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The review “Russian Economy. Trends and Outlooks” has been published by the Gaidar Institute since 1991. This is the 43th issue. This publication provides a detailed analysis of the most significant trends in the Russian economy, global trends in the social and economic development. The work contains 6 big sections that highlight different aspects of Russia’s economic development, which allow to monitor all angles of ongoing events over a prolonged period: global economic and political challenges and national responses, economic growth and economic crisis; the monetary and budget spheres; financial markets and institutions; the real sector; social sphere; institutional changes. The work is based on an extensive array of statistical data that forms the basis of original computation and numerous charts confirming the conclusions.

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Elena Apevalova, Nadezhda Polezhaeva

6.2. Company bankruptcies: current trends[1]

6.2.1. The dynamics of bankruptcies in Russia: compensatory growth in the number of bankruptcies and tougher responsibilities of owners

The statistics for 2021 on company bankruptcies in Russia indicate a low growth in the number of bankruptcies, by 3.9% relative to 2020 (*Fig. 1*).[2]

As one can see, in 2020 there was (for the first time since 2013) a significant decrease, by nearly 20% (471 legal entities), in the number of bankrupt legal entities relative to the previous year (2019), which resulted from the introduction of a moratorium on bankruptcies. Over the period 2014—2019, the number of bankruptcies of legal entities was in the range of 12,500—13,500. Thus, the growth in the number of bankruptcies observed in 2021 was compensatory in nature.

A declining number of bankruptcies in response to the support measures launched in 2020 could be observed not only in Russia, but also, for example, in the USA where, in 2020, the total number of bankruptcy petitions amounted to 544,463, which is approximately by 230,000 less than in 2018 or 2019.[3]

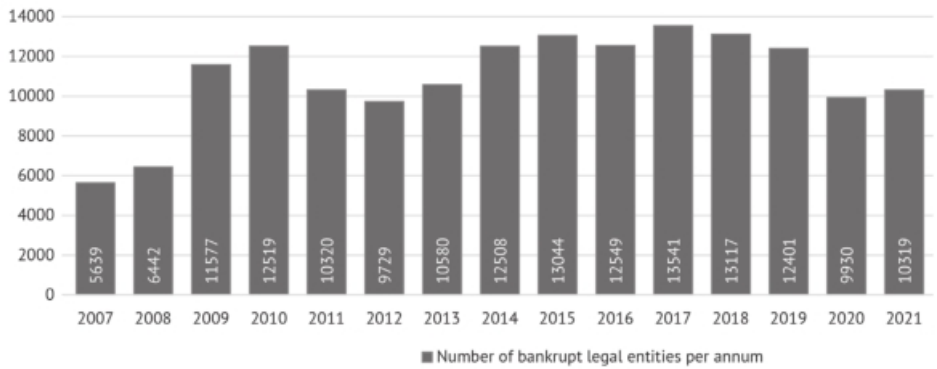

Fig. 1. The movement of the number of bankruptcies of legal entities in the Russian economy

Sources: Center for Macroeconomic Analysis and Short-term Forecasting (CMASF). Bankruptcies of legal entities in Russia: main trends over Q4 2016 (year-end results) and early 2017, URL: http://www.forecast.ru/_ARCHIVE/Analitics/PROM/2017/Bnkrpc-4-16_v3.pdf, March 15, 2017, p. 3. Fedresurs.ru. Bankruptcies in Russia: Statistical Bulletin for Q2 2017, released by the Unified Federal Register of Bankruptcy Information (the Bankruptcy Register), URL: http://bankrot.fedresurs.ru/help/ЕФРСБ%20Бюллетень%202%20кв.%202017.pdf. Bankruptcies in Russia: results for 2021. Statistics released by Fedresurs.ru. URL: https://download.fedresurs.ru/news/Банкротство%20статрелиз%202021.pdf.

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2 Hereinafter: Bankruptcies in Russia: results for 2021. Statistics released by Fedresurs.ru. URL: https://download.fedresurs.ru/news/Банкротство%20статрелиз%202021.pdf (cited as of January 18, 2022).

3 In 2020, the number of filings under Chapter 11 (on small business bankruptcy) alone increased to 8,113. This is nearly 1,300 cases more than in 2019. – *Alan C. Hochheiser*. Consumer Bankruptcy

Such a reduction in the total number of bankruptcy petitions filed during the pandemic was primarily the upshot of the bankruptcy moratorium, including the impossibility to obtain and enforce court orders or claims orders, and the limitations imposed on the types of debt that could be recovered by debt collection agencies.[1]

In general, the measures and methods of support to companies introduced in Russia during the pandemic appear to be quite effective, *but the overall figures by no means fully reflect the specific situation in each particular region across the country*. Thus, if we take a look at the statistics for 2021, broken up by subject of the Russian Federation, on the number of reports on the opening of bankruptcy proceedings in respect of legal entities and peasant farms, in some regions that index will demonstrate a significant increase on 2020. Those regions, just to number a few, include the Rostov region (149.7%), the Republic of Bashkortostan (161.2%), the Tyumen region (143.8%), the Ulyanovsk region (132.8%), the Ivanovo region (167.4%), the Republic of Chuvashia (144.2%), the Sakhalin region (190%), the city of Sevastopol (276.9%), and the Republic of Khakassia (187.5%). It is required, at least, that some special attention be paid to the situation with bankruptcies of companies there, and to the measures designed to support those companies.

More than half of all bankruptcies are observed in just three sectors: trade (2,585 new bankruptcies in 2021, +0.1% relative to 2020); building construction (2,317; +9.8%); and real estate deals (1,199; +1.4%).

In 2022, unless the epidemic situation should significantly deteriorate, or any sudden significant changes occur with regard to support measures or prevailing legislation, this trend is going to persist.

