Debt adjustment proceedings in Finland

Background report for the Finnish Economic Policy Council

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1 Introduction

The European Union took the first step to harmonise insolvency laws of the Member States as the Preventive Restructuring Directive (2019/1023/EU, Directive)[1] was adopted on June 20th, 2019. Earlier cooperation in the field of insolvency law in the EU had concerned jurisdiction and cross-border cooperation. The new directive is a qualitative step forward since it, for the first time, lays down common rules and principles for national insolvency laws and proceedings. At the same time, the legal basis of EU competence to legislate in the field changed from judicial cross-border cooperation to the regulation of the common market.

The focus of the Directive is on the regulation of business insolvencies and restructuring of companies in financial distress. The proposal lays down rather detailed rules and principles for seeking protection against the creditors (a stay), for the rights of the debtor and the creditors during a stay, for proposing a restructuring plan including the adjustment of the debts, for the procedure for the accepting and confirming of such a plan, and for the qualifications of the practitioners. The Directive has obviously been inspired by the U.S. "Chapter 11", the Chapter of the U.S. Bankruptcy Code that has become known worldwide by that name.

Especially when looking at the procedure, in which the creditors vote on a restructuring plan and the plan is confirmed, the Directive gives an impression that its focus is on big and internationally significant companies. However, the Directive covers also small and middle size companies and entrepreneurs who carry on business in their own name. Most importantly, the Directive prescribes that the member states must make a discharge of debt available to debtors who are entrepreneurs.[2]

According to the Directive, the member states should set up a framework that would help to "increase the opportunities for honest entrepreneurs to be given a fresh start".[3] This second chance should also promote investment, while "…evidence shows that shorter discharge periods have a positive impact on both consumers and investors, as they are quicker to re-enter the cycles of

[1] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (also referred to as PRD, Preventive Restructuring Directive).

[2] Directive 2019/1023 Articles 20-23. F Javier Arias Varona, Johanna Niemi and Tuomas Hupli, 'Discharge and Entrepreneurship in the Preventive Restructuring Directive' (2020) 29 International Insolvency Review 8.

[3] Proposal for the Directive of The European Parliament and of The Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU Preamble (1) (78) (79) (38); COM(2016)723Final; including the Explanatory Memorandum (see p 6-7).

consumption and investment,"[4] and because a failure shall not stigmatise and will not compromise future activities.

The difficult situation of small entrepreneurs with excessive debt is well known. When the member states have developed their insolvency laws during the past two decades, they have enacted or at least considered the discharge provisions for entrepreneurs and consumers. However, small entrepreneurs may be excluded from discharge procedures that lead to debt relief for consumers and other non-business individuals and households. Even if the small entrepreneur is not explicitly excluded from these procedures, the conditions for discharge may be hard to meet. On the other side, many small entrepreneurs are not able to benefit from the limited liability that company owners and directors enjoy, either because the activity is on such a small scale that there is no point in setting up a company ltd or because the financiers require personal guarantees for the loans of the small company in any case.

The national legislators have experienced that it is not easy to design a discharge procedure for entrepreneurs that would be feasible, target honest but unfortunate debtors, and avoid encouraging irresponsible borrowing and lending. Now that the Member States shall transpose the Insolvency Directive into their national laws and regulations by July 17th, 2021, examples of good practices are in need.[5]

One example of a rather advanced version of debt adjustment for entrepreneurs is found from the Finnish Debt Adjustment Act (DAA 57/1993) as amended in 2014 (1123 /2014).[6] This example is worth noting also because the Finnish insolvency system has been rated as the best in the OECD countries.[7]

The 2014 amendment introduced new provisions in the DAA allowing for the discharge of the business debt of a private entrepreneur in the debt adjustment procedure, in addition to private debt, while giving the possibility to continue the activity as an entrepreneur.

The new insolvency regulations were placed in the Act on the Adjustment of Debts of a Private Individual (DAA or Debt Adjustment Act), not in the Restructuring of Enterprises Act (ReAct 47/1993) nor in Bankruptcy Act (BA 120/2004).[8] There is no discharge in or after bankruptcy. Thus, not many individual debtors file for bankruptcy and if they do, they are likely to file for debt adjustment after the bankruptcy.

