

2. PROJECT METHODOLOGY

This section summarises the methodology applied in order to compile this report. It includes our approach, the activities undertaken and the unforeseen events encountered.

2.1. INTRODUCTION

The project “Bankruptcy and a fresh start: stigma on failure and legal consequences of bankruptcy” consists of two parts:

- Part 1: Stigma on Failure: this part analyses the attitude of the public, the business community and financial institutions towards business failure and bankruptcy.
- Part 2: Legal Consequences of Insolvency: this part analyses the following:
 - The existing procedures in the Member States and the US aimed at detecting businesses with financial difficulties at an early stage;
 - The possibilities, in the different Member States and the US, for economically viable businesses to continue its activities; and
 - The legal consequences of bankruptcy and the possibilities for a fresh start.

2.2. PART 1: STIGMA ON FAILURE

2.2.1. The Targeted Communities and Organisations

In order to assess the extent of the Stigma, we formulated a questionnaire to send to targeted communities (general, business and financial) and organisations. The targeted communities and organisations have been selected from a database of Deloitte & Touche (a partner of the consortium), and its international network. The European Commission reviewed the list of the targeted organisations before sending the questionnaires.

Initially the list of targeted organisations comprised of 319 enterprises. An introductory phone call was made and during this call we had the opportunity to explain the general purpose of the project, how the project relates to them as targeted organisations and to make them aware of the forthcoming faxed questionnaire. At this point, a number of the targeted organisations, in particular the U.S. organisations, declared that they would not participate in the project due to a variety of reasons and as a result a modified list of targeted organisations was compiled, which reduced the number to 289 enterprises.

A copy of the final list of the targeted organisations, segregated into each of the mentioned communities, is enclosed.

2.2.2. The Questionnaires and the Interviews

From the introductory telephone calls, we realised that there is a significant difference in the perception of bankruptcy between the three defined communities, and as a result we prepared three different questionnaires tailored for each targeted communities (Appendix U). The questionnaires to the business and financial communities were designed to be more technical. A copy of the templates is enclosed.

The aforementioned templates were submitted to the European Commission at the meeting held on 21st December 2001 at the Directorate. Based on valuable input from the European Commission and in order to increase feedback, the templates were simplified. This was mainly achieved through the use of closed (Yes/No) questions, however space was also provided for the targeted enterprise to additional comments with each question. Conservatively estimated the template would take approximately 20 minutes to complete.

The questions to the business and the financial communities were designed to receive clear feedback on the following issues:

- **The Stigma.** The questions evaluate the existence of the Stigma for businesses that failed, business in distress, business recovering from distress, start-up IT businesses in difficulty, and fraudulent and non-fraudulent bankrupt business.
- **The information.** If the Stigma exists, it is usually shared and enhanced through the availability of information. The questions request examples of any available information that is shared by the communities concerning businesses in difficulty.
- **The reasons for failure.** The questions evaluate what the degree of knowledge and awareness of the targeted communities is in respect to the most common reasons for business failure.
- **The role of the organisations in the prevention of failure.** The questions explore whether organisations could adopt special measures to prevent the failure of the business. Furthermore, the questions also explored what criteria is used to evaluate risk, whether there are internal mechanisms to detect that a business is in distress, and who are the most appropriate professionals to assist the business when in difficulty.
- **The fresh start.** The questions focus on whether the enterprises believe that legislation should promote a Fresh Start and eliminate the Stigma of businesses previously involved in bankruptcy and if the enterprises provide credit to businesses that have previously failed.
- **The external control.** The questions evaluate the possibility to introduce an external control over a distressed business and if such a control should be exercised by the public authorities and/or by ad hoc professionals (such as anti-crisis managers and mandataires ad hoc according to the French trend).

The questions to the general community were designed to be less technical, to enhance feedback, even if the subject “Stigma and Fresh Start” often does not represent a priority for them. The questions focused on the following issues:

- **General knowledge.** The questions evaluate the degree of awareness of the targeted organisations within the specific field.