As far as US statistics on bankruptcies of companies are concerned, over the course of January-October 2021, a total of 364 bankruptcy cases were initiated there, which is less than the corresponding indicators for each of the previous 11 years, and represents a sharp drop compared to the Great Recession era, when thousands of companies were annually applying for protection in court.[2] No doubt that this is the result of the large-scale relief measures. However, one cannot rule out an increase in the number of company bankruptcies in 2022-2023 in response to the implementation of riskier investments, carry-forward of debts, increased collateral, and debt maturity dates being reached.[3]

Among the EU member states, if we set data for Q3 2021 against those for Q2 2021 (adjusted for seasonal fluctuations), the highest growth in the number of petitions in bankruptcy will be observed in Romania (+25.2%), Lithuania (+16.4%),

in the Age of COVID-19, URL: https://www.americanbar.org/groups/business_law/publications/blt/2021/07/consumer-bankruptcy/, June 25, 2021.

1 Ibid.

2 *Michael O'Connor, Chris Hudgins*. US corporate bankruptcies reach new low in 2021. URL: https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-corporate-bankruptcies-reach-new-low-in-2021-67459322, November 8, 2021 (cited as of January 18, 2022).

3 *Chutchian Maria*. Bankruptcy filings are down, but lousy deals and operational woes will change that. URL: https://www.reuters.com/legal/transactional/bankruptcy-filings-are-down-lousy-deals-operational-woes-will-change-that-2021-09-14/,14.09.21 (cited as of January 18, 2022).

and Slovakia (+12.3%); and the deepest plunge, in Estonia (-31.6%), Portugal (-12.9%), and The Netherlands (-12.7%).[1]

Further developments in the field of company bankruptcies will largely depend on the future course of the pandemic, on anti-pandemic measures, changes in government regulation in the sphere of bankruptcy, and the pace of reduction in the amount of government financial support allocated to companies.

In recent years, an important trend in the evolvement of Russia's legislation has been *the increasing level of responsibility of companies' CEOs and controlling entities* as a result of the introduction, in 2017, of a new chapter in the Law "On Insolvency (Bankruptcy)", titled "Responsibility of the debtor's CEO and other individuals and entities in a bankruptcy case", and the subsequent rapid increase in the number of cases where the latter were brought to subsidiary liability. Within the framework of that chapter, additional (subsidiary) liability of a company's CEO and the individuals and entities controlling the company is envisaged; the latter can be recognized to be the those who (both individuals and legal entities) for not more than 3 years prior to the emergence of signs of bankruptcy (as well as after their emergence and prior to the receipt, by an arbitration court, of the petition concerning the recognition of the debtor to be bankrupt), had enjoyed the right to issue to the debtor instructions that the latter was obliged to implement, or had had "the ability to otherwise determine the actions of the debtor, including the execution of transactions and the determination of their terms".

Liability is envisaged to be as follows:

— if full redemption of creditors' claims is impossible due to the actions and (or) lack of action on the part of the individual or entity controlling the debtor;
— for a failure to comply with the obligation to submit the debtor's petition to the arbitration court (or to convene a meeting in order to adopt the decision on the debtor's petition to the arbitration court, or to adopt such a decision).

Controlling individuals or entities, unless proved otherwise, are assumed to be as follows:

— the CEO or managing organization of the debtor;
— a member of the debtor's executive body;
— a liquidator or member of the liquidation commission of the debtor;
— a party with the right to dispose of 50% or more of voting shares (or a stake amounting to more than half of the authorized capital), independently or jointly with related parties;
— a party with the right to more than half of votes in a general shareholder meeting of a legal entity (independently or jointly with related parties);
— a party with the right to appoint (or elect) the debtor's CEO (independently or jointly with related parties);

1 Eurostat Statistics Explained. Quarterly registrations of new businesses and declarations of bankruptcies – statistics. URL: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Quarterly_registrations_of_new_businesses_and_declarations_of_bankruptcies_-_statistics&oldid=549179#Quarterly_comparison_by_Member_State (cited as of January 18, 2022).

— a party who has benefited from the unlawful and unscrupulous conduct of the individual authorized by law, etc., to act on behalf of the legal entity.

The mechanism of recognizing individuals or legal entities to be in control of the company and bringing them to subsidiary liability has many nuances that require special attention but cannot be properly discussed here.

In actual practice, subsidiary liability is mainly held by the CEOs and nominee owners of bankrupt companies. Courts of justice bring the beneficiaries to responsibility by establishing the fact of their ownership, including by means of indirect indicia of ownership: e.g., if somebody has declared themselves to be the owner of a given business entity in the media or within the framework of their relations with a tax agency. Moreover, courts of justice have begun to extend liability beyond those individuals who personally control debtors, to their wives and children.[1] According to the Economic Collegium of the Supreme Court of the Russian Federation, this is permissible in respect of those individuals for the benefit of whom property has been alienated, or those who have participated in managing the debtor or in its tax avoidance scheme.[2]

As far as statistics are concerned, in 2015 a total of 444 petitions were filed against companies' CEOs in order to make them liable for insolvency of their companies, and 18 acts for holding them liable (4% of cases); in 2020, there was an almost 15-fold increase in the number of liability-seeking petitions against CEOs; when taken in absolute terms, the figure exceeds 6,500. In this connection, nearly 40% of all petitions are satisfied (*Fig. 2*).

In H2 2021, the number of petitions for subsidiary liability continued to climb, rising about 10% on the same period of 2020, while the percentage of petitions filed with a positive outcome reached nearly 50%.