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[4] COM(2016)723Final Explanatory Memorandum p. 4; Insolvency Directive Preamble (15).

[5] There is an option for the Member States to receive one additional year for the implementation of the directive. Finland has opted in to this opportunity, mainly due to the Finnish Presidency of the Council of the EU (1 July – 31 December, 2019).

[6] The amendments are in force since Jan 1st, 2015.Government Bill 83/2014. An English translation of the DAA is found by the number of the Act (57/1993) at www.finlex.fi/english. The translation of the DAA has not been updated after the amendments in 2014.

[7] World Bank: http://www.doingbusiness.org/rankings. Critically about the rankings see McCormack, Why 'Doing Business' with the World Bank May Be Bad for You. European Business Organization Law Review 2018, 650-676.

[8] Both are available in English www.finlex.fi.

These tree acts prescribe a path system, in which bankruptcy aims at liquidation, ReAct to business restructuring and debt relief, and DA to discharge of private household debt.

Debt Adjustment for Private Individuals	→	Payment plan & discharge
Restructruring Act	→	Payment plan & discharge
Bankruptcy Act	→	Liquidation, no discharge

This paper serves two purposes. First, it gives a presentation of the Finnish debt adjustment law for private individuals (Section 2.1 of the paper), setting it in the landscape of Finnish insolvency law (Sections 2.2 and 2.3). Secondly, the paper shall discuss the 2014 amendment including private entrepreneurs in the debt adjustment process (Part 3). The paper shall discuss the background of the amendment, describe its effects in practice so far and evaluate the reform. In particular, the paper shall discuss the conditions for the success of the reform and the decision to place it in the DAA.

Finally, the paper shall in part 4 make overall conclusion on the structure and efficiency of the Finnish insolvency regime. Those who already know the system or are not interested in details, can jump directly into conclusion.

2 The Debt Adjustment of Private Individuals

The Debt Adjustment Act was enacted in the early 1990s to help the Finnish households through a particularly hard recession following the deregulation of the Finnish credit markets in the late 1980s, the subsequent devaluation of the Finnish Mark (the national currency before Euro) and the simultaneous collapse of the trade with the Soviet Union. Examples of big increases in debt in the early 1990s were frequent, as many entrepreneurs had taken big loans in foreign currencies and the value of the loans multiplied overnight with the devaluation of the Finnish mark in 1991.

It was not easy to guide the law through the parliamentary procedure, as there were many cautions about the effects of discharge. On the other hand, the political pressure to help over-indebted households was hard.

Even though the need for the new law was apparent, the number of applications was hard to predict. No immediate rush was observed, however. The debt counselling services help to prepare the applications and, thus the availability of the counselling has rationed the influx of applications to the courts. During 1993-2002, 73.800 applications were filed in the courts. From these 73.800 applications 55.000 were accepted and led to the discharge. The rate of filings levelled at c. 3 000 per year during the 2000s. So far, the debts of some 100.000 Finns have been adjusted during the 25 years and the annual level of debt adjustment proceedings has settled at some 3.000-4.000 in the mid-2010s.

When confirming the law, the Parliament required for a research project to follow its implementation. According to a series of studies, the reasons for filing were followed during the first 15 years of the law. During the first five years, the applications were most often grounded on unemployment (40 %) and guarantees of loans of another person (20 %). Illness and failed business was also frequently mentioned as a reason for debt adjustment (15 % each). These figures overlap since several reasons could be given.

The reasons for filing seem to have changed over the years. In late 1990s and early 2000s, most of the applications were grounded on the unlucky situation as a guarantor of loans of another person or failed business (40 %). The next frequent reason was unemployment (20 %) followed by illness and divorce (only 8 % each). The loss of home and too high mortgage debt, quite usual in the early 1990s, were named just in some cases (4 %).[9]

2.1.1 Access to Debt Adjustment

The DAA includes a fairly sophisticated insolvency system. The cases are processed through the district court with the help of debt counsellors who prepare the cases and trustees that are appointed in complicated or disputed cases.

