

3. STIGMA ON FAILURE

3.1. QUESTIONNAIRE FOR THE GENERAL (CONSUMER) COMMUNITY AT NATIONAL LEVEL

The present comparative analysis is based on answers to the questionnaires received from targeted organisations in Belgium, Finland, France, Greece, Italy, Luxembourg, Portugal, the Netherlands, Spain, and the UK.

No responses were received from the targeted organisations in the following countries: Austria, Denmark, Germany, Ireland, Sweden, and USA.

“Yes” and “No” answers are illustrated in graphical form.

KEY:

1 = Yes

2 = No

3 = Yes and No/ according to the specific case

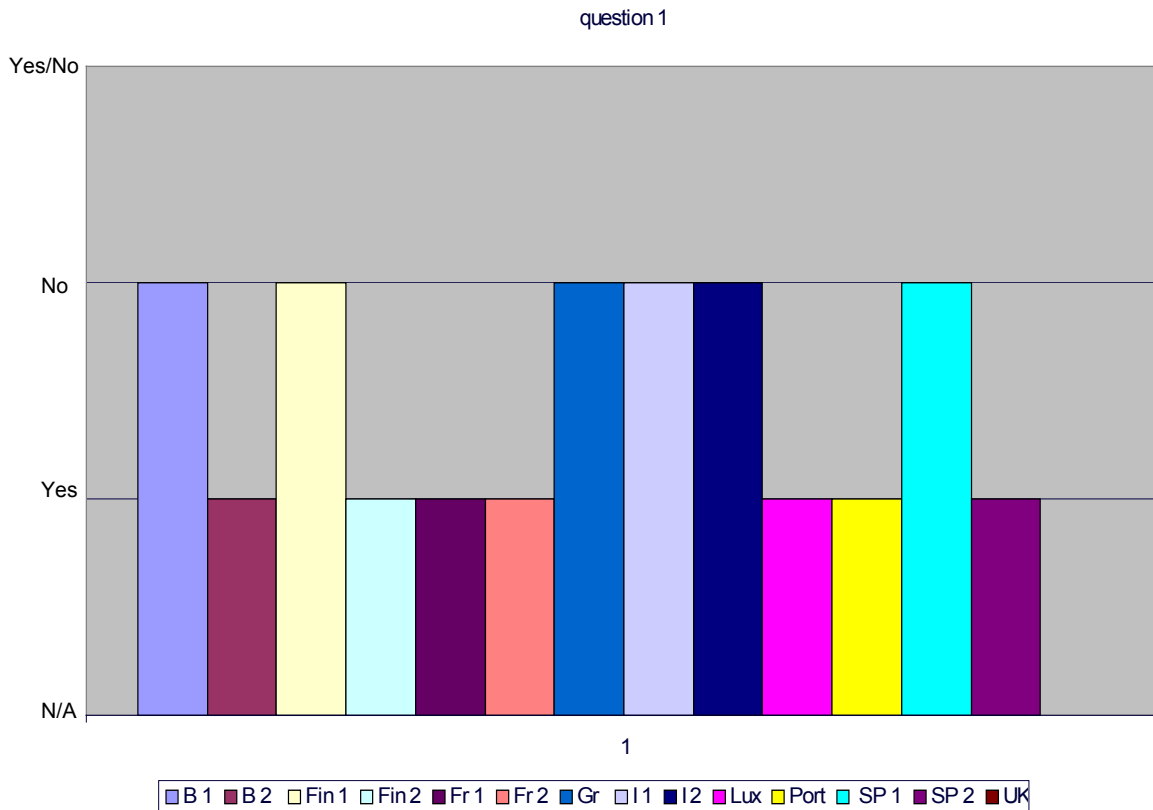
A number of questions were not answered or answered “we do not know”: These will be displayed as blank.

Additional comments provided by the targeted organisations will be referred to alongside the comparative analysis.

The name of the targeted organisations is confidential, their answers will not be personally identified in the present report, but will be assessed using a country trend.

□ **General Knowledge**

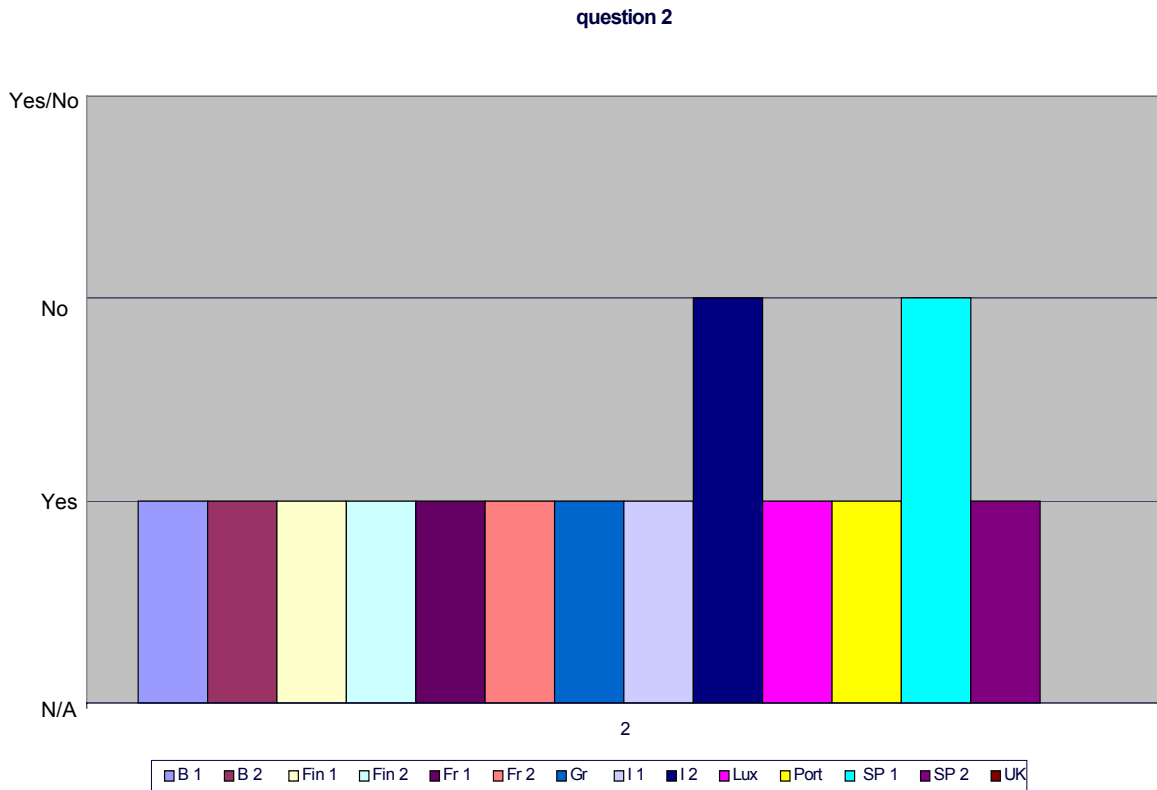
1. Do the members of your organisation /community know the difference between insolvency and bankruptcy?