According to available data, in view of the prospects of companies' CEOs being found liable, the number of cases where claims were satisfied voluntarily and amicable agreements were concluded increased by 1.5 times. With regard to the period 2017–2020, it can be noted as follows:

— there was a 2.5-fold increase in the number of those found to be liable (from 969 in 2017 to 3191 in 2020);
— there was a 3.8-fold increase in the total subsidiary liability imposed on CEOs and controlling entities of companies (from Rb103.2 bn in 2017 to Rb395.3 bn in 2020);
— there was an increase of 16.3% in the average amount of subsidiary liability imposed on CEOs and controlling entities of companies (from Rb106.5 mn in 2017 to Rb123.9 mn in 2020).

In actual practice, there have also been some cases of multibillion-dollar subsidiary liability being imposed. Thus, in 2018, the co-owner and former Director General of Nastyusha Grain Company LLC was found liable in the amount of Rb39.4 bn. In 2019, the Director General of BTK CJSC, a wholesale seller of

1 For more details, see *Zanina A., Volkova E*. Defendants by direct descent. – Kommersant. No. 200, October 30, 2020, p. 1.
2 *Zanina A*. Caught in the crosshairs of subsidiary liability. – Juridical Business. Supplement to the Kommersant newspaper No. 225 December 8, 2020, p. 7.

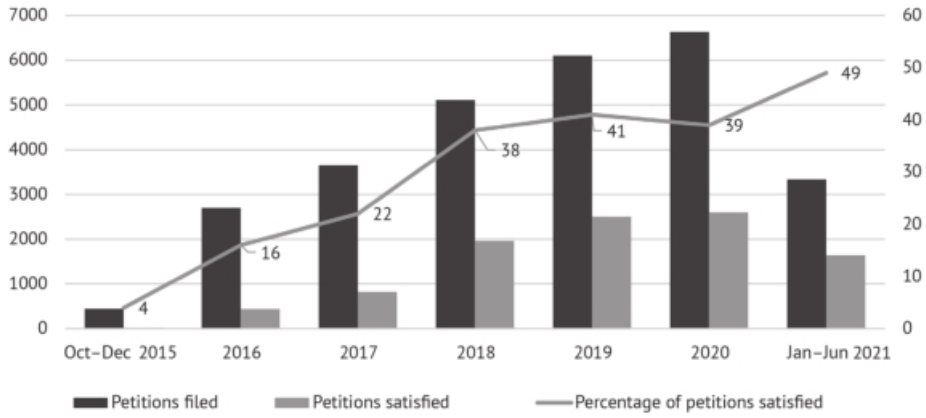

Fig. 2. The movement of the number of subsidiary liability petitions

Source: Fedresurs.ru. Statistical Bulletin as of June 30, 2021, released by the Unified Federal Register of Bankruptcy Information (the Bankruptcy Register) URL: https://download.fedresurs.ru/news/Статистический%20бюллетень%20ЕФРСБ%2030%20июня%202021.pdf, P . 23.

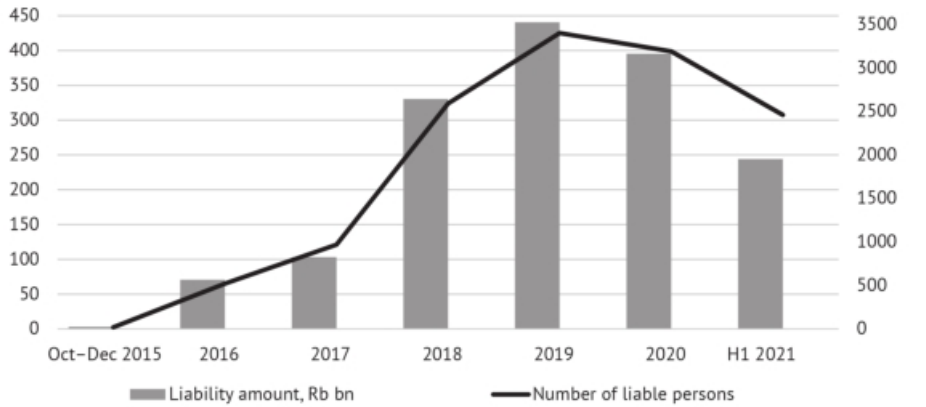

Fig. 3. The movement of the amount of subsidiary liability and the number of those deemed to be liable

Source: Fedresurs.ru. Statistical Bulletin as of June 30, 2021, released by the Unified Federal Register of Bankruptcy Information (the Bankruptcy Register). URL: https://download.fedresurs.ru/news/Статистический%20бюллетень%20ЕФРСБ%2030%20июня%202021.pdf, 23.

household electrical goods, was brought to subsidiary liability for the company's obligations in the amount of Rb41.5 bn for his failure to submit its accounting statements to the arbitration manager. In November 2021, it became known that the decision of the court of first instance concerning the subsidiary liability the founder of the bankrupt agricultural holding Eurodon (a major Russian producer of

turkey and duck meat) for the liabilities of Ursdon LLC (Eurodon's branch) was left unchanged by a court of appeal. As follows from data available from the Unified Federal Register of Bankruptcy Information, its liability for the debts of Ursdon amounts to Rb40.457 bn.[1]

Apparently, over the course of the years 2021 and 2022, we should expect a further increase in the number of cases where the CEOs and controlling individuals and entities of bankrupt companies will be found liable, because this is one of the few available mechanisms of protecting creditor rights that actually work, and, as has been shown in actual practice, it is also quite popular.

