CONFERENCE ON EUROPEAN RESTRUCTURING AND INSOLVENCY LAW

Contact:
Prof. Reinout Vriesendorp
Leiden Law School
PO Box 9520
2300 RA Leiden
The Netherlands
E: info@ceril.eu
W: www.ceril.eu

Date: 28 September 2022
Re: CERIL Report 2022-3

Reporters: Profs. Catarina Frade and Annina H. Persson[1]

CERIL Report 2022-3

on the Consumer as a Creditor in Corporate Restructuring and Insolvency

[1]This Report is prepared by CERIL Working Party (WP) 4 on Consumer Rights. The WP that discussed and contributed to this Report consisted, in addition to its co-chairs Catarina Frade and Annina Persson, of the conferees participating in this WP. See https://www.ceril.eu/working-parties/wp-4-consumer-rights.

The reporters would like to express their gratitude for their extensive contributions to Prof. Kim Sommer Jensen (Denmark); Prof. Tuula Linna (Finland); Prof. Lorenzo Benedetti (Italy); Prof. Joanna Kruczalak-Jankowska and Monika Maśnicka (Poland); Marie Meling (Norway); Dr. Miodrag Đorđević, Pija Okoren and Blaž Možina (Slovenia), Prof. Ana Conceição (Portugal); and Prof. Yolanda Bergel Sainz de Baranda (Spain).

CONTENTS

1 INTRODUCTION

When talking about insolvency law and court proceedings, consumers are usually given particular consideration when they are involved as insolvent debtors, but only rarely when they are involved as creditors. However, the insolvency of companies can also imply losses for consumers who, as customers/clients, may be deprived of a good or service that may be of utmost importance for their private lives and for which they may have already paid in advance, especially prior to an event leading to the company's insolvency. As a group, consumers may be the largest in number, but their bargaining power tends to be low and fragmented.

If a consumer has a claim against a company that has become insolvent, it can be difficult to receive a dividend. Consumers' claims are deemed unsecured and this means that the chances of being repaid are small. As individuals, acting mostly in a non-professional way, they can be profoundly, negatively affected by the insolvency of a retailer, being a travel agency, a language centre or a driving school.

In this study, we present some general conclusions on the consumer's position in case its counterparty enters restructuring or insolvency proceedings, including restructuring frameworks based on the Preventive Restructuring Directive (2019/1023).[2]

Before we present our conclusions and an analysis of a consumer's position as a creditor in insolvency and restructuring in nine European countries, we will put forth, in chapter 2, a brief overview of a consumer's status under the present EU consumer law. The overview of nine European countries is presented in an Annex to this Report. These reports were kindly prepared by several colleagues, to whom we address our deep gratitude and recognition. The national reports offered in this study have been prepared in 2021, based on a questionnaire, which is added as a separate Annex to this Report. After having drawn general conclusions based on these nine national reports in chapter 3, we present our tentative conclusions in chapter 4, followed by chapter 5 with our general recommendations.

2 A BRIEF OVERVIEW OF THE CONSUMER POSITION UNDER PRESENT CONSUMER LAW

In general, during the last years, the European Commission has continued to strengthen the consumer's positions in EU Members States. In 2018, the Commission has for example, initiated a *New Deal for Consumers*.[3] This initiative aims to strengthen the enforcement of EU consumer law in light of the growing risk of EU-wide infringements. The initiative also aims to modernise EU consumer protection rules in view of the market development. Thus, the following two instruments have been adopted, namely (1) the Directive on better enforcement and modernisation of EU consumer protection

[2] 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 ('Directive on restructuring and insolvency').

[3] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, A New Deal for Consumers, 11 April 2018, COM(2018) 183 final.

(2019/2161),[4] and (2) the Directive on representative actions (2020/1828).[5] Other important instruments regarding consumer law are the Directive on contracts for the sale of goods (2019/771)[6] and the Directive on contracts for the supply of digital content and services (2019/770).[7] As fairness is an overarching principle in all business-to-consumers relationships, the Commission has provided further guidance on the two applicable directives on unfairness, namely the Unfair Commercial Practice Directive (2005/29/EC)[8] and the Unfair Terms Directive (93/13/EEC).[9] Additional guidance has also been made on the Consumer Rights Directive (2011/83/EU)[10] and the Price Indication Directive (98/6/EC).[11]

Furthermore, consumer protection regarding payments services has been strengthening through the Directive on payment services in internal market (2015/2366).[12] Several other regulations and directives have also been introduced to protect the consumers when traveling by air (Regulation 261/2004),[13] rail (Regulation 1371/2007),[14] sea (Regulation

[4] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, OJ L 328/7.

[5] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, OJ L 409/1.

[6] Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, OJ L 136/28.

[7] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, OJ L 136/1.

[8] Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market,29 December 2021, Document 52021XC1229(05), OJ C 526/1.

[9] Commission notice — Guidance on the interpretation and application of Council Directive 93/13/EEC on unfair terms in consumer contracts, 27 September 2019, Document 52019XC0927(01), OJ C 323/4.

[10] Commission notice Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights. Document 52021XC1229(04), 29 December 2021, OJ C 525/1.

[11] Commission Notice – Guidance on the interpretation and application of Article 6a of Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of the prices of products offered to consumers. Document 52021XC1229(06), 29 December 2021, OJ C 526/130.

[12] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337/35.

[13] Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ L 46/1. See also Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204/1.

[14] Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, 1177/2010, OJ L 315/14.

1177/2010),[15] or bus (Regulation 181/2011[16] or when booking a package holiday (Directive 2015/2302).[17]

In all, the Commission has taken a rather strong position in emphasising a European citizen's day-to-day life of buying products, receiving digital services or engaging in travel as well as protecting them against unfair businesses, including unfair contractual terms. However, the above-mentioned directives and regulations seldom provide provisions that protect consumers in case of a provider's insolvency. The exception to this rule is worth mentioning, i.e., the Directive 2015/2302 on package travel that ensures protection for consumers against the insolvency of the travel agencies, namely the reimbursement of prepayments made by travellers (Articles 17 and 18).

3 FINDINGS FROM NINE NATIONAL REPORTS

From the analysis of the national reports (see Chapter 7, Annex, with national reports on Denmark, Finland, Italy, Norway, Poland, Portugal, Slovenia, Spain and Sweden) some common trends emerge and problems can be presented here. The nine national insolvency regimes described in this study do not entail any special provisions regulating consumers' rights in restructuring and insolvency proceedings. Consumers are generally treated in the same way as other creditors in restructuring as in insolvency proceedings, their claims are considered unsecured. As a creditor, a consumer can file for insolvency proceedings of a retailer. However, considering that in some cases creditors must make a security deposit when filing for such a proceeding, and that filing is often costly, one can expect that consumers can be hesitant to file for insolvency.

In the Scandinavian countries (Denmark, Finland, Norway and Sweden) *constitutum possessorium* is not accepted as a valid means for the delivery of goods. Still, a consumer can be protected – also in a restructuring or insolvency proceeding – against a seller's creditors as of the conclusion of a contract with the seller. However, it is required in such a case that the goods have been individualised for the buyer, in Sweden, this can take place by separation, marking or a specification in the seller´s bookkeeping.

A consumer claim in the form of a gift card or voucher is normally considered an unsecured claim. Consumers who have paid via credit card may get the payment back from the credit card company.[18] A consumer with an unredeemed gift card or voucher is not able to receive money or goods from the insolvent estate after the insolvency proceeding has commenced. However, an individual consumer can lodge his/her claim in the same way as other unsecured creditors.

[15] Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004, OJ 334/1.

[16] Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport, OJ L 55/1.

[17] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, OJ L 326/1.

[18] See also Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337/35.

To date, from the nine jurisdictions studied, the transposition of the Preventive Restructuring Directive (2019/1023) has not been completed except for Portugal, where an amendment to the 2004 Insolvency and Corporate Recovery Code (CIRE)was adopted in January 2022 and came into force in April 2022. For the other jurisdictions where legislative proposal to transpose the Directive on restructuring and insolvency are pending do not seem to predict special rules regarding consumers as creditors currently. The Portuguese transposition admits the possibility for debtors to identify categories of creditors (which may include consumers) in restructuring proceedings.

In all, there is no direct link between consumer and insolvency law in the countries studied in this report. Nevertheless, it is worth mentioning that due to Directive on package travel and linked travel arrangements, all EU Member States have adopted rules to ensure protection for consumers against the insolvency of travel agencies.[19]

For consumers, cross-border insolvencies are an issue *per se*. They emerge as a complex issue that makes it a challenge to design special rules for consumers. As creditors, consumers share the same difficulties as other creditors, including limited access to information and legal support to file their claim in cross-border proceedings. If consumers already have little incentive to file under domestic law, they will most certainly be less proactive to file their claim in insolvency proceedings under foreign laws.

The Preventive Restructuring Directive (2019/1023) addresses consumers only directly when referring to over-indebted persons. The Directive recommends that EU Member States extend debt discharge mechanisms to individuals too. As creditors, they may be implied when the Directive recognises the categories of creditors as a separate class for the purpose of voting on a restructuring. However, for instance, the Portuguese transposition did not make any special acknowledgment of consumers as such a category.

4 GENERAL CONCLUSION REGARDING THE CONSUMER'S POSITION IN INSOLVENCY AND RESTRUCTURING LAW

This exploratory study shows that the consumer's position in insolvency and restructuring proceedings is generally weak. In insolvency, the consumer is treated as an unsecured creditor, which often – with the many assetless estates in many jurisdictions – will be without any dividends to consumers. The position may be a slightly better in a restructuring, as it is possible to pay the consumer´s claim and thereby make the consumer a so-called non-affected party by the restructuring plan.[20] When considering how many consumers do prepayments in advance, prior to the delivery of goods and services, there is a need to strengthen the consumer's position. From this study, general conclusions can be drawn.