The responses received from the targeted organisations highlight that a significant number of those organisations are not aware of the difference between bankruptcy and / or insolvency.

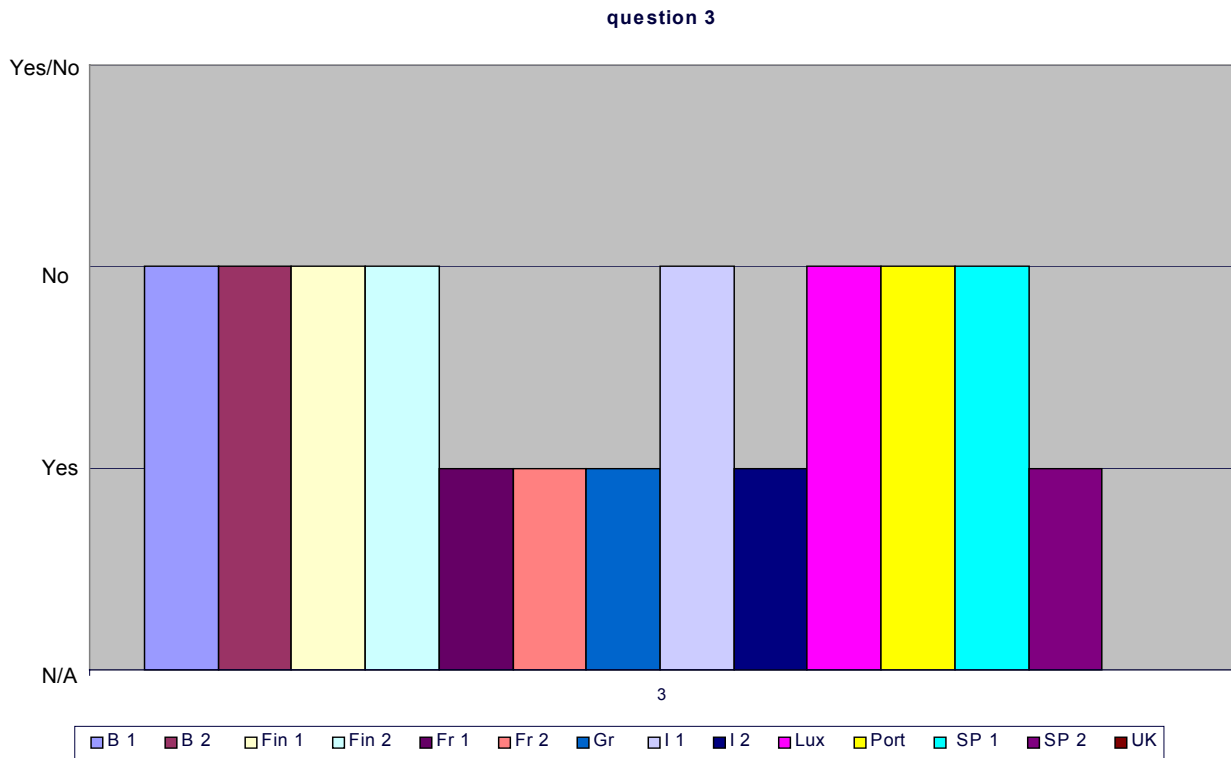
According to the telephone interviews carried out, the vast majority of the organisations targeted do not deal with that specific field. The Italian organisations interviewed did not consider consumers to be directly affected by bankruptcy. Indeed, according to them, within the field of the consumer protection, there are other priorities to deal with. The same organisations pointed out that in many cases they are subject to budget restrictions, and are therefore obliged to work solely within the fields of consumer health or protection of consumers in commercial and financial transactions.

2. Are your members familiar with the notion of bankruptcy/business failure?



The majority of the targeted organisations stated that their members (regional organisations) and consumers are familiar with the notion of bankruptcy / business failure. The vast majority of those organisations interviewed also stated that the consumer has only very general views on, or knowledge of business failure. The French organisations noted that in their experience consumers are aware as a number of them have been placed under a procedure for excessive debt.

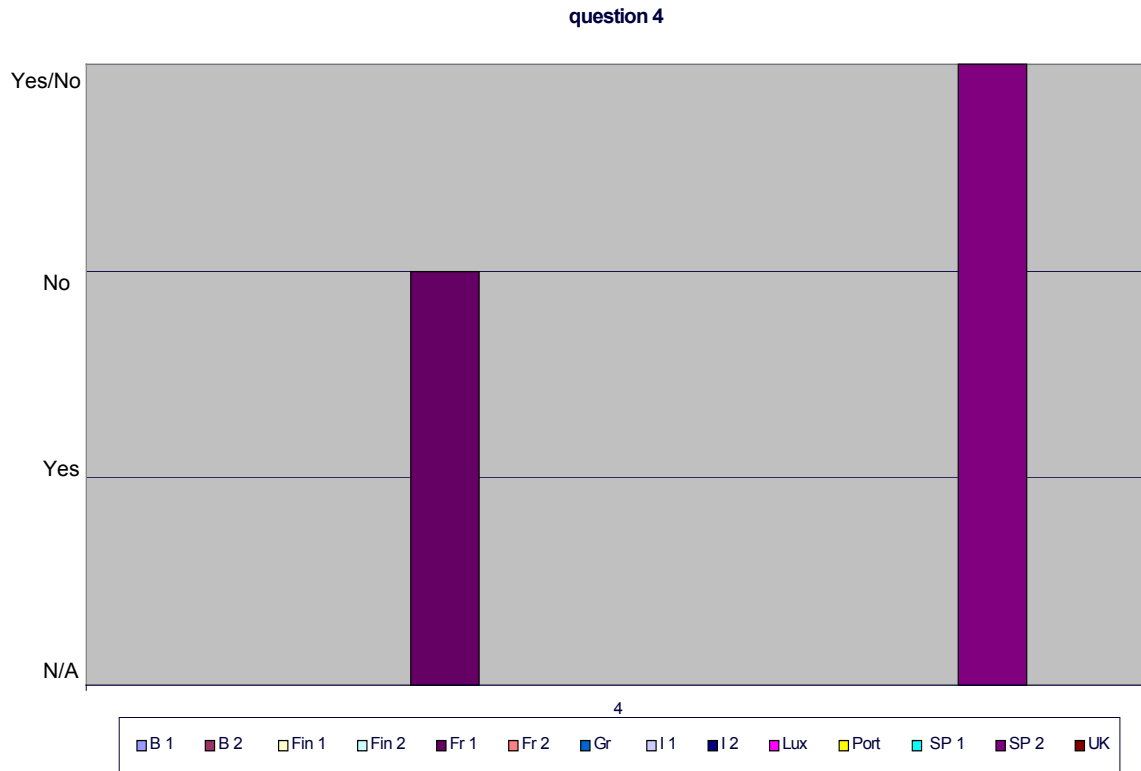
3. Do your members often have questions regarding bankruptcy/business failure?