In 2021, *the number of legal entities across the economy continued to decline*. As of September 19, 2021, the number of legal entities was 3,316,168.[2] Its shrinkage had begun back in 2016 (*Fig. 4*), when the Federal Tax Service initiated a campaign designed to strike fictitious and inactive companies off the Unified State Register of Legal Entities.[3]

Over the period from 2016 through September 2021, the number of legal entities shrank by 32%, or by approximately 1.5 mn (from 4,816,707 in 2016 to 3,316,168 by September 2021). The key factors that have determined this trend are as follows:

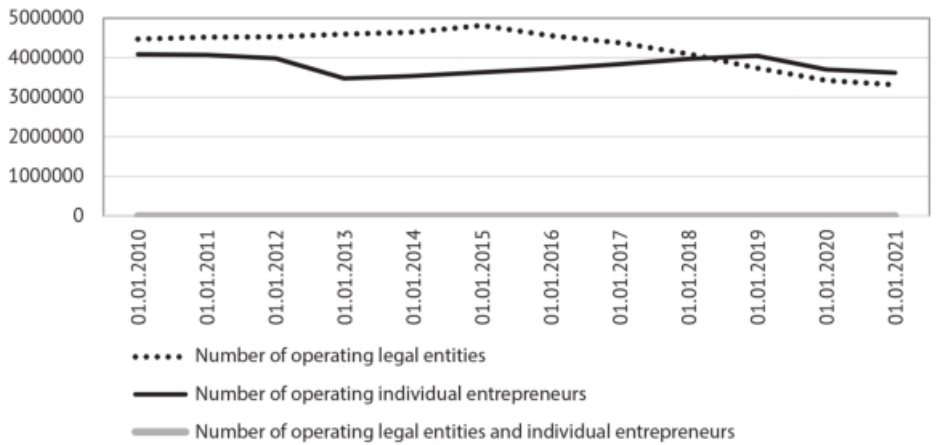

Fig. 4. The movement of the number of legal entities and individual entrepreneurs (2010–2021)

Source: The movement of the number of operating legal entities, individual entrepreneurs, and their total index from 2002 through 2021. URL: https://фси.рф/Main/StatisticalInformation

1 The Court of Appeal confirmed Vaneev's subsidiary liability for the debts of Ursdon in the amount of Rb40 bn. URL: https://fedresurs.ru/news/b9e6fb9f-ff52-4f81-b9dc-523a2230c037, November 9, 2021.

2 Hereinafter: The movement of the number of operating legal entities, individual entrepreneurs, and their total index from 2002 through 2021 (as of September 19, 2021). URL: https://фси.рф/Main/StatisticalInformation

3 Center for Macroeconomic Analysis and Short-term Forecasting (CMASF). Bankruptcies of legal entities in Russia: main trends. – 2021, p. 4.

— *unfavorable economic conditions* (such as sanctions, inflation, difficulties in doing business in Russia[1] that include, among other things, the absence of competitive markets in many sectors, bureaucracy, etc.);
— *intensified activities of the tax service aimed at eliminating fictitious and inactive legal entities.* From 2016 onwards, some new grounds for refusing an entry in the Unified State Register of Legal Entities were introduced in legislation, and the tax agencies were granted the authority to verify the accuracy of information entered into the register, thus empowering them to reduce the number of fictitious companies. The downward trend in the number of operating legal entities has been indeed the result of the efforts to strike off the Unified State Register of Legal Entities those companies and organizations that have actually been abandoned by their owners and organizations, for which inaccurate information has been submitted. The tax service has clarified that over the 3 years starting from 2016, 2.02 mn legal entities were struck off the Unified State Register of Legal Entities;[2]
— *an outflow of entrepreneurs — founders of companies (societies) into the individual entrepreneurship sector.* Among the reasons behind this phenomenon are the difficulties in obtaining loans for companies, the lower tax rate for individual entrepreneurs and the lower risks for the latter to have problems with tax agencies and other state bodies. Starting from mid-2019, the number of individual entrepreneurs for the first time exceeded that of legal entities, and this trend continues.

As far as the movement pattern displayed by the number of new legal entities is concerned, over the period from 2013 through July 2016 it never fell below 40,000 (when cleared of seasonality); then, towards the end of 2019, it plunged still further to less than 25,000; and by August 2021 it reached the level of 20,000.[3] Thus, over the course of 5 years, we can see at least a twofold shrinkage in the number of newly created legal entities. The reasons behind that situation have been explained earlier.

If we look at *global trends*, in 2020, according to available estimates, a total of more than 213 mn companies were operating around the world, of which 132.28 mn were situated in the Asia-Pacific region; 57.24 mn, in Europe, Africa, and the Middle East; and 24 mn, in the Americas. From 2000 onwards, all these regions have been demonstrating a steady increase in the number of companies.[4]

The situation, naturally, can be expected to vary from country to country. Thus, for example, over the period 2010—2014, Germany experienced a decline in the

1 For example, according to a survey conducted by PwC and the NAFI Analytical Center titled "The river moves, unmoving", 87% of companies' top managers believed that doing business in Russia was "rather difficult or very difficult". – *Kokoreva M*. High taxes and state pressure: businesses in Russia named their main problems. – Forbes, November 25, 2021.

2 Hereinafter: *Rozhkova E*. Bad company: the number of legal entities in Russia decreased by 800,000. URL: https://iz.ru/892313/elena-rozhkova/plokhaia-kompaniia-kolichestvo-iurlitc-v-rossii-sokratilos-na-800-tys, June 27, 2019.

3 For more details, see Center for Macroeconomic Analysis and Short-term Forecasting (CMASF). Bankruptcies of legal entities in Russia: main trends over Q3 2021. URL: https://arb.ru/upload/iblock/6c8/Bnkrpc-3-21.pdf, c. 7.