The general access prerequisite is qualified insolvency, meaning that the debtor cannot pay their debts in a foreseeable future (DAA 9 §). The access to the debt adjustment and discharge is regulated by a list of "obstacles" that aim at keeping irresponsible borrowers out of the procedure. These exclusion clauses (DAA 10 §) prescribe that the debtor will not qualify for the adjustment and discharge if any of the following circumstances exists:

1. The debtor has been convicted of a crime and for the liability to payments because of this crime, and the nature of the crime and other circumstances considered express that debt adjustment is not reasonable.
2. The debtor is suspected of such a crime.
3. The debts derive from a business in which the debtor has acted against the interests of his creditors.
4. The debtor has worsened his economic position and made transactions and other arrangements that are against the interests of his creditors.
5. The debtor has not disclosed his affairs or has given false information in a preceding execution procedure.
6. The debtor has given a false statement to get the credit and this information has been essential to get the credit.
7. There are reasonable grounds to believe that the debtor has run into debt in an irresponsible way or with a debt adjustment procedure in mind. This judgement should be based on the debtor's way of handling the personal economy, the source of the debt and the circumstances when running into debt, including the assessment on whether the credit institutions have acted responsibly or irresponsibly
8. The debtor has not tried to negotiate with his creditors for a composition through agreement, has not disclosed his affairs or has given false information in the debt adjustment procedure, or has not obeyed the orders of the court or provisions of the law in the procedure.

[9] *Muttilainen, Vesa, Velkajärjestelyt tuomoistuimissa.* National Research Institute of Legal Policy 2005, 2007; *Tala, Jyrki, Vesa Muttilainen & Pekka Vasara, Velkajärjestelyt tuomioistuimissa 1994,* National Research Institute of Legal Policy 1994.

9. There are reasonable grounds to believe that the debtor will not follow the payment plan.
10. The debtor has had a payment plan confirmed before.
According to the 11 §, the court can make an exception to the exclusion clauses. In such decision, the court should especially consider the age of the debts and the debtor's efforts to repay them.

The court should asses the material conditions both as an admissibility test and as a condition for the final confirmation of the plan. All the exclusion clauses, including the bar, are subject to consideration by the court. During the 1990s, a rich case law on the material conditions evolved, including several cases appealed all the way to the Supreme Court. In practice, DAA 11§ point 7, running into debt in an irresponsible manner has been most frequently invoked in practice. Generally, indebtedness through guarantees for another person's debt had not been regarded as irresponsible, nor business debt or big loans for purchase of an apartment. Consumer debt has been looked at most negatively, as well as the speculative investment debt.

2.1.2 Opening of the procedure

The debtor files for a debt adjustment at the district court. The court may hear the creditors or some of them before it makes a decision on accessibility. Most debtors get help from debt counsellors at the legal aid offices but private advocates can assist them as well.

The opening of the debt adjustment gives effect to the stay of enforcement and debt collection. The stay stops payments by the debtor, the recovery efforts by the creditors and official enforcement procedure (DAA §§ 12-13). Relief from the stay can be given to a secured creditor if his right would otherwise be impaired. Garnishment of wages is not automatically discontinued. The enforcement agent keeps the garnished part of the wages, which is later distributed to the creditors according to the payment plan.

The court may assigns a private advocate or a financial professional as a trustee but that is not necessary. The debtor has to pay a part of the fee of the trustee. The debtor's payment of the fee is as much as he can pay to the creditors during the first four months of the plan. These four months prolong the duration of the payment plan. The rest of the trustee's fee is paid from public funds (64-71 §§).

2.1.3 Discharge and payment plan

A debtor earns the discharge though a payment plan of normally three years. According to the payment plan, the creditors are paid pro rata, that is, each get a share that corresponds to its share of the total debt. The priorities of creditors were largely abolished in 1993 by the Law on Priorities in Bankruptcy and Debt Enforcement (1578/1992). The payments are first, up to four months, channelled to the payment of the trustee fee. After that, maintenance payment to a child has the second priority. Third priority is optional: the court may order payments to a creditor who has financed necessary living or housing costs (31 §). After that, each creditor gets the same percentage of its claim.

The standard length of the payment plan was originally five years and reduced to three years in 2010. The payment plan may be extended by two years to pay private creditors (DAA 31a §§). They are persons who have given personal guarantees for a loan and other private persons to whom the debtor owes money.