The majority of consumers were found not to have questions relating to bankruptcy or business failure. According to those organisations interviewed, there is also a cultural issue to face: consumers generally think that consumer organisations deal exclusively with consumer protection and not with commercial matters. They also explained that there are no national publicity or other campaigns highlighting the implications of business failure for consumers.

4. If yes, is this generally because they:

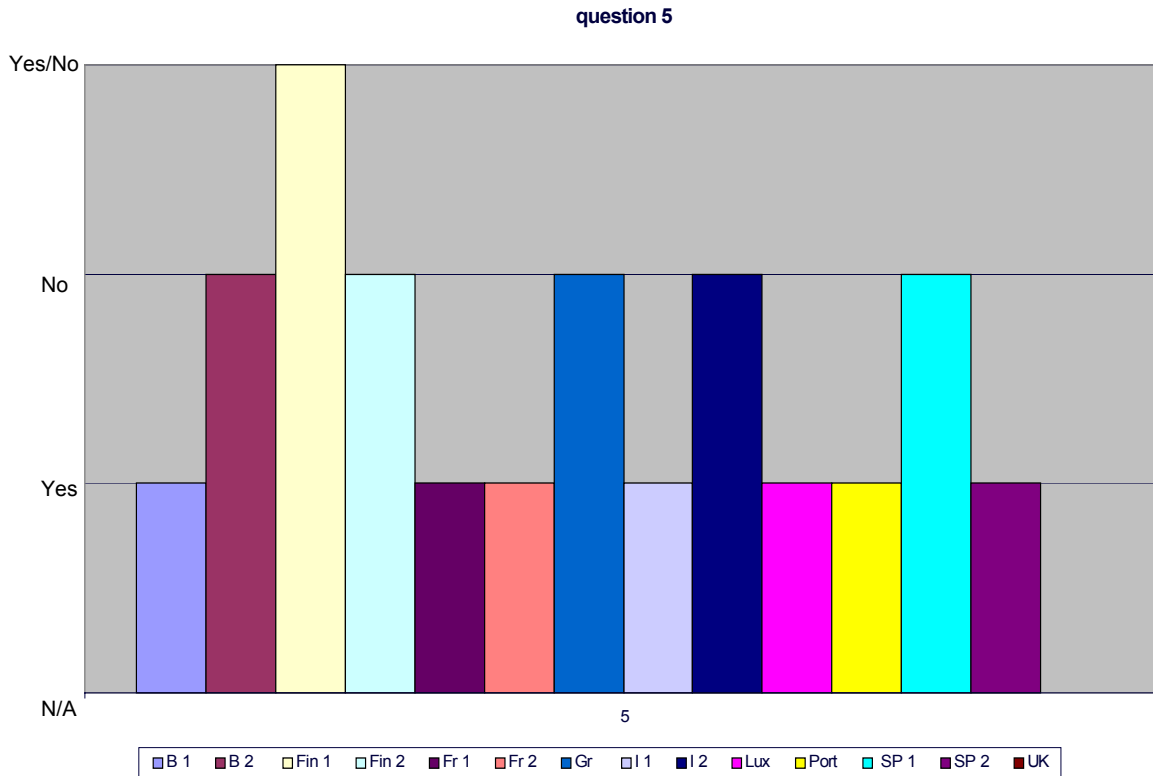
- **are facing financial difficulties**
- **deal with bankrupt/failing businesses and are unsure whether they should continue to do so**



In view of the limited number of responses received, it is impossible in this instance to highlight a trend. Those targeted organisations, which provided feedback confirmed that in the majority of cases consumers only show an interest in bankruptcy legislation when they face financial difficulties or are dealing with a business in crisis.

□ **Stigma**

5. Do your members attach a stigma to a bankrupt business?



7 organisations out of 13 organisations stated that their members attached a Stigma to a bankrupt business. However, no common trend could be identified among the responses received. Additionally, on a national level, organisations adopted different approaches. Organisations in Belgium, Italy and Spain expressed opposite positions. This situation was not altered during the telephone interviews. The interviewed organisations underlined the fact that their answers were given without consulting their members.

More interesting input was given by a French organisation. According to this organisation, stigma exists because consumers have such a low degree of protection in these circumstances. Indeed, this organisation added that increased public and external control over a business in financial difficulty would reduce the stigma if the controller were acting in the name of the creditor/consumer protection.

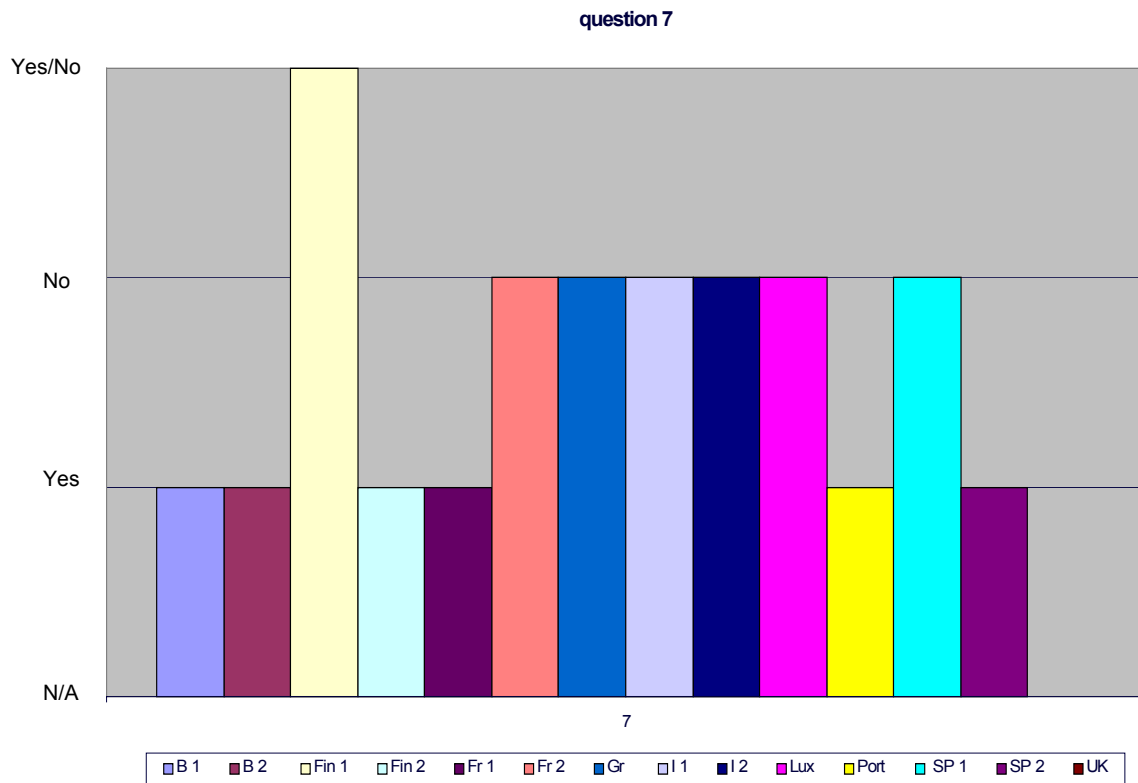
6. Why?