4 *Clark D*. Number of companies worldwide 2000–2020, by region. URL: https://www.statista.com/statistics/1260719/global-companies-by-region/#statisticContainer, September 3, 2021.

number of newly created limited liability companies — from 74,000 to 67,5000, or by 6,500. However, later on, from 2015 through 2019, the number of new companies resumed growth, increasing from 69,400 in 2015 to 74,000 in 2019, or by 4,600. As far as their total number is concerned, over the period from 2006 to 2019 it was continuously on the rise, increasing from 467,600 to 643,100,[1] or by 37.5%. Overall across the EU, one can point out an upward trend in the number of registered companies that was observed from early 2015 through Q4 2019, with subsequent fluctuations caused by containment measures and the coronavirus crisis as a whole.[2]

6.2.2. Reforming the institution of bankruptcy: EU and Russian practices

The debtor bailouts and bankruptcy moratoriums launched in many countries[3] have actually worked reasonably well, preventing an avalanche of company bankruptcies; however, legislations of many European countries provide for lengthy bankruptcy procedures that are not intended to restore companies' solvency/liquidity of their assets. The natural upshot of the intention to further prevent mass bankruptcies were changes introduced in bankruptcy legislations with the purpose of creating new opportunities and mechanisms for keeping businesses going.

In 2021, new insolvency laws came into force in Germany, The Netherlands,[4] Italy (in part), France, Austria, and Brazil. In 2022, it is planned to adopt new bankruptcy laws in Spain and Italy.[5]

Some of them were based on the mechanisms set forth in the EU Directive on preventive restructuring frameworks adopted in 2019 (Directive (EU) 2019/1023).[6] The reform outlined in that Directive (dated June 20, 2019) represents the first attempt at harmonizing national insolvency laws across the European Union; in this connection, it introduces into European law some concepts from Anglo-Saxon law, such as, e.g., cramdown whereby a debtor may change the terms of a contract with a creditor in a court proceeding. This provision allows a reduction in the amount owed to the creditor to reflect the fair market value of the collateral that was used to secure the original debt.

1 For more details, see Entrepreneurship Database. URL: https://www.worldbank.org/en/programs/entrepreneurship. (cited as of January 13, 2022).

2 For more details, see Eurostat statistics explained. URL: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:New_businesses_bankruptcies_Q32021data.jpg (cited as of January 13, 2022).

3 For more details, see *Apevalova, E.A., Polezhaeva, N.A.* Coronavirus crisis and company bankruptcies (2020). // Russian Economy in 2020. Trends and Outlooks (Issue 42). – M., IEP, 2021.

4 *Lehmann Alexander*. New EU insolvency rules could underpin business rescue in the COVID-19 aftermath. URL: https://www.bruegel.org/2021/03/new-eu-insolvency-rules-could-underpin-business-rescue-in-the-covid-19-aftermath, March 24, 2021.

5 New restructuring tools in Europe: Keeping up with the competition. URL: https://www.ashurst.com/en/news-and-insights/insights/new-restructuring-tools-in-europe-keeping-up-with-the-competition, October 29, 2021 (cited as of January 21, 2022).

6 Hereinafter: EUR Lex. Directive (EU) 2019/1023 of the European Parliament and of the Council. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L1023 (cited as of November 17, 2021).

The coronavirus pandemic and the resulting containment measures enforced over 2020-2021 exacerbated the situation with company bankruptcies and sped up the insolvency legislation reform aimed at creating new opportunities and mechanisms for preserving businesses. Now let us discuss the key mechanisms introduced in the EU Directive in more detail.

First, there are transparent *early warning tools for preventing a possible bankruptcy*, the access to which should be provided by the member states. These include warning the debtor of outstanding payments, the provision of consulting services, and a system of incentives on the part of public authorities (tax and social security agencies) designed to ensure a timely notification of the threat of bankruptcy.[1] The EU member states must ensure universal accessibility and proper conditions for debtors and representatives of employees to all relevant information on these issues, as well as on the procedures and measures relating to debt restructuring and repayment.

Secondly, there are *preventive restructuring frameworks* that allow restructuring to be carried out in order to prevent a company's insolvency and ensure its viability, without any discrimination towards other available insolvency preventing solutions, thereby protecting jobs and maintaining business activity:

1) restricted access to a preventive restructuring framework for debtors – individuals who have been sentenced for serious breaches of accounting or bookkeeping obligations, until the implementation of adequate measures designed to eliminate the violations for which they were sentenced, and the notification of the creditors thereof, so that they could make a restructuring decision;

2) the implementation of a viability test in accordance with the national law, provided that such a test is intended to exclude those debtors that have no prospect of restoring their viability, and that it can be implemented without any detriment to the debtors' assets;

3) the enactment of *a provision whereby the participation of a judicial or administrative body in preventive restructuring is restricted* whenever this would be necessary and proportionate, while ensuring the protection of the rights of any affected parties and relevant stakeholders.

Under a general rule, the preventive restructuring framework should be available at the request of debtors. However, the member states may also provide that *the preventive restructuring framework should be available at the request of creditors and employee representatives*, on condition that the debtor agrees thereto. The member states may limit the requirement for debtor consent only to those cases where the debtors are small and medium-sized enterprises (SMEs).

Third, *the negotiations on preventive reorganization plans should be facilitated*, which may include as follows:

1) granting to those debtors who have access to preventive restructuring procedures also a full or at least partial control over their assets and day-to-day operation of their businesses;

1 Hereinafter: EUR Lex. Directive (EU) 2019/1023 of the European Parliament and of the Council. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019L1023 (cited as of November 17, 2021).

2) the decision concerning the appointment of a practitioner in the field of restructuring by a judicial or administrative body should be made on a case-by-case basis, unless there exist some special circumstances;

3) the appointment of a practitioner in the field of restructuring in the following cases:

— individual enforcement actions are suspended by a judicial or administrative body, and there is a necessity to protect the rights of creditors;
— when a restructuring plan must be confirmed by a judicial or administrative authority through classification in accordance with Article 11 of the EU Directive on preventive restructuring frameworks;
— if this has been requested by the debtor or a majority of creditors, provided that the costs of the practitioner serviced are borne by the creditors.