The plan is five years also in case in which the debtor not pay anything at all (so called NINA cases; no income, no assets; DAA 30.4 §). However, if the inability to pay is deemed permanent, the plan is three years.

2.1.4 Debtor's property, including home

Finland is a country with a high rate of home-ownership. Excessive housing debts and debtors who were not able to sell their first house or apartment after they already had bought a new one were one of the high profile reasons for the law to be passed in the early 1990s. The concept, a trap of two apartments, became part of the everyday language. Thus, throughout the legislative process the prospect of alleviating the debt burden without forcing the debtors to sell the family home was put forward.

As a main rule, the debtor or the trustee should sell assets that can be used to cover the debts. The law includes rules on what property is protected against creditors, such as necessities of the life, normal household furniture and tools. Specific regulations govern property that is a collateral for a credit. One example is a car needed to drive to work. In such cases secured debt up to the value of the asset has to be paid.

The DAA includes provisions for keeping a home that the debtor owns. The baseline is that the debtors have to pay the secured debt for which the home is a collateral (secured debt) up to the value of the collateral. If the debt owed exceed the value, the rest of the debt is in the same position as other unsecured debt.

The interest of the secured credit can be lowered but not totally squashed and the repayment period of the secured debt (up to the value of the home) can be prolonged. The collateral can also be exchanged with a new collateral, for example, if the debtor is able to find a more affordable dwelling.

If the debtor keeps their privately owned dwelling, the duration of the payment plan for unsecured debt may exceed three years. In that case, the duration of the plan may be ten years to pay the unsecured debts and to pay the mortgages as long as originally agreed or somewhat longer (DAA 30 §§).

In addition, the DAA includes a rather complicated calculation system for situations, in which the amount of unsecured debt is very high but the home is not collateral up to its roof. This situation typically occurs when the debtor has been a personal guarantor to a loan of another person. In this situation, the DAA protects the debtor's home against the unsecured creditors to some extent.

Thus, it is possible for a debtor to retain their home through the debt adjustment process but this basically requires that they are able to pay the secured debt. In practice it is rare that debtors own their home, and even more rare that they are able to retain it through the debt adjustment. According to a study in the mid-2000s, some four per cent of the debtors in debt adjustment procedure owned their homes and it was unclear if even they were able to keep the home.

2.2 The Restructuring of the Enterprises Act and private entrepreneuers

The ReAct was enacted simultaneously with the DA in 1993 and contains an equally sophisticated regime. In general, the ReAct seems to well align with the Insolvency Directive.

The ReAct is designed with big companies in mind but the law does not exclude a private entrepreneur from its scope. The ReAct only allows for the adjustment of the business debt. Thus,

private entrepreneurs (PE) who are working in their own name can file for restructuring and the debts deriving from the entrepreneurial work can be adjusted according to the ReA, but not their private debt, for example, from a housing loan or a personally given guarantee. In practice, however, more often than not, the debtor is in trouble with both private and business debt at the same time and sometimes it is difficult to divide one from the other.

Some 50 private entrepreneurs have filed for restructuring, out of a total of little less than 400 filings in total, and some 30-40 plans for entrepreneurs have been confirmed,.

2.3 Parallel filings

2.3.1 Relationship between debt adjustment and restructuring

The line between companies and private entrepreneurs is not as clear-cut as the law books tell. In companies without limited liability, the owner is liable for the business debt and goes insolvent as the company fails.

If a debtor has a business in a partnership in which the debtor is personally liable for the debts of the partnership,[10] the debtor can qualify for the debt adjustment for their private debt; as long as the partnership is solvent (DAA 45.2 § point 1).

Also, if the partnership is in restructuring process, the debt adjustment for private debt can be initiated (DAA 45.2 § point 2 and 45a.2 §). The idea is that if the restructuring is successful, then the debts of the partnership are adjusted and the debtor's liability reduced accordingly. Thus, in parallel proceedings, a debt can be adjusted either in restructuring or in debt adjustment.[11]

A sole owner of a company with limited liability may have guaranteed the credits of the company by privately owned collateral, typically their home, or personal guarantees. If the owner files for debt adjustment of private debt, this has no effect on the company. As long as the company is solvent, a guarantee for its debts is not included in the debt adjustment of the owner. This changes, if the company files for bankruptcy or restructuring. Then the guarantee is included in the owner's debt adjustment (DAA 48 §).