Unfortunately, only a limited response to this question was received from the targeted organisations. According to a Belgian organisation stigma exists due to cultural reasons. The answer did not provide any further comments. During the interview, the same organisation highlighted that from a lexical point of view, the word “faillite” (bankruptcy in French) has a very negative connotation. According to this organisation there is a kind of “stigma per se”.

A Finnish organisation stated that stigma does not exist because it is not considered morally justified.

The French, Spanish and Luxembourg organisations declared that stigma existed because of the negative experiences of consumers and minor investors in these situations.

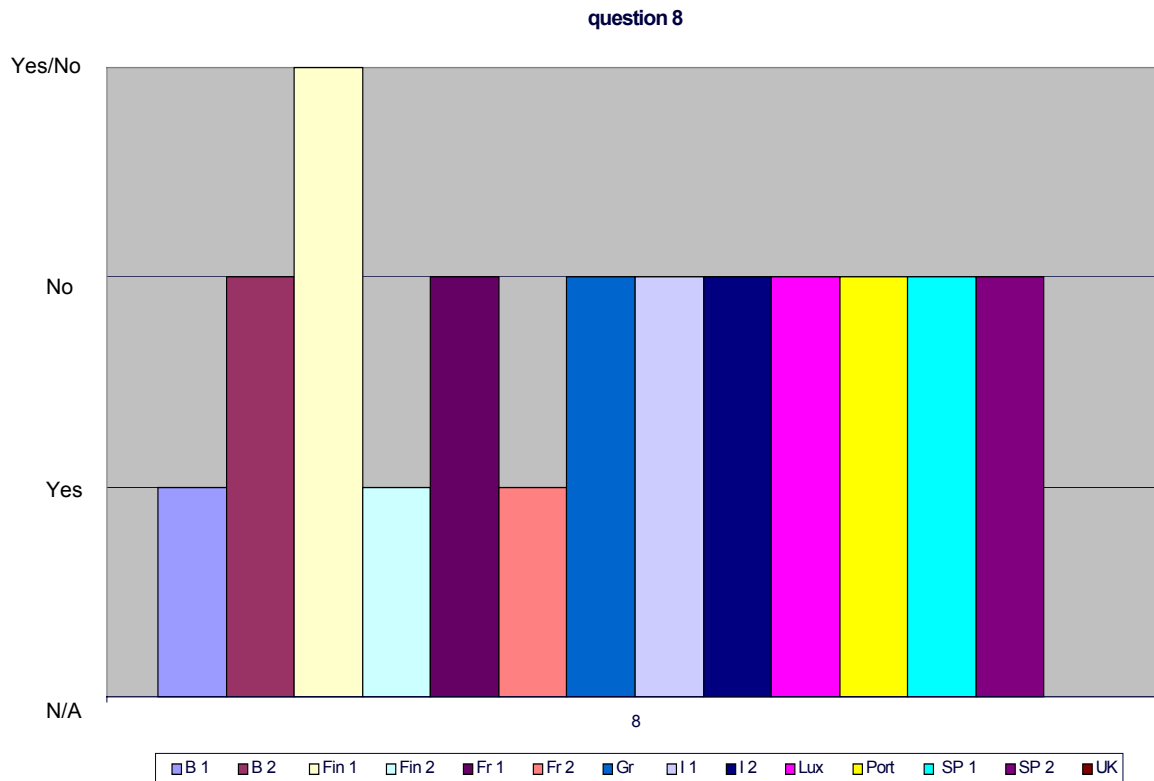
7. In your experience, do your members make a distinction between a business in distress and a business that has recovered from distress?



We are not in position to define a common trend.

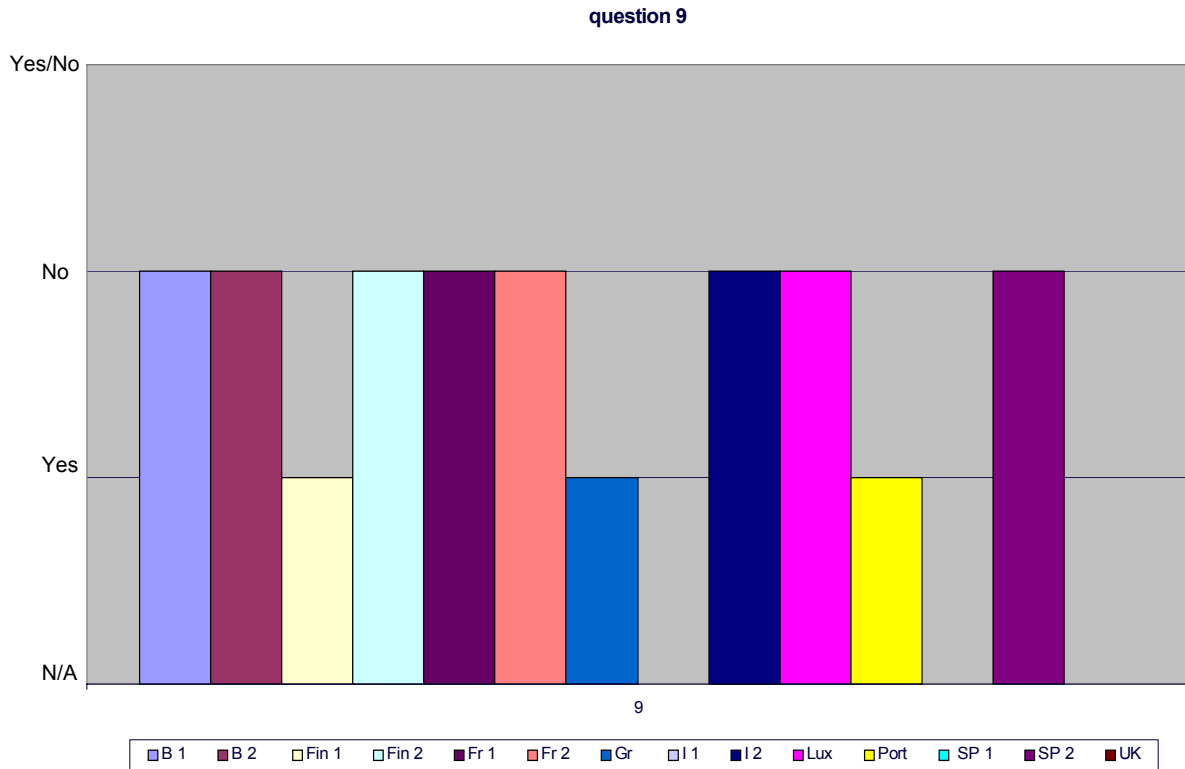
The targeted organisations stated that in general their respective members do not see a difference between the stated categories of businesses. Once a company knows that a counterpart is in difficulties, commercial relationships are immediately halted.

8. In your experience, do your members differentiate between a fraudulent bankrupt business and a non-fraudulent bankrupt business?