Fourth, a *stay of enforcement actions.* It may be general and limited. The purpose of a stay of enforcement actions is to ensure that debtors may benefit from it in order to carry on negotiations on a restructuring plan as part of a preventive restructuring framework.

Initially, the suspension of individual enforcement actions should apply for a maximum period of up to 4 months. However, it can also be possible to extend this period at the initiative of the debtor, the creditor and, wherever possible, the practitioner in the field of restructuring, in the following cases:

1) if progress in restructuring plans has been achieved;

2) if the continued suspension of some of enforcement actions does not unfairly prejudice the rights or interests of any of the affected parties;

3) if insolvency proceedings that could result in a liquidation of the debtor under national law have not yet been initiated against the debtor.

The total period of stay of individual enforcement actions, including extension periods, should not exceed 12 months.

Fifth, *a restructuring plan*. The Directive lays down minimum standards for the content of a restructuring plan, which, among other things, should include:

— the estimated financial flows of the debtor, if provided for by national law;
— any new financing anticipated as part of the restructuring plan, and the reasons why the new financing is necessary for the implementation of that plan;
— a statement of reasons which explains why the restructuring plan has a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business, including the necessary pre-conditions for the success of the plan. The member states may require that the statement of reasons be made or validated either by an external expert or by a practitioner in the field of restructuring, if such a practitioner is appointed.

As a minimum, creditors of secured and unsecured claims should be treated in their own separate classes for the purposes of adopting a restructuring plan, and workers' claims should be put in their own separate class. The member states may provide that debtors that are SMEs can opt not to treat affected parties in separate classes.

The member states should lay down the majorities required for the adoption of a restructuring plan. Those majorities are not to be higher than 75% of the amount of claims or interests in each class or, where applicable, of the number of affected parties in each class.

The member states must ensure that the restructuring plans confirmed by a judicial or administrative authority should be binding on all the related parties.

Sixth, the *protection for new financing and interim financing*. The member states should ensure that new financing and interim financing are adequately protected. As a minimum, in the case of any subsequent insolvency of the debtor:

1) new financing and interim financing should not be declared void, voidable or unenforceable; and

2) the grantors of such financing should not incur civil, administrative or criminal liability, on the ground that such financing is detrimental to the general body of creditors, unless other additional grounds laid down by national law are present.

The member states may provide that these provisions only apply to new financing if the restructuring plan has been confirmed by a judicial or administrative authority, and to interim financing which has been subject to *ex ante* control.

Seventh, the *protection for other restructuring related transactions.* These include the payment of fees for and costs of restructuring; the payment of fees for and costs of seeking professional advice; the payment of workers' wages for work already carried out; any payments and disbursements made in the ordinary course of business.

Eighth, *discharge of debt.* The EU member states must do as follows:

1) ensure that insolvent entrepreneurs have access to at least one procedure that can lead to a full discharge of debt in accordance with this Directive;

2) may require that the trade, business, craft or profession to which an insolvent entrepreneur's debts are related has ceased;

3) must ensure that the related repayment obligation be based on the individual situation of the entrepreneur and, in particular, be proportionate to the entrepreneur's seizable or disposable income and assets during the discharge period, and takes into account the equitable interest of creditors. This is the case when a full discharge of debt is conditional on a partial repayment of debt by the entrepreneur.

As a general rule, the period after which insolvent entrepreneurs are able to be fully discharged from their debts is no longer than 3 years.

If professional debts incurred in the course of trade, business, craft or profession cannot be reasonably separated from personal debts, such debts are treated in a single procedure. If it is possible to differentiate, they are separated.

As far as the appointment of practitioners in procedures concerning restructuring is concerned, the most significant provision is that in order to avoid any conflict of interest, debtors and creditors should have the opportunity to either object to the selection or appointment of a practitioner, or request the replacement of the practitioner.

The EU member states should put in place appropriate oversight and regulatory mechanisms to ensure that the work of practitioners is effectively supervised,

with a view to ensuring that their services are provided in an effective and competent way, and, in relation to the parties involved, are provided impartially and independently. Those mechanisms should also include measures for the individual accountability of practitioners who have failed in their duties.

The reform of the institution of bankruptcy in Italy was launched in 2021.

In August 2021, by Law Decree No. 118/2021, the entry into force of the Italian Crisis Code was postponed until May 18, 2022, and part of the measures, namely procedures related to the prevention of a business crisis, were postponed until December 31, 2023. In November 2021, the norms stipulated in the law regulating the voluntary settlement of a business crisis through negotiations came into force.[1] The purpose of the negotiated settlement procedure is to restore the company's solvency, and it can be initiated by the debtor. The procedure is absolutely confidential. The application is submitted through an information platform.

The entrepreneur will be assisted by an independent third-party expert with specific crisis management skills, who could facilitate negotiations with the creditors, in order to lead the company to its recovery. The expert is appointed by a commission, which should consist of three professionals in the relevant field appointed by the Chamber of Commerce for a period of 2 years.

Further, *a simplified procedure for the assignment of the assets of the distressed company to the creditors (a type of liquidation)* is introduced. This phase starts 60 days after a negative outcome of the negotiated settlement procedure was achieved. The entrepreneur must submit to a court of justice a proposal concerning the composition of assets alongside their sale plan, and request its approval (after a feasibility decision has been received), in absence of arguments in favor of alternative bankruptcy. The main "simplification" of this procedure is that a meeting and voting of creditors is no longer necessary.