The Finnish insolvency system allows for parallel restructuring of the company and debt adjustment of the owner (DAA 48 §). In practice, this does not happen often, as the debt adjustment is conditional of a successful restructuring, making the coordination of the two procedures a dire task. However, the option is important in principle and paved road for the new regulation for entrepreneurs in the DAA. We also find an illustrative case from the Supreme Court:

> KKO:2003:56: A had been a major shareholder and executive director of a Construction Company, ltd (CC). After the bankruptcy of CC he filed for debt adjustment. Immediately after the bankruptcy of CC, he had set up a new company CC Brothers ltd. A had no shares in CC Brothers, the owners of which were his family members and extended family. As CC Brothers continued the work of CC, A and his brother reached an agreement with the creditors, according to which they gave personal guarantees for certain debts of the CC

[10] Avoin yhtiö or kommandiittiyhtiö.
[11] HE 83/2014, 70.

Brothers which made it possible to buy machinery from CC. In A's debt adjustment procedure, the guarantees for CC Brothers were excluded from the procedure.

2.3.2 Relationship to bankruptcy

The aim of bankruptcy procedure is the liquidation of the assets of the debtor and, if the debtor is a company, the liquidation of the company as well. For this purpose, there is the need to clarify the economic situation of the bankrupt estate. The administrator of the estate has several means at their disposal to get information about the debtor's assets and liabilities, including a public call to the creditors.[12] Such public call is not possible in the debt adjustment procedure.

The Bankruptcy Act also recognizes the need to inspect the events that have led to bankruptcy and an eventual possibility to recover funds to the estate. According to the Act, these are standard duties of an administrator of the estate. If there is a need to inspect the conduct of the bankrupt and their affairs but the assets of the estate do not cover the costs, the court may appoint a public receiver.[13] Such possibilities do not exist in debt adjustment but the debt counsellor and the trustee do act as controllers and gatekeepers, at least to some extent.

Since the law is structured into three separate procedures (bankruptcy, reorganization and debt adjustment), there is a need for regulations on the priority in case of parallel filings and on how to shift from one procedure to another.

When parallel filings are pending, there is a priority for the debt adjustment and restructuring filings (DAA 20 §, ReAct 24 §). A court puts a creditor's filing for bankruptcy to rest while the filing for a debt adjustment or restructuring is pending. Bankruptcy filing is suspended until payment plan in debt adjustment is confirmed. Then bankruptcy filing expires. If debt adjustment is not granted, then bankruptcy filing is processed.

During the debt adjustment procedure and after a plan has been confirmed, a bankruptcy can be opened for new debt. If a bankruptcy is opened during a debt adjustment procedure or three months after application for debt adjustment was dismissed or discontinued, the new debts enjoy super priority in bankruptcy (DAA 20a §).

The system for parallel filings seems complicated. It should allow for an assessment of the debtor's situation and for a choice of the most suitable proceeding. However, in practice the aim of the procedure is decided before any procedure is opened. There may be a risk that the chosen path is followed even if another procedure would be more appropriate.

3 Debt adjustment for entrepreneurs

The aim of the 2014 amendment was to fill the gap in legislation that made it impossible for the private entrepreneurs to file for adjustment of both business and private debt, while continuing in business. ReAct did not allow for adjusting private debt and the business restructuring procedure was all the way too costly for small entrepreneurs and self-employed persons. There was an estimation of the cost of the restructuring of € 10.000, with a minimum of € 5.000, consisting mostly

[12] Bankruptcy Act (120/2004) Chapter 22. The calls for creditors are published in the official journal: https://www.virallinenlehti.fi/fi/journal/pdf/2020095.pdf

[13] Bankruptcy Act (120/2004) Chapter 8 Estate administrator; Chapter 10:5 compensation of the administrator form public funds and 11 Public receivership.

of the fees to a lawyer-trustee. The simplified fast track procedure in the ReAct, requiring the acceptance by 80 per cent of the creditors had not become popular as the threshold was set very high. As an additional argument for the special regulation, the Bill mentioned the need and possibility of preserving the debtor's home in debt adjustment, as opposed to restructuring.