Firstly, there is not enough information provided to the consumers about their rights against a company in insolvency or restructuring related to the continuation of their contracts.

[19] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, OJ L 326/1.

[20] Articles 2, 8 and 9 Preventive Restructuring Directive (2019/1023).

Moreover, there is a need for more understandable information to the consumer on both national and cross-border restructuring and insolvency proceedings. It could be an adequate way to guard these interests by considering the appointment of a representative for the consumers in restructuring and insolvency proceedings, including cross-border proceedings, in certain industries with a high density of consumers. Therefore, we urge the European Commission to continue to maintain and confirm positions of consumers in general and to conduct a study to reflect on consumer´s position in case of insolvency and restructuring proceedings of a retailer or a supplier in case of prepayments.

It is worthwhile to look at some work already done in other jurisdictions as it is the case for the UK, where in 2016, the Law Commission presented a report on Consumer Prepayments on Retailer Insolvency to the Parliament.[21] The goal of the report was to examine the protections given to consumer prepayments and to consider whether such protections should be strengthened. The Law Commission made a set of recommendations, including one for insolvency rules. It proposed 'a limited change to the insolvency hierarchy, for prepayments of £250 or more made in cash, cheque or bank transfer in the six months before insolvency. Consumers making such payments would be "bumped up" the insolvency hierarchy to be preferential rather than unsecured creditors, making it likely that they will get a better return'.[22] So far, however, the UK Parliament made no amendments to its insolvency legislation to accommodate this proposal that has been welcomed by consumer associations.

5 RECOMMENDATIONS

Increased consumers' protection has been a goal for the EU for decades. From rights, to guaranties and safety nets, EU Consumer Law has been one of the most reformed legal regimes in European spectrum. To a much lesser extent, European insolvency laws are concerned with consumers. However, a privileged approach has been almost exclusively devoted to the consumers as debtors, while the consumer-creditor approach has received virtually no attention from the EU legislator.

The present study is one of the first comparatively analysis, focusing on the position of a consumer as a creditor in insolvency and restructuring proceedings. Data collected in several EU Member States confirms the pattern that legislators have seldom had their focus on such a consumer-creditor. Only some jurisdictions have demonstrated some willingness to widen the consumer angle in the field of business insolvency and restructuring.

Consumers' claims in insolvency proceedings are deemed unsecured and listed below those of workers and other privileged creditors. This means that in most cases, consumers with prepayments made for the insolvent retailer or service provider receive none or only a small

[21] See The Law Commission, *Consumer Prepayments on Retailer Insolvency*, Law Com No 368, 13 July 2016, available at https://www.lawcom.gov.uk/project/consumer-prepayments-on-retailer-insolvency/.

[22] See A. Shalchiand L. Conway, *Gift vouchers and Insolvency*, Commons Library Research Briefings no. 6540, House of Commons Library, 28 July 2021, , available at https://commonslibrary.parliament.uk/research-briefings/sn06540/.

portion of the amount due.[23] In some cases, prepayments to a company that over time has become insolvent may be recovered by consumers through chargebacks if they used a credit card as their payment method. This is not possible when the payment was made in cash or by bank transfer. Additionally, the provisions on insolvency of the organiser of packaged travels (Directive 2015/2302) show that the subject of the protection of consumers as creditors should not be disregarded. The same is underlined by the limited but tailored legal initiatives of some jurisdictions studied in this report.

The experiences in third jurisdictions and the work done by entities like the UK Law Commission as well as legal researchers justify the need for broadening the discussion within the European institutions and national legislators to address the need for a revised and specific regulatory framework dealing with the position of consumers in restructuring and insolvency proceedings. The scattered and diffuse bargaining power of this particular group of creditors may require some regulatory solutions that help balance their disadvantageous procedural position. Clear and consensual solutions are yet to be presented, but the discussion has started and must be further developed.

Whilst the European Commission is called upon to continue to maintain and confirm positions of consumers in general, it is recommended that it will arrange, under its aegis in collaboration with several European universities and European consumer organisations, a discussion to further clarify and possibly to strengthen a consumer's position in case of insolvency or preventive restructuring of a company to which the consumer is a client/customer.

Such a discussion could focus on four areas of interests:

1.Information regarding the contractual position of a consumer once restructuring and insolvency proceedings, including cross-border proceedings, are opened

A proposition for debate: insolvency or restructuring proceedings do not, in principle, terminate information rights of consumers or guarantees (unless a contract provides differently). Shortly after the opening of insolvency or restructuring proceedings, including cross-border proceedings, a consumer receives understandable information on its contractual position.

2.Information on the position of a consumer during the course of restructuring and insolvency proceedings

A proposition for debate: during insolvency or restructuring proceedings, including cross-border proceedings, a consumer receives timely and periodically understandable information about the progress of these proceedings.

[23] T. Tajti (Thaythy), 'Unprotected Consumers in the Digital Age: The Consumer-creditors of Bankrupt, Abandoned, Defunct and of Zombie Companies', *Tilburg Law Review,* 2019, 24(1), p. 3–26, available at: https://doi.org/10.5334/tilr.139. Tajti refers to the 1978 introduction of the US Bankruptcy Code as the starting point for a shift in consumer-creditor protection rules. It introduced Section 507(a) US Bankruptcy Code, which provides under certain conditions a special priority provision for consumer-creditor claims. However, with the requirements, this provision has been used in a few cases only.

3.Representation of consumers (or their interests) in restructuring and insolvency proceedings

A proposition for debate: in insolvency proceedings as well as in restructuring proceedings, consumers should be treated as a separate class of creditors. A representative of the consumers should be appointed to guard the consumers' interests in restructuring and insolvency proceedings in certain industries with a high density of consumers.

4.Strengthening of a consumer's financial position in case of its prepayments for goods or services in restructuring and insolvency proceedings

A proposition for debate: in case of prepayments by a consumer in advance (prior to delivery of goods or services after a company goes into insolvency or restructuring proceedings), EU law should strengthen a consumer's position. This could be achieved, for instance, by (a) allocating a special part of the assets to the consumers, (b) by forming a mandatory class of creditors in case of restructuring, or (c) by establishing a security right for (a part of) a consumer's claim, to be established by operation of law at the moment of opening insolvency or restructuring proceedings.

6 ANNEX: QUESTIONNAIRE AND GENERAL OUTLINE OF NATIONAL REPORTS

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors

Please describe the types of insolvency proceedings where consumers are involved as creditors and their main characteristics (very brief). Please state at least the following in your answer.

- Can the consumer open the proceeding against the debtor?
- What types of claims do the consumer has against the debtor? Claims because of a purchase?
- What happens with the consumers claim in form of a gift card or voucher?
- What priority position has the consumer in relation to other creditors?
- Are the claims held by the consumers subject to a special validation procedure?
- Is the consumer obliged to file his or her claim?
- Does the commencement of the insolvency proceeding automatically terminate the contract between the consumer and the debtor?
- Is it possible for the insolvency practitioner to directly pay the consumer´s claims before all other claims?
- Who provides information and guidance to the consumer during the insolvency proceedings?

Question 2 – The EU Directive on restructuring and insolvency (2019/1023)

- What impact will the new reconstruction and insolvency directive have on the consumer position as a creditor?
- Regarding the procedural position of consumers in insolvency proceedings - is there a need for a group representative de *lege ferenda*?

Question 3 – Insolvency law and consumer law

- Is there a link between consumer law and insolvency law in your country? Please explain.
- Are there examples of consumer´s claims regarding a travel agency or an airline going into insolvency proceedings? Please detail.

Question 4 – Cross border insolvencies

- Do you see specific problems when it comes to cross border insolvencies and consumers' rights as creditors?
- Is there a need de *lege ferenda* for specific rules in cross-border regions where trading between local companies and consumers from two different countries are frequent, in cases were those companies become insolvents?

Question 5 – Law improvement

- What current international work- for example UNCITRAL about a simply procedures - that could be helpful in proposing new rules advantages for the consumers? See https://uncitral.un.org/en/working_groups/5/insolvency_law.

7 ANNEX: NATIONAL REPORTS

7.1 Denmark

Professor Kim Sommer Jensen

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors
In Denmark, there are three forms of insolvency proceedings - reorganisation, bankruptcy, and discharge of debt. The last-mentioned is only possible for natural persons. All forms are regulated in the Danish Bankruptcy Act (*Konkursloven 775/2021*). The Act does not entail any provisions regulating consumer rights. Therefore, there are no differences between consumers and other creditors.

A consumer can – as all other creditors – file for bankruptcy against a retailer company or any other debtor. If bankruptcy is declared, the filing creditor must make a security deposit for the costs of the estate until 4.000 euro. The distribution of the assets of any debtor in insolvency proceedings is governed by the rules on preferential rights in the Bankruptcy Act. According to that, a consumer claim is usually a non-preferential claim, and the consumer is considered an unsecured creditor. Thus, a consumer as a creditor holds no priority position in relation to other creditors. An unsecured creditor will seldom receive payment in a retailer's insolvency. However, when buying goods from a retailer, a consumer is protected against the seller´s creditors as of the conclusion of the contract, provided the goods have been individualised for the buyer by separation, or the contract concerns a specific object. In such a case, the goods do not belong to the bankruptcy estate of the debtor, and it is possible for the consumer to separate the goods from the debtor company, cf. Bankruptcy Act section 82

The consumer can have different types of claims against the debtor. The claims will be the same as the claims outside bankruptcy. It could e.g. be damages. All creditors must notify their demand to the administrator. If the administrator is aware of a potential demand from the bookkeeping list or otherwise, the administrator must notify the potential creditor of the bankruptcy. The administrator is the one providing information and guidance to all creditors during the bankruptcy proceeding.