Besides, some other changes to the bankruptcy law were introduced, the most important ones appearing to be as follows:

— a moratorium convention that allows, by an agreement between the entrepreneur and his creditors, an extension of the maturities of claims, the waiver of acts or the suspension of enforcing and conservative actions;
— the provisions for financing and business continuity within the framework of arrangements with creditors and debt restructuring agreements;
— an approval of an agreement with creditors, which may take place even in the absence of a public creditor;
— extended validity of restructuring agreements.

The EU Directive will be transposed into national law by the new Italian Bankruptcy Code, which will take effect on May 16, 2022, to replace the existing Italian bankruptcy law.[2]

1 Hereinafter: *Mauro Battistella*. The recent reform to the Italian Bankruptcy Law to support the restructuring of the crisis of the companies. URL: https://www.lexology.com/library/detail.aspx?g=43311989-7c7e-41f7-aaf6-a4d6f6a13cc7, (cited as of December 4, 2021).

2 New restructuring tools in Europe: Keeping up with the competition. URL: https://www.ashurst.com/en/news-and-insights/insights/new-restructuring-tools-in-europe-keeping-up-with-the-competition (cited as of December 2, 2021).

The reform of the bankruptcy system in France introduces classes of creditors and encourages the recapitalization of bankrupt companies. The crisis of 2020—2021, which began as the COVID-19 pandemic crisis and evolved into an economic one, revealed not only the limitations of France's insolvency legislation in the field of business bankruptcies, but also the strategic importance of bankruptcy legislation in mitigating the effects of the economic downturn.[1]

It also accelerated the incorporation of the EU Directive on preventive restructuring frameworks (2019/1023) into French law, which was formalized as of October 1, 2021 by Ordinance No. 2021-1193 dated September 15, 2021 and implemented by Order dated September 23, 2021. The legislator also augmented French legislation by a number of measures adopted under Ordinance No. 2020-596 dated May 20, 2020 (known as Covid-Ordonnance).

Ordinance No. 2021-1193 dated September 15 introduced significant changes into the French Commercial Code Book VI, aiming to improve the efficiency of restructuring procedures. Nevertheless, this does not translate into major changes in insolvency legislation. As the Report to the President of the Republic on Ordinance No. 2021-1193 makes clear, this happens because the legislator has not found it necessary "to question the general architecture (of restructuring), but rather to clarify/specify the law".

The main innovation is the *introduction of classes of creditors*, which will replace the traditional committees of creditors. Creditors will be divided into classes as soon as the company exceeds 250 employees and a turnover of €20 mn, or simply exceeds a turnover of €40 mn. Regardless of these thresholds, classes will be mandatory in an accelerated safeguard proceeding. The allocation of creditors to these classes is the debtor's responsibility. The criterion for grouping creditors in the same class is primarily the quality of the claim, for example privileged or only unsecured.

To preserve the interest of the creditors, the reorganization or safeguard plan proposed by the debtor will be adopted if most of the classes vote in favor.

However, this solution is subject to several mechanisms. First, the Court must verify that forced implementation of the plan does not further deteriorate the situation of the creditor who refused it compared to the situation that would be his in a compulsory liquidation. In addition, at least one class of privileged creditors must have accepted the plan. A so-called "absolute priority rule" is also imposed, whereby a senior class of creditors who voted against the plan must be fully satisfied by the same or equivalent means for a junior class to be entitled to a payment or retain an interest. Considering the necessary staff and turnover thresholds, the introduction of affected party classes will affect only a minority of proceedings.

In order to make the conciliation proceedings more attractive, the legislator has also maintained the possibility for the President of the Court, at the request

1 Hereinafter: *Arnaud Pédron, Numa Rengot*. French insolvency law reform of 15 September 2021: beyond a simple transposition of the EU Directive of 20 June 2019. URL: https://www.franklin-paris.com/en/news-en/french-insolvency-law-reform-of-15-september-2021-beyond-a-simple-transposition-of-the-eu-directive-of-20-june-2019 (cited as of December 11, 2021).

of the debtor, to suspend the enforceability of the claim as well as the individual proceedings that the creditor would initiate.

Furthermore, to promote the celerity of proceedings, the legislator reduced the observation period of safeguard proceedings. The latter can no longer exceed 12 months (as opposed to 18 months previously).

The observation period starts at 6 months by court decision, which can now be extended only once for 6 months by a specially motivated decision.

The judgment opens an observation period of 6 months, which can now be renewed only once for 6 months on a specially motivated decision.

With the same objective, the order introduces the possibility to accelerate the observation period and the examination of the plan, when commitments for the settlement of liabilities are established based on a certificate from the accountant or the auditor.

In addition to the legislator's desire to improve the attractiveness and efficiency of French pre-insolvency and insolvency proceedings, he also wishes to encourage the recapitalization of distressed companies to promote their recovery.

The order confirms the creditor's privilege originally introduced by the Covid measures of May 2020. It will be granted to those creditors who have made a new cash flow injection during the observation period of a court driven restructuring proceedings (receivership or safeguard proceedings) to ensure the maintenance of the debtor's activity. These "post-money" claims will thus be settled just after the wage claims in the order established by Article L. 622-17 of the Commercial Code.

At the same time, the order modifies the provisions relating to the accelerated safeguard proceedings. Accelerated safeguard proceedings will now have a duration of 2 months, extendable up to a maximum total duration of 4 months. The legislator also perpetuates the measure resulting from the Ordinance of 20 May 2020 whereby the thresholds for opening accelerated safeguard proceedings are abolished.

This reform aims to protect distressed companies by making French restructuring proceedings more attractive and efficient, while reorganizing the balance of power between the debtor, its shareholders and its creditors and encouraging recovery and second chances for companies in crisis.