3.1 The conditions

The new regulation (DAA 45 §) seeks to help entrepreneurs whose situation is similar or comparable to wage earners. Primarily, the aim is to help entrepreneurs who have encountered unexpected misfortune that has led to a major loss of income, to a big increase in debt or to an interim break in business. The loss of income may be due to a bankruptcy of an important client. Also, an illness may cause a break in self-employment and a major loss of income, which is not compensated by sick-pay, in contrast to salaried workers.

The idea of the 2014 regulation is that an entrepreneur should get the business back on course after the debt adjustment. Thus, debt adjustment is designed for those whose business can survive through a debt adjustment procedure (DAA 45b §). These are debtors whose business makes a profit when the running costs of the business and the living costs of the debtor and dependent family are deducted (profitability- criteria).

According to the practitioners interviewed for this paper, one from the Helpline, Chief of the Bankruptcy Supervision Agency, a district court Judge and an attorney, the profitability of the business is the most common obstacle to plan confirmation.

Even the original 1993 law allowed for adjustment of private debt in these situations. The prerequisite was that the business had no significant business debt or that it could pay the business debt in full. The 2014 amendment modified this condition. The business still has to be profitable but debts deriving from the business can be adjusted and there is no upper limit for the debt. The business must be on a small scale, whatever this means. The entrepreneur may even take up new loans subject to the ability to pay them.

During the hearings in the Parliament, the Parliament Law Committee added a new requirement to the law, that is, the bankruptcy comparison. A court should not confirm a debt adjustment plan if a bankruptcy would yield a better outcome to the creditors.[14]

The bankruptcy comparison has turned out to be a problem with debtors whose business assets have notable value, such as self-employed road construction workers with one machine with a relatively good value. This comparison also excludes most farmers because their assets usually have value, however indebted they are.

3. 2 The institutional setting

The solvency test is not quite simple, not even for a small business. The organization of the procedure is as essential to its success as its legal prerequisites. Help to small and middle-size enterprises has evolved to cover businesses in trouble. The inquiries by entrepreneurs at the verge

[14]Report of the Law Committee 12/2014.

of insolvency are channeled to Enterprise Finland Helpline, a state funded helpline.[15] They help the debtor to find an economic advisor to make an initial assessment and a debt advisor. The economic advisors are private consults, specially trained to evaluate small entrepreneurs. The debt advisors have gained experience in debt adjustment since the DAA was enacted, working in municipal service. If the case seems to fulfil the solvency test and the specific conditions of the DAA, the debt advisor helps the debtor to file for the debt adjustment procedure in the court.[16] When the court opens debt adjustment procedure, usually a trustee is appointed.

In debt adjustment, the court makes the decision on the confirmation of the plan and on the discharge, not the creditors. Therefore, trust must be built on other factors. In the Finnish context the professional and affordable expert work is central in building trust. The Helpline that does the first assessment of the debtor's situation is a state service and so are the debt advisors who have a long experience in debt adjustment proceedings with individual debtors. As former social workers and bank employees, they are not expensive.

The debtor has to pay for the financial expert and the trustee. The state has procured for the services of the financial experts and the state monitors their work. Thus, it is unlikely that fraudulent debtors would get through the system. The trustee's fee is paid with first priority in the plan during the first six months of the plan (DAA 30 §).

3.3 Stay

When the district court opens a debt adjustment procedure, a stay of debt enforcement starts. There are some specific exceptions to stay. According to the special regulation for an entrepreneur, the debtor has to pay the salaries of the workers during the stay and for three months preceding the debt adjustment and the accumulated salaries for annual holidays.

If payments are coming in to a bank account with an overdraw option, such payments are used to pay of the overdraw credit.

The stay covers also secured debt. However, the creditor with a collateral has a right to the interest after the opening of the debt adjustment (DAA 12a §). The creditor cannot terminate the loan (DAA 13.1). If a sale of a property has been announced, the court may terminate the sale if the property is needed in business (DAA 17 §). This rule was originally designed for the home of the debtor, thus, it includes the business premises.