The vast majority of the targeted organisations stated that the general public does not know whether there is a difference between fraudulent and non-fraudulent bankruptcy. In doubt, they attach a strong stigma to a bankrupt business. Furthermore, according to a Finnish organisation, the knowledge of the public varies according to the information provided by the media. Therefore, the consumer pays attention just to the content of the information and not to the legal nuances.

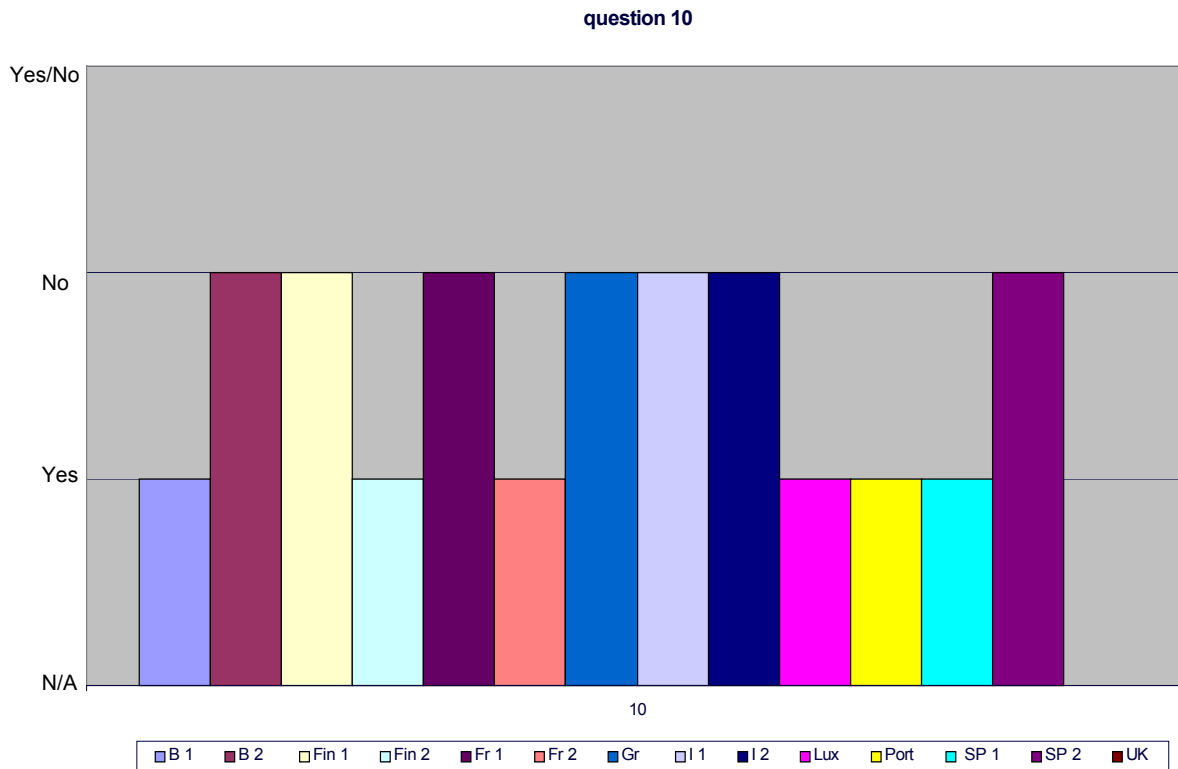
9. Is your community more tolerant towards a young IT start-up in difficulty than towards an established firm with a significant number of employees?



The majority of the targeted organisations stated that the general public is not more tolerant vis-à-vis start-ups. The one exception was provided by a Finnish organisation. According to this organisation, the Finnish consumer is very tolerant vis-à-vis a business with a significant number of employees. During the interview, the same organisation confirmed that safeguarding the work force appeared to be the most important value for the Finnish citizen and consumer.

□ **Availability of information**

10. Apart from the general media, do your members have any other way of being informed of a business failure?



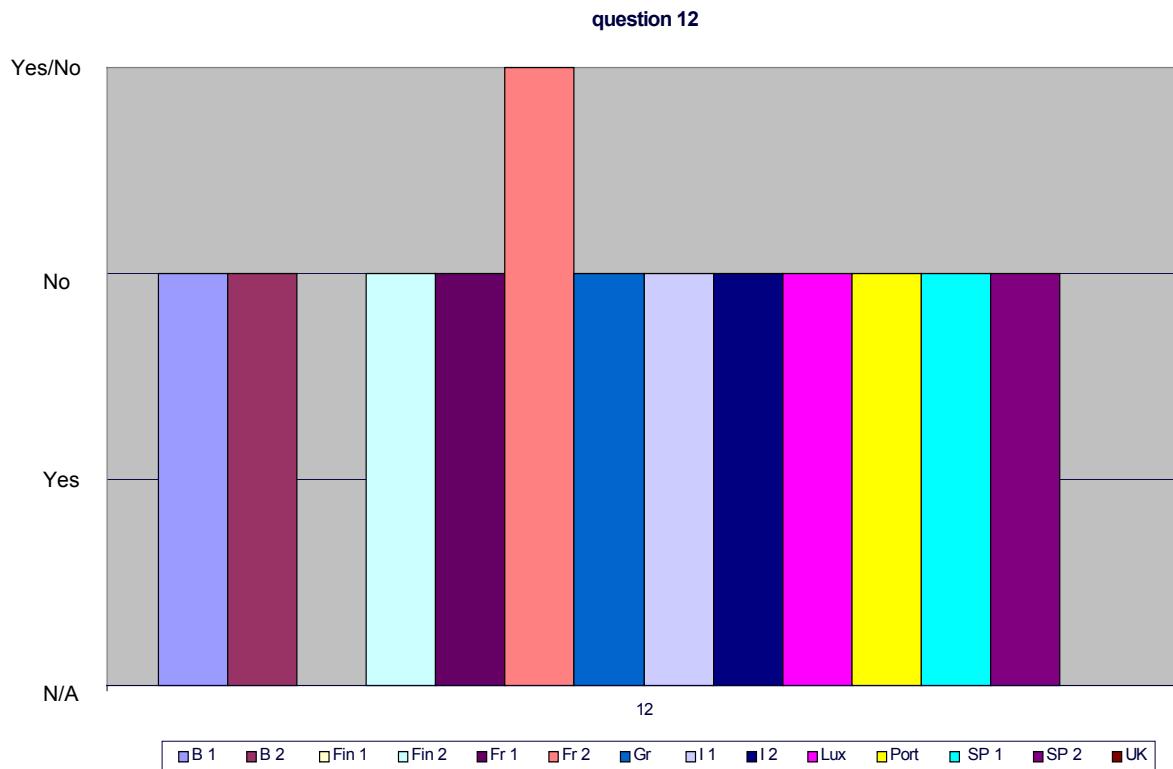
According to the questionnaires received and interviews carried out, the targeted organisations are of the view that the general public relies on the information provided by media.