- **The Stigma.** The questions focus on whether the general community distinguishes between a business in distress, a business that has recovered from distress, and a fraudulent bankrupt and non-fraudulent bankrupt entrepreneur.
- **The availability of information.** The questions determine what information is gathered by the general community and to identify its sources.
- **Reasons for failure.** The questions evaluate what the degree of knowledge and awareness of the general community is in respect to the most common reasons for business failure, which is expected to be different from the other communities.
- **Consequences of failure.** The questions should clarify what the commercial attitude of the consumer is vis-à-vis the failed entrepreneur.
- **The fresh start.** The questions evaluate what the perception of the general community and consumers is on the fresh start of an entrepreneur who has previously failed, especially differentiating between a fraudulent bankruptcy and the non-fraudulent bankruptcy. Consumers are often seen as the least important party to a bankruptcy and therefore, important to understand whether the risk of bankruptcy is considered as deterrent to set up a business.

The questionnaires were initially created in English. We contacted the targeted organisations by phone, during which they confirmed their interest to contribute to the survey. A vast majority of the organisations were able to communicate fluently in English. However, in order to have a better communication with the targeted organisations, where possible, we used the language of the contact person.

From the first round faxed questionnaires, we only received 36 replies out of 270 (Of the 36 replies received, just 22 provided a completed questionnaire). It was therefore suggested by the European Commission, following the meeting held on 28 February 2002 in Brussels, that we send a second distribution of faxed questionnaires whilst also making the following improvements to the process in order to increase the potential number of the replies:

1. The questionnaires were translated into French and German.
2. The number of the targeted organisations was increased to 289 enterprises.
3. It was agreed to, not only send the questionnaires to the newly identified organisations, but also re-send the questionnaires to the previously contacted organisations.
4. Further phone calls were made to notify them of the revised faxed questionnaire, explaining again the objective of the project, and requested the targeted organisations to complete and return the questionnaire. Our approach was not rigid; often we completed the questionnaire during a phone interview with the targeted organisations, or communicated with them by email upon request. This flexible approach resulted in increased feedback.

According to the Terms of References of the project and our technical proposal, we interviewed targeted organisations to determine the expectations of their members and the official position adopted by the organisations within the field of the Stigma and the Fresh Start.

The interviews were conducted over the phone with the respective representatives of the organisations, by following the format of the questionnaires. In some cases we

completed the questionnaire based upon the interview responses and additional information received from the targeted organisations.

2.2.3. Methodology Implemented

A task force was created to follow up on the targeted organisations. This was done through a number of telephone calls and faxes. The data collection process are further explained below:

- **First phone call:** a first phone call was made between the 15th and the 25th of January. The additional organisations identified, as mentioned above, were contacted by phone between the 15th and the 21st of March. A brief explanation of the project, carried out on behalf of the European Commission, was made and provided explanatory information to the targeted organisations. The call allowed us to double-check the details of the organisations and, if requested by the organisation, sent a copy of the questionnaire (fax or email).
- **First fax sending session:** following the aforementioned phone call, the questionnaires were fax to the targeted organisations. The questionnaires were sent between the 28th of January and the 6th February. The additional organisations identified, as mentioned earlier, questionnaires were sent between the 15th and the 21st of March. A deadline of one working week was imposed, however we only received 20 replies at the time of the deadline.
- **Second phone call:** the information received was not considered to be a representative sample. Therefore, a second round of phone calls were done. The objective of the project was explained again and assurance was provided that all information will be kept in the strictest confidence. The second phone call was carried out between the 14th and the 15th of February. The additional organisations identified were contacted between the 15th and the 20th of March. After this second phone call in February an additional 16 replies were received. If requested by the organisation, a copy of the questionnaire (fax or email) was sent again.
- **Third phone call:** a third round of telephone calls were done on the 4th of March. Ten lawyers were assisting the targeted organisation to complete the questionnaires. If requested by the organisation, a copy of the questionnaire (fax or email) was sent again. After the third round of phone calls, only three additional replies were received.
- **Fourth phone call:** Ten lawyers were used between the 15th and the 20th of March to make a fourth round of telephone calls and interviews. If requested by the organisation, a copy of the questionnaire (fax or email) was sent again. After the fourth round of phone calls, 24 additional replies were received.
- **Second fax sending session:** according to the suggestion of the European Commission, and our technical proposal, in order to increase the degree of feedback, the questionnaires were translated into French and German and resent to the relevant targeted organisations. The first template of the questionnaire was

prepared only in English. Because of the lack of reaction of the targeted organisations, we translated the questionnaire. The template sent to the organisations provided the questions in the 3 languages in order to reduce eventual language barriers. It should be noted that once the new version was revised, we re-sent the questionnaires to all organisations provided in the list. We re-sent the questionnaire also to organisations that had already provided their answer in order in order to grant equal treatment to future answers.