Reorganisation is applicable to consumer claims in the same way as to other creditors. However, in relation to reorganisation, a non-secured creditor like a consumer can be forced to accept a mandatory settlement. In such a settlement, the claims are reduced by a percentage relative to the size of the debt claim. There is no minimum dividend. It is possible to divert from that rule and give the unsecured creditors full payment up to a certain small sum. If so, it applies not only for consumer claims but also for all small claims.

A consumer claim in form of a gift card or voucher is a normal unsecured claim in the estate. However, if the consumer has paid by credit card, it is often possible to recover the value of the voucher through the credit card issuer.

Neither bankruptcy nor reorganisation automatically terminate a debtor´s contractual relations. As a starting point, the estate can decide whether the contract shall continue or shall be terminated. If the contract continues, the estate must fulfil it and so must the counterparty. In case of termination, the other party can make a claim for damages as a normal unsecured claim. It is illegal for the insolvency practitioner to directly pay the consumer´s claims before all other claims.

Question 2 – The EU Directive on restructuring and insolvency (2019/1023)
In Denmark, the implementation of the restructuring and insolvency directive is still under preparation. The consumer ombudsman can take over the consumer´s claim for damages against a trader and thus intervene as a party to a dispute. Denmark has also implemented a special group proceeding as part of the Danish Administration of Justice Act. According to this, the consumer ombudsman could take over the consumer claims. This possibility has not yet been used.

In my view, the legal standing of the consumers in bankruptcy and restructuring is clear. Therefore, there is no need for a special group representative.

Question 3 – Insolvency law and consumer law
There is no direct link between consumer law and insolvency law in Denmark. There are no provisions in the Bankruptcy Act concerning consumer claims regarding a travel agency or an airline.

Question 4 – Cross border insolvencies
There are no specific provisions regarding cross border insolvencies and consumer rights as creditors. Denmark is not taking part in the 2015 Insolvency Regulation.

Question 5 – Law improvement
N/A

7.2 Finland

Professor Tuula Linna

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors
In Finland, in addition to the enforcement of civil judgments, there are three kinds of insolvency proceedings: bankruptcy (liquidation), restructuring of enterprises and the debt adjustment of private persons. In practice, consumers can be involved as creditors in bankruptcy proceedings. A consumer can open bankruptcy proceedings against the debtor company. However, this in only a theoretical possibility.

In restructuring, the provisions of the Restructuring of Enterprises Act (47/1993) are applicable to consumers in the same way as to other creditors. Restructuring is a debtor-in-possession procedure and the businesses of the debtor company continue as usual. In bankruptcy, consumers have mainly two kinds of claims: claims concerning delivery of already paid goods and claims to redeem a gift card or voucher.

If the consumer has already paid the goods for example via web bank, she/he is the owner of the goods. However, the claim for the delivery of the goods is successful only when it is possible to for the bankruptcy estate to detach (separate) the goods from the debtor's assets. The assets of the third party (here: the consumer) will be surrendered to the owner subject to such conditions that the bankruptcy estate is entitled to impose (Bankruptcy Act, 120/2004, Chapter 5, Section 6).

In a department store bankruptcy case (*Anttila* case, 2016), the bankruptcy administrator decided that the requirement of separation was fulfilled when the goods were delivered from the central warehouse to the store in question and an e-notification had been sent to the consumer. In addition, the bankruptcy administrator decided to deliver goods that were still in the central warehouse but addressed to the byer (goods packed in a cardboard box and the address of the consumer on the box). This was a quite consumer-friendly interpretation of the Finnish Bankruptcy Act. If it is impossible to detach the paid goods, the consumer can lodge his/her claim at the latest on the lodgement date.

Consumers who have paid via credit card may get the payment back from the credit card company (see also Directive (EU) 2015/2366 on payment services in the internal market).A consumer with an unredeemed gift card or voucher is not able to get the money or goods from the bankruptcy estate after the court has made an order of bankruptcy but can lodge his/her claim in the same way as the other creditors.

In the said Anttila case (2016), all creditors with maximum 5.000 euros claim were offered 50 percent payment. The purpose of this offer was to reduce the number of the creditors. These kinds of offers base on the consent of other creditors.

A consumer as a creditor holds no priority position in relation to other creditors.

There is a special validation procedure for cases where several creditors have undisputed claims based on similar grounds. The bankruptcy administrator can take these claims into account in the draft disbursement list without a lodgement (Bankruptcy Act, Chapter 12, Section 8).

The commencement of the insolvency proceeding does not automatically terminate the contract between the consumer and the debtor. If, in the beginning of bankruptcy, the debtor has not performed a contract, the other contracting party can request a declaration of whether the bankruptcy estate commits to the contract. The other contracting party may terminate the contract on the grounds provided in the law (Bankruptcy Act, Chapter 3, Section 8). A claim in bankruptcy that has not fallen due will usually be considered due as between the creditor and the debtor (Chapter 3, Section 9).

The Consumer Ombudsman's office may provide information and guidance to the consumers during the insolvency proceeding.

Question 2 – The EU Directive on restructuring and insolvency (2019/1023)
In Finland, the implementation of the restructuring and insolvency directive is unfinished. As far as I know, there will be no proposals regarding consumers as creditors.
There is a need for a group representative for consumers *de lege ferenda*. In Finland, this could be an appropriate task for the Consumer Ombudsman.

Question 3 – Insolvency law and consumer law
There is no link between consumer law and insolvency law in Finland. There are no provisions in the Bankruptcy Act concerning consumer´s claims regarding a travel agency or an airline.

Question 4 – Cross border insolvencies
There are no specific provisions regarding cross border insolvencies and consumers' rights as creditors.

Question 5 - Law improvement
De lege ferenda there is a need for some kind of help for consumers in cases where they have prepaid goods and the seller, located in another country, becomes insolvent.

7.3 Italy

Professor Lorenzo Benedetti

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors
Italian bankruptcy law does not provide for specific rules for consumer's credits. The consumers are involved as any other creditor in the proceedings (bankruptcy, scheme of arrangement, restructuring agreement) and the proceeding is enforceable to the consumers as any other company creditor. Pursuant to Italian bankruptcy law, indeed consumer is a common creditor as any other creditor such as a bank or a supplier of the undertaking. Instead, Italian law (now law n. 3/2012 and in the future, the new crisis and insolvency code (legislative decree 14/2019) provides for a customer's over-indebtedness proceeding, which sets out the rules about the consumer as debtor.

The consumer can open the proceeding against the debtor, as any other creditor. However, the consumer cannot file an application for a scheme of arrangement. Such an application can only be filed by the debtor. Furthermore, the creditors can only present a competitive proposal for the reconstruction of the debtor's company after the debtor has presented one.

The typical claim by the consumer against the insolvent company is normally a claim because of a purchase made by the consumer.

A consumer with a claim in form of a gift card or voucher is considered as an unsecured creditor. Therefore, the consumer´s claim is subject to the same rules within the insolvency proceedings as any other unsecured creditor.

The consumer has no special position in insolvency, the consumer is an unsecured creditor. The claims held by consumers are not subject to a special validation procedure. The consumer is obliged to file his or her claim in the proceeding as any other creditor. Neither the commencement of bankruptcy or the commencement of the scheme of arrangement automatically terminate the pending contracts between the debtor and the creditors. The rule is the same for consumer contracts.

It is not possible for the insolvency practitioner to directly pay the consumer´s claims before all other claims. The insolvency representative provides information and guidance to the consumer during the insolvency proceeding.

Question 2 – The EU Directive on restructuring and insolvency (2019/1023)
In my personal opinion, the insolvency directive has no impact on the matter discussed here, namely the consumer´s position as a creditor. The directive refers to the consumers in the recital 21, but this is in other perspective, namely about the consumer as debtor (consumer over-indebtedness) and not as a creditor. No Italian scholars have envisaged a need for a group representative for consumers as creditors *de lege ferenda*.

Question 3 – Insolvency law and consumer law
There is a link between consumer law and insolvency law in Italian law. Legislative decree 62/2018 has enforced in the Italian legal system EU Directive 2015/2302 about the package travel and linked travel arrangements. Pursuant to the rule of the legislative decree, the voyager has the right to be refunded by the travel operator which has sold the air ticket if the airline company files for bankruptcy. However, if the consumer has purchased the air ticket by himself/herself (online or directly from the airline company), the consumer must file the claim in the bankruptcy proceeding of the airline company. As I know, there are no examples of consumer´s claims regarding a travel agency or an airline going into insolvency proceedings.

Question 4 – Cross border insolvencies
I am not aware of any specific problems when it comes to cross border insolvencies and consumers' rights as creditors. I am not aware if there is a need *de lege ferenda* for specific rules in cross-border regions/areas where trading between local companies and consumers from two different countries are frequent, in cases were those companies' become insolvents.

Question 5 – Law improvement
See above.

7.4 Norway

Marie Meling[24]

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors

a) Introduction

Under Norwegian law, insolvency proceedings are generally governed by the Bankruptcy Act of 8 June 1984 No. 58 (No: *konkursloven*) and the Creditors Recovery Act of 8 June 1984 No. 58 (No: *dekningsloven*). These two acts do generally not separate between proceedings where the *creditors* are consumers and proceedings where the creditors involved are professional investors. Neither is there, as the main starting point, any difference in the proceedings depending on whether the *debtor* is an individual (consumer) or a company. The Bankruptcy Act contains rules on both debt relief proceedings (No: *gjeldsforhandling*) and bankruptcy proceedings (No: *konkurs*).