The French and Luxembourg organisations interviewed provided exceptions to this. These organisations stated that consumer can have access to this information at “guichets” (desks), which are set up within the courts.

11. If yes, how?

The exception is represented by both a French and a Luxembourg organisation. These organisations declared that consumer can have access to this information thanks to guichets (desks), set up within the courts.

12. Does your association keep a specific databank on bankruptcies/business failures?



All the targeted organisations stated that they do not retain this type of information.

One exception was provided by a French organisation. This organisation retains data where that information refers to businessmen who have been involved in bankruptcy on several occasions.

13. If yes, how and under what circumstances is it used?

The French organisation is the only organisation to hold such data. The data is used in litigation procedures initiated in order to defend the consumer.

□ ***Reasons for failure***

14. According to your experience, and according to your members, what are the most common reasons for business failure?

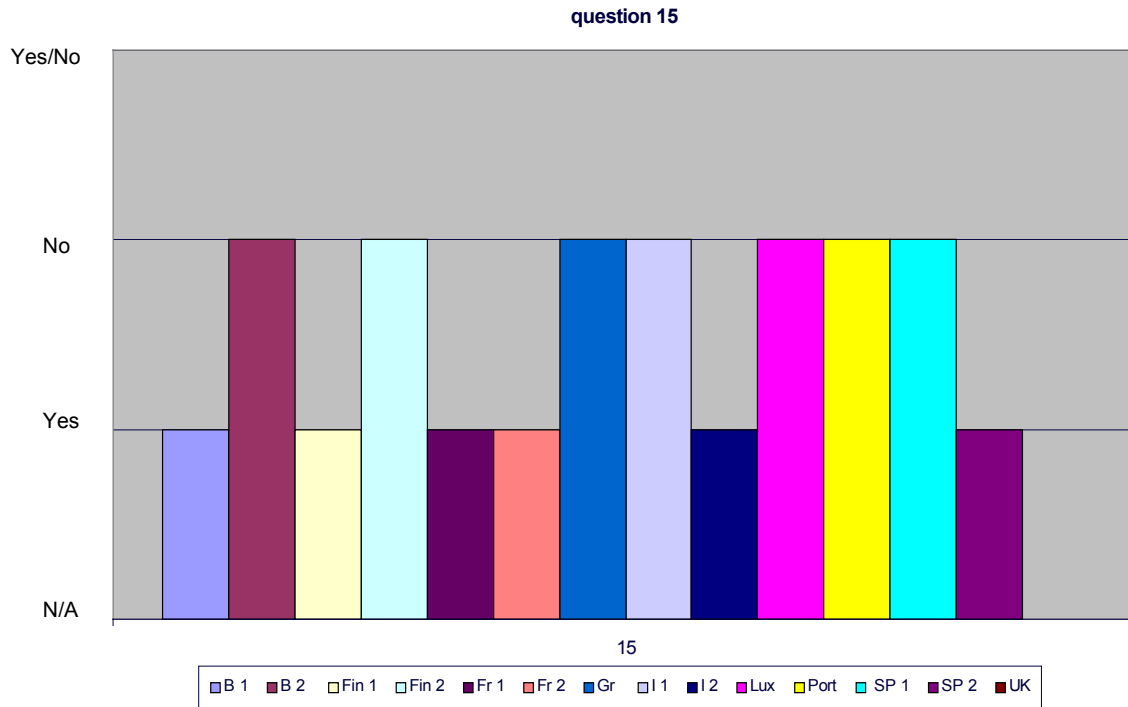
According to the questionnaires received and the interviews carried out, the vast majority of organisation stated that the causes of the business failure are:

1. financial difficulties
2. lack of management skills
3. fraud
4. taxation.

The majority of interviewed organisations stated that within the credit sector, business failure is due to financial problems. Within the horeca (hotels, restaurants, café's) sector, business failure is usually caused by a lack of management skills. These sectors would appear to be the most sensitive for consumer protection. Please note that the activities of the majority of targeted consumer organisations are focused on the credit and health sectors.

□ **Consequences of failure**

15. Do you usually discourage your members from dealing with a company whose financial difficulties have been revealed?



From the 13 organisations questioned, 7 were found not to discourage their members from having dealings with a business in difficulty.

16. Why?

A French organisation, during the interview, taking a conservative approach, stated that the protection of the consumer would be beneficial in a market where the offers for consumers have no limit and the degree of competition is very high.

17. What is the reaction of the majority of your members towards a failing company?

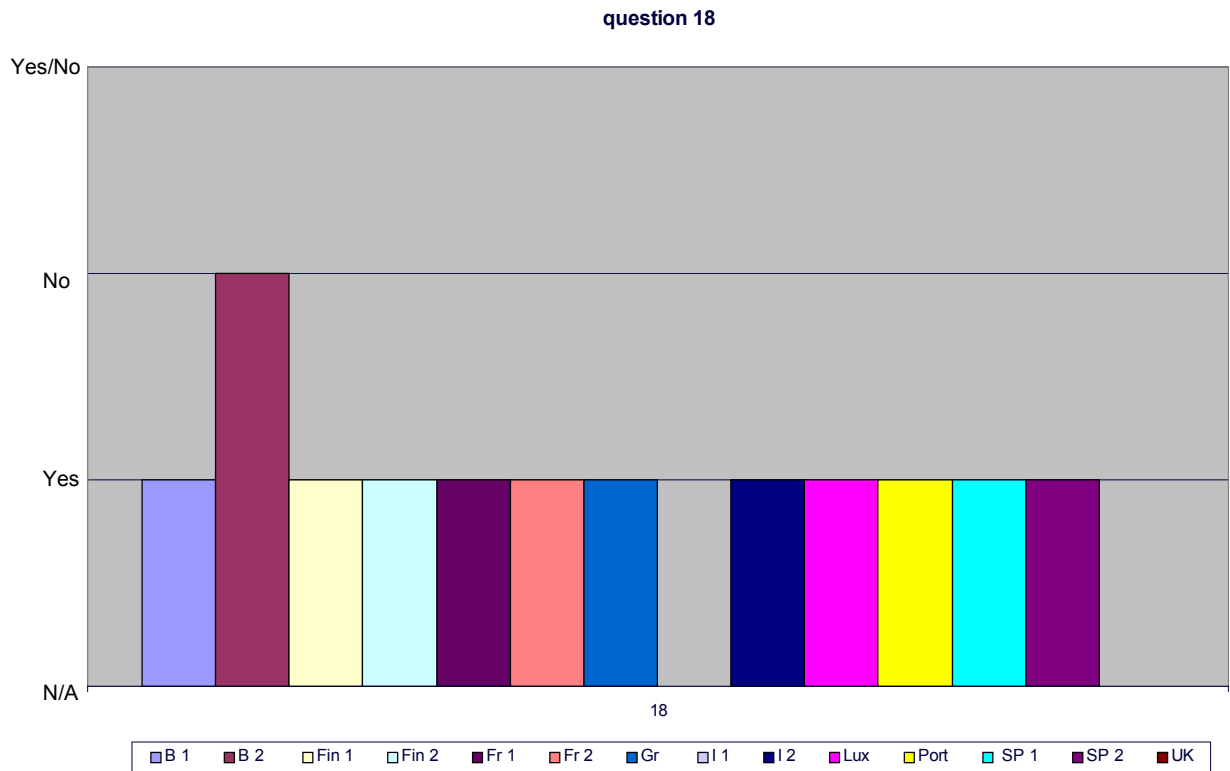
The questionnaires received highlighted two major trends: firstly that their members decide to cease all commercial relationships immediately or they request advice from a third party.

