slovene language)

Zgodovina finančnih kriz in njihove resne posledice so postale ključnega pomena za akademike in oblikovalce politik. V obdobjih gospodarske rasti se je na stečaj gledalo predvsem kot na mehanizem za izločitev nekonkurenčnih podjetij. Vendar so sedanje svetovne gospodarske razmere, vključno z inflacijo, zmanjšanim povpraševanjem, naraščajočimi proizvodnimi stroški, energetsko krizo in finančnimi zlomi na nekaterih trgih, mnogim podjetjem otežile odplačevanje dolgov. Zastareli stečajni predpisi so razmere še poslabšali. Zaradi globalizacije in internacionalizacije poslovanja je posodobitev stečajne zakonodaje postala nujna. Različne mednarodne institucije so se zavzele za reforme, vključno s ponovno opredelitvijo koncepta državnega stečaja. Namen tega prispevka je analizirati vlogo države v stečaju, pri čemer se ne osredotočamo na njeno vlogo kot poslovnega upnika ali dolžnika, temveč kot potencialnega subjekta samega stečaja.