In connection with the financial difficulties faced by many businesses following the lock-downs to fight covid-19 in the spring of 2020, a temporary act on debt restructuring proceedings was enacted in May 2020.[25] The temporary act is in force until 31 December 2021, and while it is in force it replaces the debt relief proceedings found in the Bankruptcy Act. There are minor differences between the Bankruptcy Act and the temporary Restructuring Act when it comes to what possibilities it provides for an individual debtor (consumer) to restructure its debt. The differences between the debt relief proceeding in the Bankruptcy Act and the temporary Restructuring Act are most apparent when it comes to the restructuring of corporate debtors. The temporary Restructuring Act generally weakens the protection of each individual creditor and gives a wider room for majority decisions than the provisions found in the Bankruptcy Act.

Although the debt relief proceedings under both the Bankruptcy Act and the temporary Restructuring Act are available to all kinds of debtors, it will usually be more practical for *consumer debtors* to apply for debt settlement under the Debt Settlement Act of 17 July 1992 No. 99 (No: *gjeldsordningsloven*). The procedure set out in this act is specifically designed to deal with consumer over-indebtedness. The Debt Settlement Act is currently under review by the legislator, but it is still uncertain whether and when the Act will be amended, and what amendments that can be expected. The discussion process can be followed (in Norwegian) on the web page of the Ministry of Children and Families (No: *Barne- og familiedepartementet*): https://www.regjeringen.no/no/tema/forbruker/gjeldsordning/id670299/.

b) Can the consumer file for bankruptcy?

As a starting point there are no limitations on what types of creditors that can request the opening of a bankruptcy proceeding in Norway. For a bankruptcy proceeding to be initiated, the debtor must be insolvent. Under Norwegian law this means that the debtor must be both cash flow insolvent (No: *illikvid*) and balance sheet insolvent (No: *insuffisient*), see § 61 of the Bankruptcy Act.

A consumer should, however, be aware that the creditor who requests the opening of an insolvency proceeding may be held liable for the costs of the proceeding pursuant to § 73 of the Bankruptcy Act. The liability is capped at 50 R (1R is approximately 100 EUR).[26] Employees are exempted from this liability when requesting the opening of an insolvency proceeding against their employer based on a claim for unpaid wages, but there is no general exception for other consumers as creditors.

[24] For any follow-up questions, please do not hesitate to contact Ms Meling at marie.meling@jus.uio.no.

[25] In Norwegian: *Midlertidig lov 7. Mai 2020 nr. 38 om rekonstruksjon for å avhjelpe økonomiske problemer som følge av utbrudd av covid-19 (rekonstruksjonsloven)*.

[26] In Norwegian R stands for *rettsgebyr* and is a measuring unit for payment of different costs in connection with legal proceedings. The value of 1 R is changed with effect from 1 January every year. For the year 2021 1 R equals 1.199 Norwegian kroner (NOK).

Debt relief proceeding under the Bankruptcy Act and the Debt Settlement Act can only be initiated by the debtor, not a creditor. Under the temporary Restructuring Act, a creditor can initiate a restructuring proceeding, but the debtor must still consent in order for the opening request to be granted (§ 4 of the temporary Restructuring Act).

c) What types of claims do the consumers have against the debtor?
In principle, it can be all types of claims, but the most common claims for consumers relate to purchase of goods or services. Either because the consumer has prepaid for goods or services that have not been delivered prior to the creditor's insolvency, or warranty claims arising from already delivered goods or performed services.

Pursuant to § 6-4 of the Creditor's Recovery Act claims that are not monetary claims will be converted to monetary claims in a bankruptcy proceeding unless the bankruptcy estate decides to continue the contractual relationship. The rules on continuation and termination of the insolvent debtor's contractual relationship in different types of insolvency proceedings are found in Chapter 7 of the Creditor's Recovery Act.

In addition, consumers will often have claims for unpaid wages. Claims for unpaid wages and related employee benefits are to a large extent given priority in bankruptcy, and such claims are also guaranteed under a public wage guarantee scheme, see https://www.nav.no/en/home/employers/the-wage-guarantee-scheme.

d) What happens with the consumers claim in form of a gift card or voucher?
It will in practice usually be without any value, as an unused credit in form of a gift card or voucher will be treated as general unsecured claims, and general unsecured claims end up without any payment of dividend in the majority of Norwegian bankruptcy proceedings due to limited unencumbered assets in most bankruptcy estates.

In conformity with Art. 15(2) and (3) of EU Directive 2008/48 on credit agreements for consumers etc. Norwegian law provides consumer protection through a right to make a secondary claim against the issuer of credit when a purchase is made with a credit card. This "credit card insurance" follows from § 54 b of the Norwegian Financial Contracts Act of 25 June 1999 no. 46 (No: *finansavtaleloven*), but does only provide secondary liability for the issuer of the credit if there is a *problem with the delivered goods or service*. This is not deemed to be the case with respect to an unused gift card or voucher, and such consumer claims are therefore especially exposed in case of an insolvency.

e) What priority position has the consumer in relation to other creditors?
Consumers have no special priority as such and will thus be treated as general unsecured creditors entitled to *pari passu* treatment with other unsecured debtors, unless the consumer has established a right to set-off or other security or special priority for the claim.
In a restructuring proceeding or debt relief proceeding the restructuring plan or composition can set out that all claims should be covered in full up to a certain monetary threshold (e.g. 100 or 1000 EUR), but this will then be a monetary threshold applicable to all kinds of general unsecured claims, and not a consumer specific treatment. And as this is only an *option*, it does not guarantee special treatment to small claims.

f) Are the claims held by consumers be subject to a special validation procedure?
Claims held by consumers are not subject to a special validation procedure. See answer directly below on the filing and validation procedure.

g) Is the consumer obliged to file his or her claim?
In bankruptcy proceedings only filed claims will receive dividend from the bankruptcy estate (Bankruptcy Act § 133). Thus, the consumer is obliged to file his or her claim to be entitled to dividend from the estate.

In a restructuring or debt relief proceeding there is not the same consequences if a claim is not filed, as the debtor remains in possession of its assets and responsible for its obligations. In addition, it is expected that the debtor will have information about the outstanding claims, and have an interest in providing the correct information in order to not have the risk of the restructuring or composition being declared invalid or not binding for the creditor's that have not been involved. Still, the creditors will always be encouraged to file their claims in a restructuring or debt relief proceeding.

h) Does the commencement of the insolvency proceeding automatically terminate the contract between the consumer and the debtor?

The commencement of the insolvency proceeding does not automatically terminate the contract between the consumer and the debtor. In a bankruptcy proceeding it is up to the bankruptcy estate to decide which of the debtor's contracts the estate wants to continue, but through the estate's right to so-called "cherry picking" most contracts will usually be terminated.

In a restructuring or debt relief proceeding no separate "estate" is established, and the debtor's contractual relationships are presumed to continue. However, the debtor in a restructuring or debt relief proceeding has an extraordinary right to terminate contracts with "customary notice", which should not in any event be deemed longer than three (3) months, see the Creditor's Recovery Act § 7-6. Claims arising from such termination can be made subject to the restructuring plan or composition.

i) Is it possible for the insolvency practitioner to directly pay the consumer´s claims before all other claims?

It is not possible for the insolvency practitioner to directly pay the consumer´s claims before all other claims. Payments to creditors from the bankruptcy estate will only be made once a bankruptcy proceeding has been finalised. Employees will, however, usually be paid directly from the Norwegian Wage Guarantee Scheme.

As a main rule, the same applies in a restructuring or debt relief proceeding, which in any event will not necessarily end with an immediate payment to the creditors. The Norwegian Wage Guarantee Scheme does not cover restructuring or debt relief proceedings, but employee claims can also not be compromised through such proceedings.

In a restructuring or debt relief proceeding the legal starting point is that all general unsecured claims should be treated equally. Thus, it is challenging for the insolvency practitioner (No: *rekonstruktør*) to find legal support for the approval of payment of general unsecured claims only in respect of consumer creditors. In theory, it should be acceptable to the extent that the payments so made do not exceed what the relevant consumer creditor will be entitled to pursuant to the final restructuring plan. In practice, it will usually expose the insolvency practitioner and the board of the debtor to potential liability if they agree to make payment to some creditors before it has been established that the required majority and the court will accept the proposed restructuring plan.

j) Who provides information and guidance to the consumer during the insolvency proceeding?

Both in a bankruptcy proceeding and a restructuring proceeding this will formally be the insolvency practitioner, through the general information provided to the creditors. A consumer can also seek help with the Norwegian Consumer Authority (No: *forbrukertilsynet*) (https://www.forbrukertilsynet.no/english) or the Norwegian Consumer Council (No: *forbrukerrådet*) (https://www.forbrukerradet.no/#).