5 organisations (F – 2 orgs, P/Fin/S) consider that their members would discontinue business with a failing company.

5 organisations (S – 2 orgs, L/Gr/B) consider that their members would request advice from a third party.

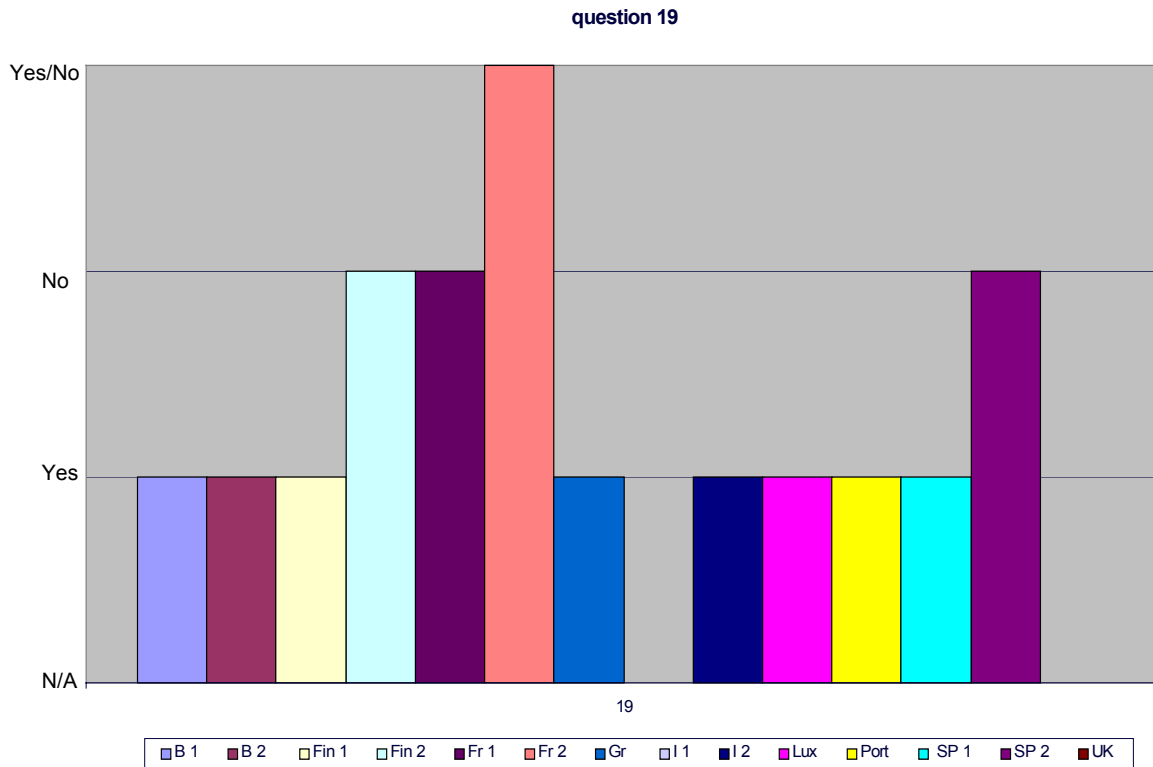
□ *A fresh start*

18. If a failed entrepreneur has started a new business, would your members be influenced by his previous failure?



According to the questionnaires received, only one organisation out of 13 stated that their members would not be influenced by the previous failure of an entrepreneur.

19. Would you warn them of this previous failure?



The overall majority of organisations questioned stated that they would warn their members about the previous failure of a business.

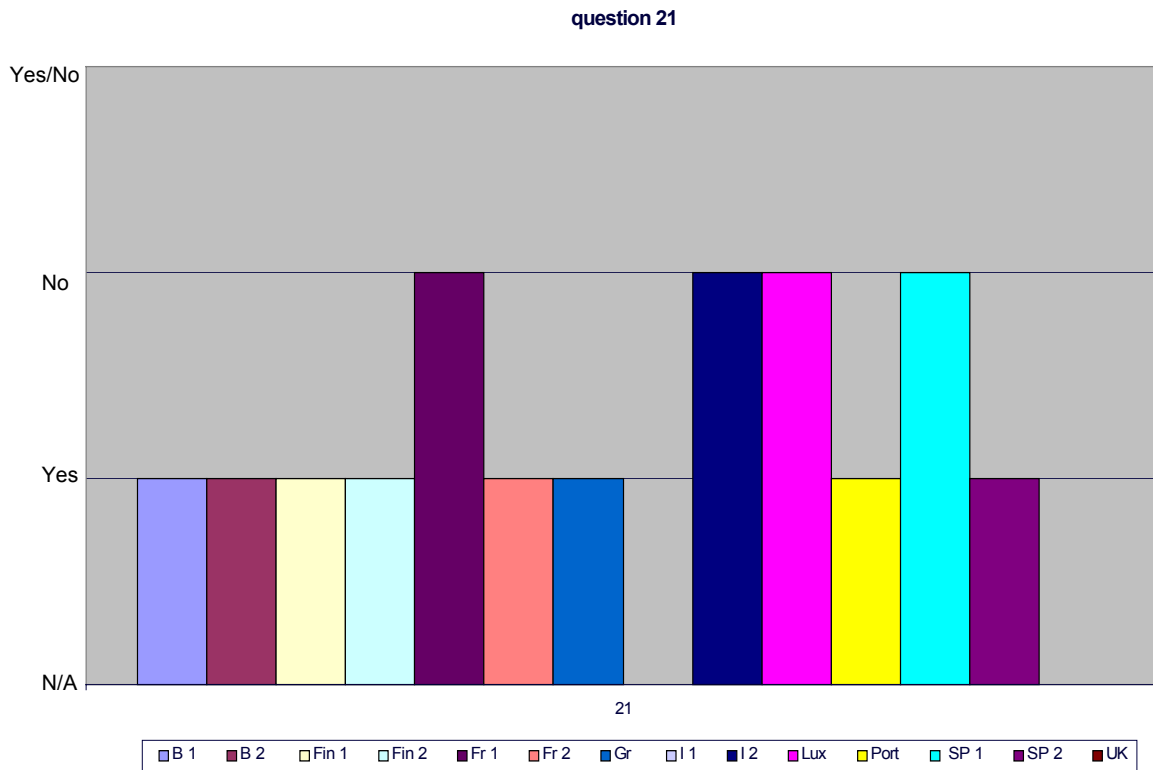
A Spanish organisation stated that it preferred not to intervene in the commercial conduct of its members. The same organisation, however, declared during the interview that it is impossible not to exert to a certain extent an influence their members if you provide them with this kind of information.