- **The final phone call:** a final phone call was done prior to the 6th of May. This phone call aimed to assist the reluctant organisations to provide a feedback before the completion of the draft of the final report. If requested by the organisation, a copy of the questionnaire (fax or email) was sent again.

2.2.4. Degree of contribution of the targeted organisations

No of organisations	Sent	Answers Received	Blank Answers
289	>289 ¹	79 (27,3%)	26

- Degree of participation of the targeted organisations per country

Country	No of questionnaires sent	Answers Received	% of Participation
A	15	5	33,3%
B	16	4	25%
DK	12	1	8,3%
F	24	3	12,5%
FIN	15	6	40%
G	24	5	20,8%
I	28	13	46,4%
IR	15	5	33,3%
L	14	5	35,7%
N	3	1	33%
NL	14	1	7,14%
P	9	2	22,2%
S	23	10	43%
SW	12	5	41,6%
UK	20	6	30%
USA	31	0	-

- Degree of participation of the targeted organisations per country and per community.

General Attitude

Country	No of questionnaires sent	Answers Received	% of Participation
A	7	0	-
B	5	1	20%
DK	3	1	33%

¹ Please, note that we sent the questionnaires to 289 organisations, but the actual number of the questionnaires sent was more than 289 because during the phone calls, the contact persons often asked us to re-send them an additional copy by fax or email.

F	8	3	37,5%
FIN	5	3	60%
G	9	1	11,1%
I	12	2	16,6%
IR	4	2	50%
L	6	1	16,6%
N	-	-	-
NL	2	0	-
P	3	0	-
S	9	4	44%
SW	4	0	-
UK	8	2	25%
USA	13	-	-

Business

Country	No of questionnaires sent	Answers Received	% of Participation
A	5	2	40%
B	7	2	28%
DK	6	0	-
F	13	0	-
FIN	3	1	33%
G	12	3	25%
I	12	7	58,3%
IR	6	4	66,6%
L	6	2	33%
N	2	0	-
NL	9	1	11,1%
P	3	0	-
S	10	3	33,3%
SW	5	3	60%
UK	9	2	22,2%
USA	B	-	-

Financial

Country	No of questionnaires sent	Answers Received	% of Participation
A	3	3	100%
B	4	1	25%
DK	3	0	-
F	3	0	-
FIN	3	1	33,3%
G	3	1	33,3%
I	4	4	100%
IR	3	-	-
L	2	2	100%
N	1	1	100%
NL	3	1	33,3%
P	3	1	33,3%
S	4	3	75%
SW	3	2	66%
UK	3	2	66%
USA	11	-	-

From the results of the above and analysis of the replies, indicators relating to the Stigma on business failure were developed and recommendations aiming at eliminating or reducing the Stigma attached to failed entrepreneurs were formulated.

2.3. PART 2: LEGAL CONSEQUENCES OF INSOLVENCY

Insolvency law specialists in each Member State were asked to prepare comprehensive reports on the legal framework of bankruptcy. To ensure comparability, uniform guidelines for their reports were designed to be followed by each expert (Appendix B). Together with this guideline, a questionnaire based on the “Principles and Guidelines for Effective Insolvency and Creditor Rights Systems” prepared by the World Bank, was sent to the experts (Appendix C).

From these individual country reports, a summary overview and a basic comparison between the insolvency legislation by country was documented. More specifically with respect to:

- Detection of businesses in difficulties and warning lights (Section 4.1);
- Legal possibilities to continue economic activity (Section 4.2);
- Legal consequences of bankruptcy and possibilities for a fresh start (Section 4.3);

During a second phase we developed indicators to assess to what extent national insolvency laws act as a deterrent to business survival and the possibility of a fresh start subsequent to bankruptcy.

Finally recommendations were formulated to improve the situation for failed entrepreneurs who wish to make a fresh start.