In case of a insolvency proceeding where the consumer is protected through the Norwegian Travel Guarantee Fund (No: *reisegarantifondet*) implemented pursuant to EU Directive 2015/2302 on package travel and linked travel arrangements etc., the Travel Guarantee Fund will also provide information (https://reisegarantifondet.no/)

Question 2 – The EU Directive on restructuring and insolvency (2019/1023)

Norway is not a member of the EU. Through Norway's EFTA-membership, directives from the EU will be implemented into Norwegian law if the scope of the directive is coved by the EEA-Agreement. As per 31 May 2021 it has not been decided whether the new reconstruction and insolvency directive will be made part of the EEA-Agreement, although it is marked on the front page of the directive that it is "EEA relevant".[27]

This uncertainty aside, I do not read the directive so that it will necessarily provide better protection specifically to *consumers* as *creditors*. Of course, measures that the directive requires the member states to take in order to improve the efficiency of insolvency proceedings may be of advantage to all creditors. The same goes for "early warning" instruments that are meant to lead to more early-restructurings and higher dividends, but these improvements can probably not be seen as consumer specific improvements.

In my view, the most interesting contribution to "consumer" protection in the directive seems to be the requirements set out in Title III on measures on "Discharge of Debt and Disqualifications". The directive requires shorter periods and more efficient means for debt relief for insolvent entrepreneurs than what Norwegian law currently offers, and I would expect this to be of benefit for these individuals both in their function as entrepreneurs and in their private life.

Regarding the procedural position of consumers in insolvency proceedings - is there a need for a group representative *de lege ferenda* I would like to add the following**.** I find it difficult to provide a general *yes* or *no* to this question. Most bankruptcy proceedings in Norway involve very small companies as debtors, and very often there is not even values in the estate to pay for the bankruptcy proceeding. If there are limited possibilities for preferred treatment of consumers in insolvency proceedings, it is difficult for me to see how a group representative could improve the position of this group of creditors. A wish to protect consumers must also be considered considering the current goal of maximising dividends to the benefit of the creditors as a whole. Given the many SMEs that are creditors (and debtors) in Norway it may also be difficult to balance the interest of consumers towards the interest of SME-creditors who may be almost equally hard hit through an insolvency with its customers or suppliers.

For the protection of consumers, it may be just as important to improve the knowledge on what the consumers can do to avoid loss in an insolvency proceeding. One important example is better communication on the risk of making payments up-front, and how this risk can be mitigated, e.g. through the use of a credit card as payment method if up-front payment is required (without losing sight of the risks related to encouraging consumers to an increased use of credit cards …).

Question 3 – Insolvency law and consumer law

To answer the question if there is a link between consumer law and insolvency law, one must first answer what is understood with "link". There is no explicit link between consumer law and insolvency law in Norway, and consumers are not generally subject to special treatment in Norwegian insolvency proceedings. The exceptions mentioned in some of the answers above are not part of the insolvency legislation and generally applicable, but a result of special considerations (and EU-requirements) for consumer claims that could typically be of a relatively high amount and involve large groups of consumers, e.g. the "credit card insurance" and the "package travel guarantee". Another example is the deposit guarantee scheme for bank deposits in case of bank insolvencies. Through these measures, consumers are provided with an alternative debtor for their claims in case of the original debtor's insolvency.

[27] The decision in EFTA can be followed here: https://www.efta.int/eea-lex/32019L1023

There are several examples of consumer´s claims regarding a travel agency or an airline going into insolvency proceedings in Norway. A recent and prominent example is the recently finalised restructuring proceeding of the airline group *Norwegian*. The restructuring was carried out as a combination of an Irish law Examinership proceedings and a Norwegian law restructuring proceeding under the temporary Restructuring Act.

The treatment of consumers (*i.e.* airline passengers with cancelled flights) in this restructuring can be summarised as follows:

- According to the company approximately 98 per cent of the outstanding customer claims where refunded prior to the opening of the restructuring proceeding. In Norway, refund had been made to 99.6 per cent of the customers who had made booking had been made directly with Norwegian
- As per 18 November 2020 (the "cut-off date" for the restructuring proceeding) the amount of customer refunds and damages that were not refunded prior to the opening of the restructuring proceeding amounted to NOK 521,622,802 and consisted of claims from approximately 34 000 customers.
- Pursuant to the restructuring plan the customer claims where treated *pari passu* with other general unsecured claims and received a dividend claim of 5 per cent.
- The customer claims were dealt with as a separate class in the Irish law examinership proceeding. The classification was mainly made for voting purposes so that the customers voted as a separate class.
- Under Norwegian law general unsecured creditors cannot be divided into separate classes, and only the general unsecured creditors can be bound by a restructuring plan. Thus, in the Norwegian law proceeding, the customers voted together with all the other general unsecured creditors.
- The possibility to use cash points earned through the loyalty program was put on hold during the restructuring proceeding, but the cash points earned were not affected by the restructuring plan.
- The customers did not have a group representative in the creditor committee.[28]

Following the uncertain situation for the travel industry due to covid-19, there has also been a large debate on how it can be assured that the Norwegian Travel Guarantee Fund is sufficiently funded to function as intended. This has now been proposed to be "solved" through a state guarantee system which can relieve the smaller providers of package travels from up to 50 per cent of their guaranteed obligation.[29] In addition, the government has commissioned an expert group to review the whole Travel Guarantee system. The expert report is said to be expected before the end of 2021, so the current debate on the Norwegian Travel Guarantee Fund will most likely continue.[30]

Question 4 – Cross border insolvencies

As Norway is not an EU-member, the Insolvency Regulation 2015/848 is not applicable to Norway, and Norwegian debtors and bankruptcy estates are thus dependent on bilateral agreements or the internal legislation in foreign countries in order for a Norwegian insolvency proceeding to be effective abroad.

For consumers, insolvency proceedings will probably always be challenging to understand and deal with, and even more so if the consumer must deal with information in a foreign language, and in a legal system that is potentially different from the rules in its home state. However, from a Norwegian

[28] More information on Norwegian's restructuring plan can, *inter alia*, be found in the attachments to a notice of the Oslo Stock Exchange made on 11 March 2021, see: https://newsweb.oslobors.no/message/527351.

[29] https://www.regjeringen.no/no/aktuelt/staten-reforsikrer-garantier-for-sma-og-mellomstore-pakkereisearrangorer/id2854695/.

[30] https://www.regjeringen.no/no/aktuelt/utval-skal-ga-gjennom-reisegarantisystemet/id2837173/.

legal point of view I do not deem cross border issues to be a consumer specific concern, but more a general insolvency law concern.

Regarding the question if there is a need *de lege ferenda* for specific rules in cross-border regions/areas, it would depend on whether the local law provides special protection to consumers, and whether local law separates between local and foreign consumers as creditors. I think it is most important that the consumers have visibility on their legal position and are provided with correct and sufficient information. In an ideal world the treatment of a consumer creditor should probably not depend on whether the debtor in a cross-border region is subject to the insolvency legislation in country X or Y, or whether the consumer is located in country X or Y.

Question 5 – Law improvement
In my view, any step towards further improvement and harmonisation of insolvency procedures should be welcomed, not at least in light of the continuing increase in cross-border trade and business. More than 95 percent of Norwegians businesses are SMEs. Still, the Norwegian insolvency law proceedings is mostly criticised for not being apt for dealing with restructuring of large corporations.

The current legislation is, however, also not optimal in protecting and continuing the business of entrepreneurs who are not carrying out their business through a limited liability company. For these debtors the EU directive on reconstruction and insolvency may provide valuable improvements when it comes to the possibility for debt relief, as may the ongoing review of the Debt Settlement Act.

For consumers and other unsecured creditors, the biggest obstacle to a dividend in bankruptcy is that most, if not all, assets of insolvent corporate debtors are usually pledged or mortgaged. This situation leaves little unencumbered assets in the estate. In addition, claims of employees (who are also consumers) and certain tax claims are given priority over general unsecured claims, including consumer claims. A Norwegian bankruptcy proceeding will therefore rarely end with payment of dividend to general unsecured claims, and if such payments are made, the dividend is often just a few percent of the original claims of each creditor.

7.5 Poland

Professor Joanna Kruczalak-Jankowska and Monika Maśnicka

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors
The consumer as a creditor may open insolvency proceedings against the debtor who is an entrepreneur. Creditors in general cannot request opening of restructuring proceedings against the debtor, with an exception for remedial proceedings which may be requested by creditors. However, consumers are unlikely to initiate remedial proceedings against debtors.

Consumers may have many types of claims against the debtor. It depends on the nature of the legal relationship between the customer as a creditor and the debtor. It may be contracts concerning sale or providing services, lease etc. However, within insolvency proceedings non-monetary claims become monetary claims which are payable upon declaration of the insolvency.

Within insolvency proceedings non-monetary claims become monetary claims payable upon declaration of insolvency. To participate in insolvency proceeding the creditor needs to lodge the claim against debtor's estate. There is no priority position for consumers in relation to other creditors. Claims held by consumers are not be subject to a special validation procedure. The same rules are applicable for both consumers and other creditors.

The consumer is obliged to file his or her claim, just as any other creditor (however there are some exceptions for employees and secured creditors).Regarding the question if the commencement of the

insolvency proceeding automatically terminate the contract between the consumer and the debtor, I would state the following: It depends on the type of the contract. Most contracts do not automatically terminate in the case of insolvency proceedings; however they might be terminated by the trustee. According to Article 98 point 1 of the Insolvency Law "*If the whole or part of obligations under a reciprocal agreement was not performed until the day of declaration of insolvency, the trustee may, upon the consent of the judge in charge of insolvency proceedings, perform the debtor's obligation and request the other party for reciprocal benefit, or terminate the agreement with effect as of the date of declaration of bankruptcy*." In particular, commission sales contracts or service contracts in which debtor is the service provider, may be terminated by the trustee. However, there are some contracts that terminate automatically as a result of opening of insolvency proceedings. For example, in the case of a loan agreement, the loan agreement expires if the loan has not been made available yet.