The stay protects the debtor against eviction from the business premises as long as the debtor pays the rent for the time after the opening of the procedure (DAA 18 §).

As a main rule, the debtor is entitled to terminate a contract (DAA 19 §). Ordinary day-to-day contracts can be completed also during the procedure.

[15] https://www.suomi.fi/instructions-and-support/support-and-assistance/information-on-enterprise-finland-telephone-service. The Government Bill for the amendment of the law on the debt adjustment for private persons: HE 83/2014, 32-33. This service is cost free for the debtor.
[16] HE 83/204, 33.

The debtor can terminate a lease of business premises with two months notice. The debtor is liable for costs and loss, which are debts that can be discharged in debt adjustment. The regulation for leasing contracts is in ReAct Act 27 §.

3.4 The plan

The main rules for the payment plan are the same for an entrepreneur as for any other debtor in DA procedure. The duration of the payment plan is generally three years. The four/six months to pay the trustee's fee are added to this time; thus, the duration of the plan can be 3 years +four/six months (30.5 §).

If the debtor can keep an apartment or house she is using as a home, the plan may be longer. Then there is no limit for the secured debt, but for unsecured debt, the maximum is ten years.

All known debts are included in the plan. The information about the opening of the procedure, which goes to all creditors that are known to the trustee and most institutional creditors but there is no formal announcement. The creditors are not required to claim their credit but it enough if it is registered in the accounts of the debtor. Since there is no official announcement, the unknown creditors are not terminated during the procedure.

The creditors do not vote on the plan. It is for the court to decide.

There is a fast track. If the creditors with 80 per cent of total debt and any creditor with more than five per cent of total debt agree on the plan (38a §). Thus, if the debtor has a total debt of €100.000, debtors with €80.000 have to agree and, in addition, any debtor with a claim over €5.000 needs to agree as well. However, most cases follow the normal path where the creditors do not have a vote (DAA 38 §).

3.5 Assessment of the 2014 amendment

The practitioners that I interviewed for this paper in 2016, one from the Helpline, Chief of the Bankruptcy Supervision Agency, a district court Judge and an attorney, where all of the opinion that there have been very few filings. The statistics do not differentiate between entrepreneurs and household debtors. Several experts estimated the number of filings by the entrepreneurs to circa 150, out of which only a handful have led to successful debt adjustment and confirmation of a payment plan.

The number of successful debt adjustments of entrepreneurs is so low that it is premature to say anything about the success of the new procedure. It is reasonable to predict that the scope of the procedure is so narrow that it will leave a number of debtors disappointed. However, it is probably a right decision to start cautiously because the insolvency system is based on trust. Usually in business restructuring the trust is constructed on the creditor's right to vote on the plan and the rules on required majorities. The Finnish ReAct had already in 1993 put the required majority at a minimum, including the opportunity to confirmation of the plan by cram-down (ReAct 54 §).

The preparatory works systematically underlined the similarity of the situation of wage earners and self-employed in relation to small entrepreneurs. While there are important parallels in the contemporary labor market, there are also differences. The entrepreneurs have more control over how much they work and how much money they draw in. This kind of debt adjustment procedure may work well in a country like Finland, where both private individuals and companies make most of

their payments by cards and bank transfers, but in a country that relies more on cash, the confidence might be more difficult to achieve and to sustain.

Finally, we think that this procedure is an important step in the development of insolvency law, not only in Finland but also in a European level. The recognition of small entrepreneurs and self-employed persons in insolvency law is an important principle in itself. If this works, at least for a small group of debtors, the next step should be to make the business restructuring more accessible and affordable for SMEs. To promote these options, it is important as well to promote economic growth and viable business environment.

4 Conclusions

The overall conclusion from this paper is that the Finnish debt adjustment system is complicated, bureaucratic and inefficient. This conclusion holds for all debtors but the problems accentuate when with a debtor who is or has been a private entrepreneur. Now, the new EU Preventive and Restructuring Directive (Dir 2019/1023) argues that the member states should provide debt relief for unsuccessful entrepreneurs in three years. With its complexity, it is questionable whether the Finnish insolvency system fulfils this criterion.