As far as Russia is concerned, the draft law on restructuring of companies submitted to the State Duma and scheduled to be considered in the autumn of 2021 is quite in line with the global trends, but has given rise to a lot of objections. We already discussed its key provisions in the previous issue of the Gaidar Institute's annual review.[1] By way of compromise, in the latest version of the draft law the introduction of a 2-year transition period was proposed, during which both the old and new procedures for the bankruptcy of companies will be applicable, but so far this proposal has not accelerated its adoption.

As for the current bankruptcy legislation, the most *important innovations* introduced in 2021 are as follows.

1 For more details, see *Apevalova, E.A., Polezhaeva, N.A.* The coronavirus crisis and company bankruptcies (2020). // Russian Economy in 2020. Trends and Outlooks (Issue 42). – M., IEP, 2021.

1. From July 12, 2021, *criminal liability for premeditated bankruptcy and bankruptcy misconduct was strengthened*.[1] Increased liability now applies to:

— individuals who have used their official position to commit this criminal offence;
— individuals and entities controlling the debtor, and their CEOs;
— arbitration administrators;
— chairpersons of liquidation commissions (liquidators);
— individuals who have committed a crime by prior conspiracy or by an organized group.[2]

However, an individual who has committed illegal actions in bankruptcy may be exempted from criminal liability (in the absence of another *corpus delicti* in their actions):

— if this is their first breach of law;
— if they actively contributed to the disclosure and (or) investigation of the crime, voluntarily reported the individuals who had benefited from the illegal or dishonest behavior of the debtor, or disclosed information on the property (income) of those individuals, the amount of which could really compensate for the damage caused by the crime.

2. From October 18, 2021, *a number of innovations were introduced with regard to bankruptcy of banks* which handle individual deposits, among which there is the transfer of bank management functions to the Deposit Insurance Agency after the revocation of their licenses.

Creditors will be affected by the following innovations:

— in order to be able to participate in the first meeting of creditors, they must present claims against the bank within 30 workdays from the date of publication in the Kommersant newspaper of the information on the start of the receipt of such claims;
— objections to the result of the consideration by the provisional administration of the creditor's claim may be filed with the arbitration court within 10 workdays from the date of receipt of that result.

3. *The regulator will now maintain a list of supervisors* of each credit institution, insurance organization and private pension fund. The data necessary for keeping that list will be submitted by the supervised organizations. In addition, the RF Central Bank will be able to independently put new individuals or entities on the list. Those included in the list may challenge this decision by applying to the special commission under the RF Central Bank.
4. From January 2, 2021, the specific features of bankruptcy in case of *syndicated lending* are established. Under a general rule, any member of a syndicate of lenders can apply to the other members with the proposal that a bankruptcy petition of the borrower or collateral provider should be filed. The proposal is submitted through the credit manager, who

1 Review: Key changes in bankruptcy law in 2021 (Consultant Plus, 2021).
2 For more details, see Federal Law No. 241-FZ dated July 1, 2021 "On introducing alterations to some legislative acts of the Russian Federation".

notifies the other members. The credit manager himself can also initiate a discussion on the issue.

5. Digital currency is now included in the debtor's assets.
6. *From April 28, 2021, the conditions for the foreclosure of an only home are applied with due regard for the instructions of the Constitutional Court, which stipulates that* "housing foreclosure cannot be denied simply because this is the only home" (this measure is relevant to our discussion here, e.g., the enforcement of subsidiary liability of a company's director and controlling individuals). When making decisions concerning such foreclosures, courts of justice must give consideration to:[1]

— the estimated market value, set against the amount of debt;
— whether there has been a violation of the law committed by the debtor. This may be indicated, for example, by the date on which the home was purchased (before or after the acknowledgement of debt).

In any case, this measure should not:

— be a punishment or a means of intimidation;
— force an individual to change their place of residence;
— to leave them without a suitable dwelling with an area not less than that stipulated in the social rent agreement norms and situated in the same settlement.

In actual practice, this means that, for example, the only expensive home may be sold in order to satisfy creditors' claims, and the debtor will be given the opportunity to buy a home of lower value/less area, but in the same place of residence and in the amount of 33 square meters of total living space per individual.

* * *

Thus, we can sum up the following most notable *trends* as follows:

1) compensatory growth in the number of company bankruptcies in the EU member states and Russia, due to the end of bankruptcy moratorium and the curtailing, in a number of countries, of relief measures targeting businesses;

2) bankruptcy reforms and plans for adopting systemic legislative measures designed to transform existing bankruptcy models in favor of the debtor, and expanding opportunities for companies to retain their business. Russia is also taking steps to draft and negotiate a law on restructuring frameworks, but the interests of companies that have been damaged during the pandemic need to be considered more comprehensively. It seems appropriate to introduce a baseline law on business restructuring frameworks (delineating separate blocks, e.g., that on bankruptcy trustees, which will require some additional discussion with due regard for the interests of all stakeholders), perhaps with the introduction of the

1 Resolution of the RF Constitutional Court No. 15-P dated April 26, 2021 "On the case of checking the constitutionality of the provisions in the second paragraph of Part 1 of Article 446 of the Civil Procedure Code of the Russian Federation, and Item 3 of Article 213.25 of the Federal Law "On Insolvency (Bankruptcy)" in connection with the complaint filed by citizen I.I. Revkov." – Consultant+.

proposed transition period, during which it will be possible to take advantage of both the old and new procedures provided by legislation;

3) since 2016 in Russia, there has been a steady decline in the number of legal entities, primarily companies, including as a result of a shift of company owners to the individual entrepreneurship sector, which is an indirect evidence of the existence of general barriers to medium-sized and small businesses. These also include difficulties in getting loans, the specifics of taxation and pension fund fees, and the general economic conditions aggravated by the pandemic.