It is not possible for the insolvency practitioner to directly pay the consumer's claims before all other claims.

After the opening of insolvency proceedings, the trustee is obliged to provide creditors with relevant information regarding conditions for challenging the decision to open insolvency proceedings and rules on lodging claims against debtor's estate. During the proceedings consumers just like any other creditors may reach out to the trustee for information, they may review court files etc. However, there is no particular body that represents customers in insolvency proceedings.

Question 2 – The EU Directive on restructuring and insolvency (2019/1023)

The adoption of the directive was postponed in Poland for a year, so the final frame is still not ready, but we have no knowledge of any suggestions on special consumer position in restructuring proceedings. According to the Polish experience we do not see the need for a group representative *de lege ferenda* at this point.

Question 3 – Insolvency law and consumer law

We do not think that there is a link between consumer law and insolvency law in Poland because consumers are treated just like any other creditors (with some exceptions for employees and secured creditors).In the event of the insolvency of a travel agency or an airline the trustee informs creditors which steps need to be taken in order to participate in insolvency proceedings. Claims against debtor's estate may be lodged on a form which makes it easier for creditors to meet formal requirements.

Consumer protection issues related to the insolvency of travel agencies are regulated in the Act on travel and related travel services. The tour operator must provide assistance to the vulnerable traveler. In the event of the tour operator becoming insolvent, payments will be refunded. If the tour operator becomes insolvent after the start of his services and if it includes transport, the return of travelers to the country is ensured and the travelers are reimbursed from the guarantee fund or insurance company.

The Tourist Guarantee Fund is a separate account in the Insurance Guarantee Fund.The contribution to the Fund is charged in the amount not exceeding PLN 30 per traveler for the concluded travel contract or for each service provided by an entrepreneur facilitating the purchase of related travel services and paid for by the traveler.

Question 4 – Cross border insolvencies

It is hard to say if there is any specific problem when it comes to cross border insolvencies and consumers' rights as creditors. Generally cross border insolvencies are much more complicated than internal cases. In the case of consumers, it may be difficult to participate in proceedings outside the state, in particular to lodge a claim or to challenge some decisions or – generally - to get informed about the proceedings due to communication problems etc.

We do not think it is necessary as it can make cross boarder insolvencies even more complicated.

Question 5 – Law improvement
See above.

7.6 Portugal

Professors Catarina Frade and Ana Conceição

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors
The 2004 Portuguese Insolvency Code (CIRE) establishes a judicial insolvency procedure (Article 1 CIRE). The fundamental principle of the Insolvency Code is to achieve a prompt payment to creditors while also allowing for the debtor's economic recovery by means of a restructuring or a payment plan. Liquidation, including the fresh start for natural persons, is the alternative answer provided by CIRE.

The proceedings are applied to all debtors, including natural persons, corporations, or autonomous assets such as estates (Article 2 CIRE), apart from insurance, banking, or other financial companies. The legal standing is limited to debtors, creditors, and individuals responsible for all the debts of a legal person or autonomous assets (Articles 18, 19 and 20 CIRE). Debtors petition the opening of the proceedings based on the verification of insolvency or likelihood of insolvency (Article 3 CIRE) and have the duty to start the insolvency proceeding in certain circumstances. Otherwise, creditors may request the opening of insolvency proceedings based on the closed list of facts established in Article 20 CIRE.

Creditors are defined by Articles 20 and 47/4 CIRE as anyone who has a credit arising from obligations established before the opening of the insolvency procedure, regardless of the value, the type, the qualification, the conditions - including non-monetary claims, the nationality, domicile or residence.

In these regards, consumers can be considered creditors, and therefore may request the opening of the procedure in the court where the debtor has his/her domicile, residency or the center of main interests. Consumers, when starting the proceeding, are represented by a lawyer and must present a petition and evidence of their legal standing and one or more of the following facts:

- Suspension of payments or the fulfilment of obligations
- Failure to comply one or more obligations that, due to their value or circumstances of breach of contract, may reveal the inability to pay or fulfil any other obligations;
- Flight or disappearance of the debtor or administrators related to the lack of solvency and without leaving a competent substitute;
- Dissipation of assets or constitution of fraudulent claims
- Insufficiency of assets determined on a judicial debt collection proceeding
- Failure to comply obligations established on restructuring plans or payment plans approved in a previous insolvency proceeding;
- Failure to comply, for more than six months, of tax or social security obligations; salaries or other labour related obligations; rents or financial obligations regarding the domicile, the residency or the offices of the debtor;
- The last company statements show a major imbalance between assets and liability (technical insolvency) or the legal deposit of statements has been delayed for more than nine months.

Consumers can base their legal standing on the breach of any consumer related contract, including services provision, purchase of goods, warranties, vouchers, among others.

The consumers as creditors must make a request to the insolvency practitioner (IP), preferably by email, but also by mail, personally or, when represented by a lawyer, through the CITIUS website (run by the Ministry of Justice), within 30 days (by default) after the declaration of insolvency (Articles 36/1) and 128 CIRE). This request is accompanied by the description of the claim, its origin, due date,

amount, any conditions, its qualification, the existence of personal guarantees, and default interest tax. This last element is fundamental, since interests are still due after the insolvency declaration [(and considered as subordinated claim Article 48/b) CIRE].

The claim must be lodged so that creditors may receive any payment, without exemptions. If the creditor does not lodge claim, I.P may admit the claim in the provisional list of claims, but the creditor must lodge the claim in the next ten days, as described above.

Consumer claims have not any legal priority *per se*, and are usually considered unsecured claims. Because of this, consumers are paid, in proportion, after all the other secured creditors, which usually leads to not receiving in full or not receiving at all (Article 176 CIRE).

Also, consumers cannot be paid before any other claimants, except when the contract is not completely fulfilled by the debtor nor the creditor/consumer (Article 102 CIRE). In this case, the contract is suspended until the IP decides to fulfil or refuse to fulfil the contract. If the contract is fulfilled, the consumer has the right to receive the amount of the unfulfilled part of the contract as an insolvency estate claim (Article 51/1/f CIRE), which is paid before any other claim (Article 172 CIRE). This happens because consumer contracts are not terminated automatically with the insolvency declaration.

Consumers are not supported by any public service in this regard. Besides, accessible official information about the insolvency proceedings is very scarce, so there is an evident lack of protection of consumers as creditors.

Question 2 – The EU Directive on restructuring and insolvency (2019/1023***)***
The Law 9/2022, of January 11, 2022, contains the transposition of the Directive (EU) 2019/1023 and will come into force on April 11, 2022. The only noticeable aspect regarding consumers as creditors (affected parties) is that the debtor may establish consumers as one category of creditors when proposing a debt restructuring plan (Article 17-C CIRE). Still their claims remain unsecured all the same.

Question 3 – Insolvency law and consumer law
The Portuguese Insolvency Code is applicable to consumers, both as debtors and as creditors, as stated. General consumer law is silent regarding insolvency proceedings. However, Decree-Law 17/2018 (transposition of the Directive 2015/2302).provides protection for consumers whenever a travel agency is declared insolvent. According to Article 31 Decree-Law 17/2018, the insolvent travel agency must reimburse their clients for all the unfulfilled paid services, without delay. After consulting the CITIUS database from the Ministry of Justice, we could not determine if there were any insolvency of travel agencies from January 1, 2020 up to 31 December 2021.

Question 4 – Cross border insolvencies
Consumers have specific difficulties regarding cross-border insolvencies which arise from the imbalance between creditor and debtor, but especially from the lack of information. Since the European Insolvency Registered is yet to be implemented, consumers have virtually no access to information about insolvency proceedings in other Member States. Also, even though consumers receive the information from IP's regarding the insolvency of a debtor in other Member States, including the deadline and the form to lodge claims, the form is very complex and not accessible to the regular consumer. In Portugal, it would be difficult for consumers to find a public service to help them filling the form, which would lead to the loss of the claim. A website, such as those which exist for cross-border ADR disputes, should be implemented to allow consumers to lodge the claims and to accompany the insolvency proceedings in their own language.

As for regional measures, the creation of a common information service would be helpful to provide legal aid to consumers as creditors.

Question 5 – Law improvement
Simplified insolvency proceedings only work if the administrative/judicial system is well equipped to promote speediness and efficiency. This includes dedicated services and courts; accessible information; dematerialisation of the procedure, competent IP's and affordability. That said, rules are fundamental, but they not enough when their enforcement is poor.

As an example, Portugal has, since 2004, a simplified solution within the insolvency proceedings, that allow consumers and small individual entrepreneurs to present a payment plan that may be approved within 45 days (Article 249 CIRE) In this case, the plan is presented by the debtor, together with the list of claims (which may be disputed by the creditors). The plan must be approved by at least 2/3 of the claimants (50% with the new law amendment that will enter into force in April 2022). The plan also requires judicial homologation, which allows for the extension of the effects to dissenting creditors, and the extinction of the proceedings. This proceeding is affordable, since there is no IP appointment, as less time consuming and less stigmatising, since it is not subject to publicity and the debtor stays in possession. Surprisingly, this solution has been scarcely used in Portugal.

Many of these characteristics are found in the proposals for the creation of a simplified insolvency proceeding for SME's, and many countries have incorporated them in their national laws. But, as stated, without information, without new technologies, without adequate supporting services for debtors and creditors, all recovery mechanisms and insolvency proceedings will remain inefficient and inadequate.