The complexity of the system stems from the three separate insolvency procedures, bankruptcy, reorganization for enterprises and debt adjustment. There is a clear path dependence in the choice of procedure. Bankruptcy leads to liquidation of the assets of the debtor and, if the debtor is a company, the company liquidation as well. Since bankruptcy does not allow any debt alleviation for a personal debtor, an entrepreneur who has been through bankruptcy must file for debt adjustment to receive debt discharge.

To master this complexity, a whole army of experts are needed. In addition to courts, insolvency lawyers process bankruptcy and reorganization procedures, assisted by economic expertise to some extent. The professionals who guide private debtors through debt adjustment process are debt counsellors and trustees. The counsellors prepare the applications and counsel debtors with the management of their finances, aid to change consumer behavior etc. While the help of a counsellor is not mandatory, most debtors need their help to get through the filing procedure. A court may appoint a trustee in debt adjustment if the drafting of the payment plan is complicated or if the debtor has assets that are sold.

The complexity has led to relatively complicated rules on situations in which filings to different procedures are pending simultaneously, but these rules do not much diminish the work of experts. In the case of bankrupt entrepreneur, the administrator or the public receiver has already recorded the assets and liabilities of the debtor. This listing could be the basis of the work in the debt adjustment but the law does not recognize it. In some ways, the debt counsellor starts the work from the beginning.

Obviously, a system with many different experts cannot be very efficient. In European Union law, there is a general requirement that the national procedures should not hamper efficient implementation of European Union law. Thus, the new Restructuring and Preventive Directive, requiring relief for an unsuccessful entrepreneur in three years, becomes interesting. It seems to be questionable whether the Finnish system, which requires a new procedure (debt adjustment) after a

bankruptcy fulfils this requirement. In any case, the requirement of a five year payment plan for a debtor with no payment capacity is longer than the three years mentioned in the directive.

The efficiency of the debt adjustment procedure in itself is also open to discussion. Statistics from both state enforcement authority[17] and the private default register,[18] reporting over 250.000 debtors in default with two million debts in default at one moment, indicate that serious debt problems are common. Yet, the debt adjustment procedure processes only circa 4.000 filings per year. Obviously, the debt counsellors function as gatekeepers in the process. In addition, the complex regulation of the access to debt adjustment seems to set the threshold to debt adjustment high. There seems to be reason to ask whether the threshold is too high.

The overview and reform project of the insolvency laws to account for the requirements of the Restructuring and Preventive Directive (1023/2019) is pending at the Ministry of Justice.[19] The aim is to facilitate a fresh start for entrepreneurs to encourage new businesses. The review should lead to a feasible access to a fresh start either in the bankruptcy process or in a debt adjustment process that feasibly follows a bankruptcy process.

In addition, an overview of the debt adjustment for private persons would be welcome. From an economic point of view, the system is cumbersome with procedural and bureaucratic complexities that decrease the efficiency of the procedure. The system has processed some 4.000 cases annually, which seems to be rather a low number in comparison with the numbers of debtors who default with their payments or who are subject to debt enforcement procedures.

To enhance the overall efficiency of the debt adjustment system following measures could be considered:

- The abolishment of the requirement that a debtor must negotiate with their creditors before filing for debt adjustment in the court,
- The introduction of a public call to creditors when a debt adjustment procedure is opened by the court, with the effect that debts, which the creditors or the debtor do not report within the deadline of the call, are precluded. There should be an electronic platform for registering the debts in a debt adjustment procedure.
- The simplification of the access criteria to the debt adjustment.
- The standard length of the payment plan for persons with no payment capability, now five years, might be shorter, especially for unsuccessful but honest entrepreneurs as debtors.
- The rules on how increased income during the payment plan is used to satisfy the creditors should be simplified, favoring solutions in which the debtor may keep additional income.
- Personal guarantors of loans of debtors in debt adjustment procedure should be included in the process so that their payment obligation towards the creditor could be alleviated, when reasonable.

[17] https://www.stat.fi/til/uloa/2019/uloa_2019_2020-04-09_tie_001_fi.html.
[18] Sara 2021
[19] https://oikeusministerio.fi/hanke?tunnus=OM018:00/2020.

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