7.7 Slovenia

Dr. Miodrag Đorđević, Pija Okoren and Blaž Možina

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors
In case of a bankruptcy of an undertaking the consumers can file a claim for the damages occurred due to the bankruptcy of the debtor, or in a specifically prescribed cases a claim to perform the contract (Arts. 265 and 266 of the ZFPPIPP, see below). The claims that the consumers have against the debtor are often filed because of a purchase. The consumer can open the proceeding against the debtor.

Claim regarding gift card/voucher is not anticipated particularly in Slovenian Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (in Slovenian language named *Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju* - ZFPPIPP). Article 253 of the Slovenian ZFPPIPP provides, that non-pecuniary claim is transformed to pecuniary claim with the commencement of bankruptcy proceedings. The value of transformed non-pecuniary claim is evaluated according to the market price. So, with the commencement of a bankruptcy proceedings the value of the gift card or voucher is converted into a monetary claim.

According to the Slovenian case-law portal (Tax-Fin-Lex, 27. 5. 2021), case of the consumer claim in form of a gift or voucher has not yet been adjudicated before any of the high courts or the Supreme Court (the decisions of the courts of first instances are not (yet) collected in databases in Slovenia).

The consumer has no special priority position in relation to other creditors. Thus, the status of a consumer does not give a creditor any priority. There is no special validation procedure for consumers' claims. The consumer is obliged to file his or her claim.

The commencement of the insolvency proceeding does not automatically terminate the contract between the consumer and the debtor. Compare Article 265 and 266 of the Slovenian ZFPPIPP.

It is not possible for the insolvency practitioner to directly pay the consumer´s claims before all other claims.

Information and guidance to the consumers in Slovenia is provided by European Consumers Centre, Slovenian Consumers' Association and Trade Inspection of the Republic of Slovenia. However, their role is not provided by the Insolvency legislation.

Question 2 – The EU Directive on restructuring and insolvency (2019/1023)
There will be no impact by the new reconstruction and insolvency directive on the consumer position as a creditor. The position is not going to change.

Regarding the procedural position of consumers in insolvency proceedings- is there a need for a group representative de *lege ferenda*, we think that It would certainly be a very helpful solution for the consumers.

Question 3 – Insolvency law and consumer law
Concerning the question if there is a link between consumer law and insolvency law we would add the following. The expression »consumer« is defined in Article 7/8 of Slovenian ZFPPIPP and is actually the same as the definition in the Consumer Protection Act. The description data involving a consumer as creditor are stated in Article 17/6 of ZFPPIPP. Apart form this the position of a consumer as creditor is not further articulated in ZFPPIPP in relation to other creditors. *There are* examples of consumer´s claims regarding a travel agency or an airline going into insolvency proceeding, for example Slovenian airline Adria Airways declared bankruptcy in 2019.

According to an Article from 2019 published on national website MMC the consumers had been advised to get in touch with their banks and pursue debt collection through bank on condition the plane tickets had been bought with credit card.

The Slovenian Consumers Association published their advice regarding bankruptcy of Adria Airways in 2019. They suggested the consumers, who had bought flight tickets, should:

- check whether they are insured for the risk of flight cancellation;
- check whether »chargeback« through their credit card is an option;
- if the ticket had been bought through travel agency, the consumers should consult with the agency about the possibilities of money refund or alternative flight;
- if a ticket had been bought through other airline, which has shared flight with Adria Airways (codeshare), consumers should consult with this other airline;
- if there is no other option left, consumers should file claims in bankruptcy proceedings; consumers were also warned about the deadlines for filing claims in bankruptcy proceedings.

See also a recent case of the bankrupt travel agency (in Slovenian only): https://www.zps.si/potovanja-in-prevozi/turizem/10895-nasveti-potrosnikom-ob-stecaju-turisticne-agencije-quo-vadis.

Question 4 – Cross border insolvencies
A specific problem could be the problem of enforcement proceedings and bankruptcy proceedings, which take place simultaneously in different countries.

On the question if there is a need de *lege ferenda* for specific rules in cross-border regions/areas we would like to point to the following court case, the decision of the High court in Ljubljana VSL Sklep I Ip 780/2018.

In the case, the creditor did not succeed to convince the Court that in case of staying of enforcement proceedings, the creditor will not be able to achieve the sale of pledged property or at least partial payment of his claim in the Netherlands. When considering Bankruptcy Law in Netherlands and the

fact that creditor is subscribed in land register by debtor's real estate in Slovenia as first and only mortgage creditor, his position in bankruptcy proceedings in the Netherlands should not be worsened to such point, that would disable him completely to claim his mortgage right and consequently he would not be granted special guarantee on claiming his secured claim, according to Regulation 1346/2000.

The problem of enforcement proceedings and bankruptcy proceedings, which take place simultaneously in different countries, was also addressed in decision of the High Court in Ljubljana VSL Sklep Cst 20/2019.

Question 5 – Law improvement
N/A

7.8 Spain

Professor Yolanda Bergel Sainz de Baranda

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors
The Law regulating insolvency proceedings in Spain is Royal Decree Law 1/2020 of March 5, enacting the Rehashed Text of the Insolvency Law (hereinafter, the "Insolvency Act"). The purpose of this Act is to satisfy the creditors' claims and prevent the liquidation of the insolvent companies. However, in practice, most proceedings conclude in liquidation and most of the claims are left unpaid, and among this, in particular, consumer's credits against the insolvent company. This because the Insolvency Act does not contain provisions giving a special treatment to consumers; consumers are considered in the same manner as any other creditor. This Act has been recently modified in several occasions to improve different matters (v.gr. offer of continuity alternatives for the companies, simplification of the insolvency proceedings, measures for refinancing and restructuring the debt) but nothing has been incorporated to it regarding consumer protection.

In Spain, insolvency proceedings are heard by the Commercial Courts. If the insolvency is proven, the court shall rule that the debtor is insolvent. It shall also appoint the Insolvency Receiver who will be paid from the estate of the insolvent company. Once the ruling of the Court is published in the Official Gazette, the creditors (without exception) have to communicate their claims and credits against the debtor to the Receiver, under penalty of having their claims degraded as subordinate claims.

Therefore, in insolvency proceedings consumers face a difficult scenario for various reasons. First because they will have to spend time and money reporting their credits and standing in the proceedings, and it is generally not worth it because the credits are not of high amounts. Also, because in most cases their credits qualify as *ordinary credits* and shall not be satisfied until credits against the company's estate and privileged credits have been paid, and, in the end, if there is any remnant with which to pay ordinary credits, they shall be satisfied *pro rata*.

Question 2 – The EU Directive on restructuring and insolvency
The implementation of the restructuring and insolvency directive is not yet finished.

Question 3 – Insolvency law and consumer law
Taking all of the above into account, it is better for consumers to look for protection somewhere else and not in the Insolvency Act. For example, they might find protection in some cases in RDL 1/2007 of November 16 enacting the Rehashed Text of the Consumer's Law (hereinafter, "Consumers Act") or in Law 16/2011 of June 24, on Consumer Credit Contracts Act (hereinafter, "Consumer Credit Act") if the acquisition of goods or the provision of services by the insolvent company was financed through a linked contract.

With regard to the Consumers Act, if there is suspicion of the company filing for insolvency and less than 14 days have passed since the conclusion of the contract, the consumer can withdraw from it without any explanation. However, this is a weak remedy due to its short duration. The consumer shall have a better possibility if there are guarantees associated to the provision of the services, such as those existing for organisers of package travel and travel agencies (arts. 164 to 167 Consumers Act) in which case he can claim against the guarantor.

The Consumer Credit Act has recently proved to be a very useful tool if the contract concluded with the insolvent company was financed through a linked contract with a financial institution. Art. 26.2 of the Consumer Credit Act provides that the inefficacy of the consumer contract (in these cases for non-performance due to the insolvency) shall also determine the inefficacy of the credit contract to finance it. Therefore, where the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, the consumer can not only stop paying the credit, but also pursue remedies against the creditor (due to the termination of the credit agreement) asking for the reimbursement of the payments made (all or partial depending on the utility of the partial performance for the creditor). This possibility has been accepted by the courts in recent proceedings (v.gr. SAP Madrid 26-1-2021 (JUR\2021\123454) and JPI Pamplona 4-3-2021(JUR\2021\143139).

Question 4 – Cross border insolvencies
There are no specific provisions regarding cross border insolvencies and consumers' rights as creditors.

Question 5 - Law improvement
Finally, we have to say that in some cases, particular solutions have been adopted to protect consumers in the case of insolvency of the company with which they have concluded a contract. For instance, in a recent case of the insolvency of a dental franchise company that left many clients with their treatments unfinished, the Receiver concluded an agreement with the Investment Fund owner of the franchise and financial institutions in order to reopen some of the clinics where the affected clients (most of them, it is true, those that were financing their treatment) could finish their dental treatment.

Regarding all of this, the Spanish Consumers Organisation (OCU) is claiming for (i) the modification of the Insolvency Law in order for consumer's credits to have a particular privilege; and (ii) establishing compulsory guarantees or insurance in these cases.

7.9 Sweden

Professor Annina H Persson

Question 1 – National corporate insolvency and restructuring law: the case for consumers as creditors
Swedish insolvency law knows four main forms of insolvency - bankruptcy, business reorganisation and debt restructuring for natural persons and debts restructuring for entrepreneurs.

A consumer can file for bankruptcy against a retailer company according to the Swedish Bankruptcy Act (*Konkurslagen*, 1987:672).The distribution of the assets of any debtor in insolvency proceedings is governed by the rules on preferential rights – the Priority Rights Act (1970:979) *(Förmånsrättslagen*). According to that legislation, a consumer claim is usually a non-preferential claim, and the consumer is considered an unsecured creditor. Thus, a consumer as a creditor holds no priority position in relation to other creditors. An unsecured creditor will seldom receive payment in a retailer's insolvency.

However, when buying goods from a retailer, a consumer is protected against the seller´s creditors as of the conclusion of the contract, provided the goods have been individualised for the buyer by

separation, marking or specification in the seller´ s bookkeeping list. See 49 § of the Swedish Consumer Sales Act (1990:932). In such a case, the goods do not belong to the bankruptcy estate of the debtor, and it is possible for the consumer to separate the goods from the debtor company, Chapter 3, Section 3 § of the Bankruptcy Act.

Bankruptcy claims can be established according to two different systems of rules according to the provisions on bankruptcy with a lodging of proofs procedure and the rules on bankruptcy without such a procedure. For bankruptcy without a lodging a proof procedure, which is the most common it is up to bankruptcy administrator to investigate the origin of bankruptcy claim. The creditors are not obliged to notify their demand to the administrator. If the administrator has no information of the claim, the creditor may lodge his or her claim, for instance, simply by calling the administrator. The administrator is the one providing information and guidance to the consumers during the bankruptcy proceeding.

The provisions of the Act on Business reorganisation (*lagen* (1996:764) *om företagsrekonstruktion*, LFR) are applicable to private persons/consumers in the same way as to other creditors. However, in business reorganisation, a non-secured creditor like a consumer can be forced to accept a mandatory settlement. In such a settlement the claims are reduced by a percentage relative to the size of the debt claim but must be given at least a 25 per cent dividend unless there are special reason for a lower percentage, or all unsecured creditors agree on a lower per cent dividend. It is possible to divert from that rule and give the unsecured creditors full payment up to a certain sum. A consumer that has for example a gift voucher could take advantage on such a settlement, but it is decided in the individual business reorganisation. It is an opportunity, not a right.

If the consumer has paid for a gift voucher by credit card or debit card, it is possible to recover the value of the voucher through the credit card issuer. According to 29 § of the Swedish Consumer Credit Act (2010:1846), the consumer shall have the right to pursue the same remedies from the card provider as he or she had against the retailer. Thus, if the goods or services are not supplied, or are not in conformity with the contract, the consumer has the right to pursue remedies against the creditor.

Neither bankruptcy nor business reorganisation automatically terminates a debtor´s contractual relations. During the reorganisation procedure, the debtor remains the same legal person as before the procedure began, which means that his or her contracts continue to run during the procedure. In the bankruptcy situation, on the other hand, a change of legal person takes place, which results in that the debtor's contracts do not continue to run unless the estate in bankruptcy enters the debtor's contracts. The basic principle governing the Swedish way to dealing with the debtor's contract is that the if the debtor has not fully performed the other party (for example the consumer) will have a claim for performance or damages, which may be submitted in insolvency. If the consumer has not in fully performed its obligations, the insolvency administrator can demand performance or damages from the consumer.

It can be mentioned that the Priority Rights Act has been amended many times since it came into force. Several rather comprehensive amendments were made both on 1st of January 2004 and on the 1st of January 2009. The aim of the 2004 reform was to give non-preferential creditors better distribution during a bankruptcy. In the wake of the reform, however, a few both positive and negative consequences emerged. One positive aspect was that non-preferential creditors recovered more distribution in bankruptcy after the reform 2004. The main negative impact however was on the capitalisation of SMEs due to changes regarding floating charges. The creditor, often a bank, received a general preferential right instead of a special preferential right, which resulted in that the creditors were more reluctant to lend capital to small traders. Since the negative effects outweighed the positive effect, the Swedish *Riksdag* (Parliament) decided to revers to previous order, i.e. reintroduce floating charge with a special preferential right.

Question 2 – The EU Directive on restructuring and insolvency (2019/1023)

In Sweden, the implementation of the restructuring and insolvency directive is unfinished. Compare proposals in SOU 2021:12 and Government Bill 2021/22:215. The new legislation will be in force the 1st of august 2022. As far as it is known, there will be no specific proposals regarding consumers as creditors.

In Sweden, the consumer ombudsman can take over the consumer´s claim for damages against a trader and thus intervene as a party to a dispute (see 2011:1211). Sweden has also implemented a special group proceeding act (2002:599). However, these two legislative products have not been used when it comes to insolvency. Therefore, as commented by Finland, a need for a group representative for consumers *de lege ferenda* is needed. The task could be performed by the Consumer Ombudsman.

Question 3 – Insolvency law and consumer law

There is no direct link between consumer law and insolvency law in Sweden. There are no provisions in the Bankruptcy Act or the Business Reorganisation Act concerning consumer´s claims regarding a travel agency or an airline. However, the legislation in the travel guarantee law (*resegarantilag* (2018:1218)) which is based on directive 2015/2302 may help the consumer. The travel guarantee shall ensure that the payments made for the trip is repaid to the traveller to the extent that the trip is not carried out as a result of the insolvency of the organiser or the trader which, through mediation or otherwise facilitated the emergence of a linked travel arrangement.

As just said, Sweden has, as Denmark a special group proceedings act (2002:599). A group proceeding can be instituted by for example an association of consumers or by the Consumer ombudsman on behalf for a group of consumers. Compare also alternative dispute resolution for consumer disputes, directive 2013//11/EU, where the consumer ombudsman can act as a party to the dispute and take over claims for damages from several consumers against a trader (2015:739).

Question 4 – Cross border insolvencies

There are no specific provisions regarding cross border insolvencies and consumers' rights as creditors. The 2015 Insolvency regulation is applicable to consumes as all other creditors.

Question 5 - Law improvement

As been mentioned by Finland, *de lege ferenda* there is a need for help for consumers in cases where they have prepaid goods and the seller, located in another country, becomes insolvent. The working group within CERIL could try to propose simplified rules or a group representative for consumers in insolvency situations.

CERIL Conferees

EXECUTIVE

Chair
Prof. em. Bob Wessels
The Netherlands

Vice Chair
Prof. Ignacio Tirado
Spain

Secretary
Prof. Reinout Vriesendorp
The Netherlands

Members
Mylène Boché-Robinet
France

Giorgio Corno
Italy

Prof. Tuula Linna
Finland

Prof. Stephan Madaus
Germany

Prof. Elina Moustaira
Greece

Nicoleta Mirela Năstasie
Romania

Dr. Paul Omar
United Kingdom

Prof. The Hon Lady Sarah Wolffe
Scotland

OTHER CONFEREES

Prof. Stefania Bariatti
Italy

Michal Barlowski
Poland

Prof. Oleksandr Biryukov
Ukraine

Prof. Reinhard Bork
Germany

Pavel Boulatov
Russia

Kathlene Burke
United Kingdom

Barry Cahir
Ireland

Dr. Miodrag Dordevic
Slovenia

Anja Droege Gagnier
France

Dr. Đuro Đurić
Serbia

Zoltan Fabok
Hungary

Dr. Juan Ferré
Spain

Prof. Catarina Frade
Portugal

Dr. Roel Fransis
Belgium

Dr. Arthur Galea Salomone
Malta

Prof. Jasnica Garašić
Croatia

Prof. Francisco Garcimartin
Spain

Prof. Andreas Geroldinger
Austria

Bartosz Groele
Poland

Prof. Aurelio Gurrea-Martinez
Spain

Frank Heemann
Lithuania

Dr. Jana Julia Hübler
Germany

Prof. Tuomas Hupli
Finland

Dr. Ivan Ikréyni
Slovakia

Dr. Marjolaine Jakob
Switzerland

Prof. Marie Karlsson-Tuula
Sweden

Prof. Joanna Kruczalak-Jankowska
Poland

Dr. Line Langkjaer
Denmark

Prof. Antonio Leandro
Italy

Nathalie Leboucher
France

Prof. Irene Lynch Fannon
Ireland

Catarina Macchi
Italy

Dr. Myriam Mailly
France

Prof. Renato Mangano
Italy

Prof. Miguel Martínez Muñoz
Spain

Dr. Ángel Espiniella Menéndez
Spain

Prof. Irit Mevorach
United Kingdom

Prof. Göran Millqvist
Sweden

Grégory Minne
Luxembourg

Prof. Paula Moffatt
United Kingdom

Piet Neijt
The Netherlands

Prof. Rimvydas Norkus
Lithuania

Annemari Õunpuu
Estonia

Prof. Luciano Panzani
Italy

Dr. Gabriella Pataki
Hungary

Prof. em. Christoph Paulus
Germany

Prof. Annina Persson
Sweden

Stathis Potamitis
Greece

Prof. Juana Pulgar
Spain

Dr. Tomáš Richter
Czech Republic

Prof. Patrizia Riva
Italy

Prof. Rodrigo Rodriguez
Switzerland

Dr. Alexandros Rokas
Greece

Prof. Omar Salah
The Netherlands
Dr. Ignacio Sancho
Spain

Siv Sandvik
Norway

Prof. Jessica Schmidt
Germany

Prof. Catarina Serra
Portugal

Prof. Dominik Skauradszun
Germany

Stine Snertingdalen
Norway

Dr. Petr Sprinz
Czech Republic

Prof. Lorenzo Stanghellini
Italy

Kate Stephenson
United Kingdom

Emil Szczepanik
Poland

Adrian Thery Martí
Spain

Prof. Joeri Vananroye
Belgium

Prof. Melissa Vanmeenen
Belgium

Prof. Michael Veder
The Netherlands

Dr. Jiří Voda
Czech Republic

Prof. Rolef de Weijs
The Netherlands

Nora Wouters
Belgium

Prof. Oleg Zaitsev
Russia