20. Why?

We are not in a position to identify any general trend due to the lack of information provided by the questionnaires received.

However, during the interviews 3 Italian organisations stated that their role is to ensure that the consumer is not involved in financial difficulties. Therefore, on the basis that the consumer is generally the weakest party, these organisations preferred to warn their members. A Greek organisation stated that it would suggest to its members to make further inquiries about the causes of the failure in order to evaluate the desirability to stop business.

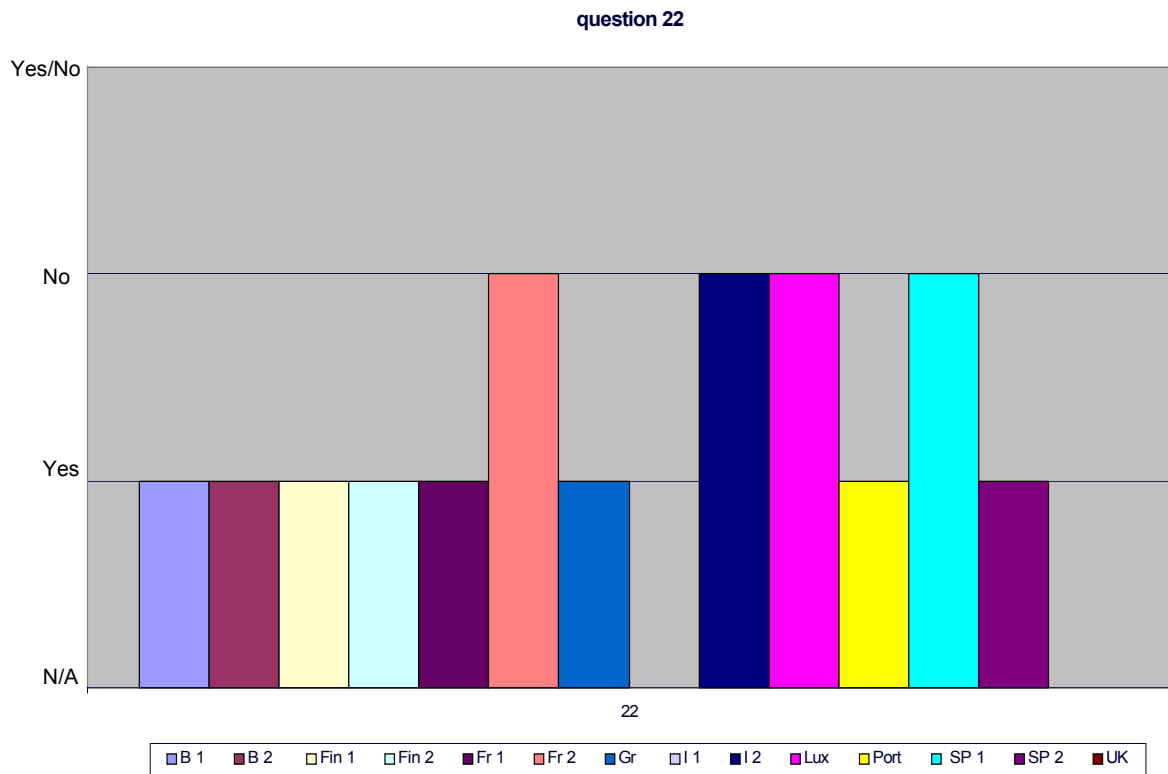
21. Do you think that the legislator should promote the opportunities available for a business previously involved in bankruptcy?



8 organisations out of 13 were favourable to the idea of promoting new business opportunities for businesses that previously went bankrupt.

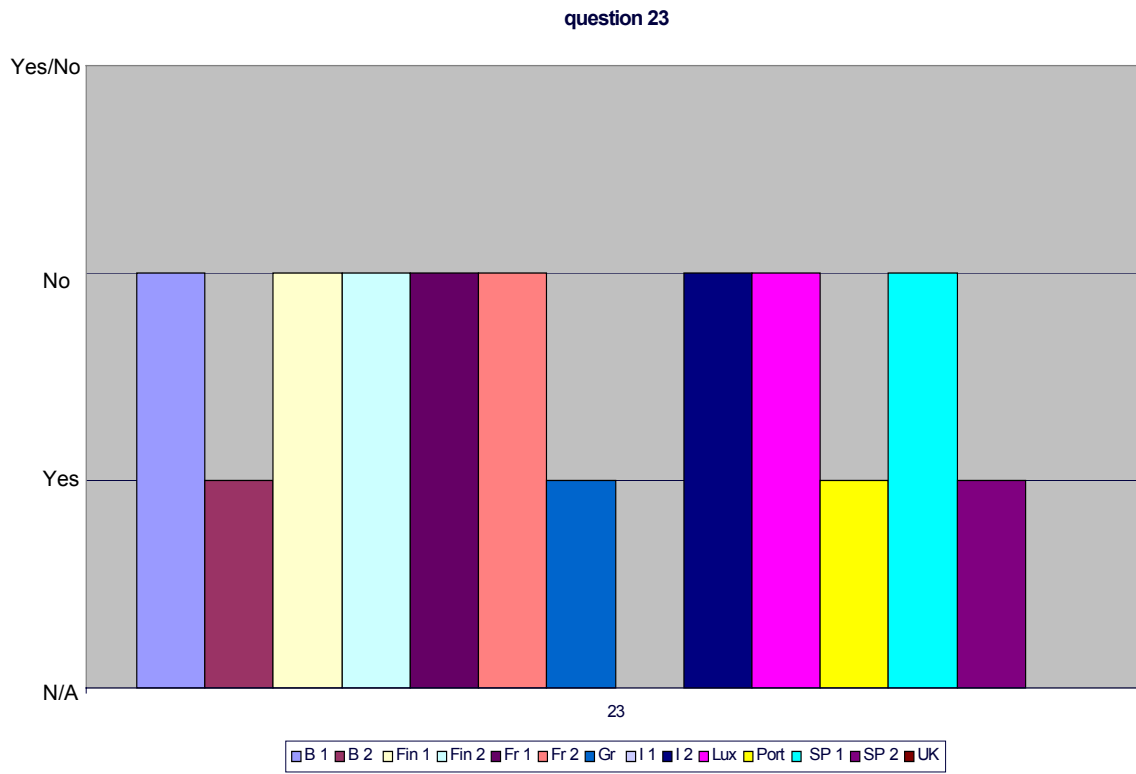
50% of the targeted organisations that responded stated during interview that the legislator should promote new business opportunities for all entrepreneurs in a safe legal and economic environment.

22. Do you think that the legislator should work to eliminate the stigma affecting the business life of an entrepreneur previously involved in a bankruptcy?



8 organisations out of 13 declared that the legislator should work to eliminate the stigma affecting the business life of an entrepreneur previously involved in a bankruptcy. We can state that this answer is in line with the previous question

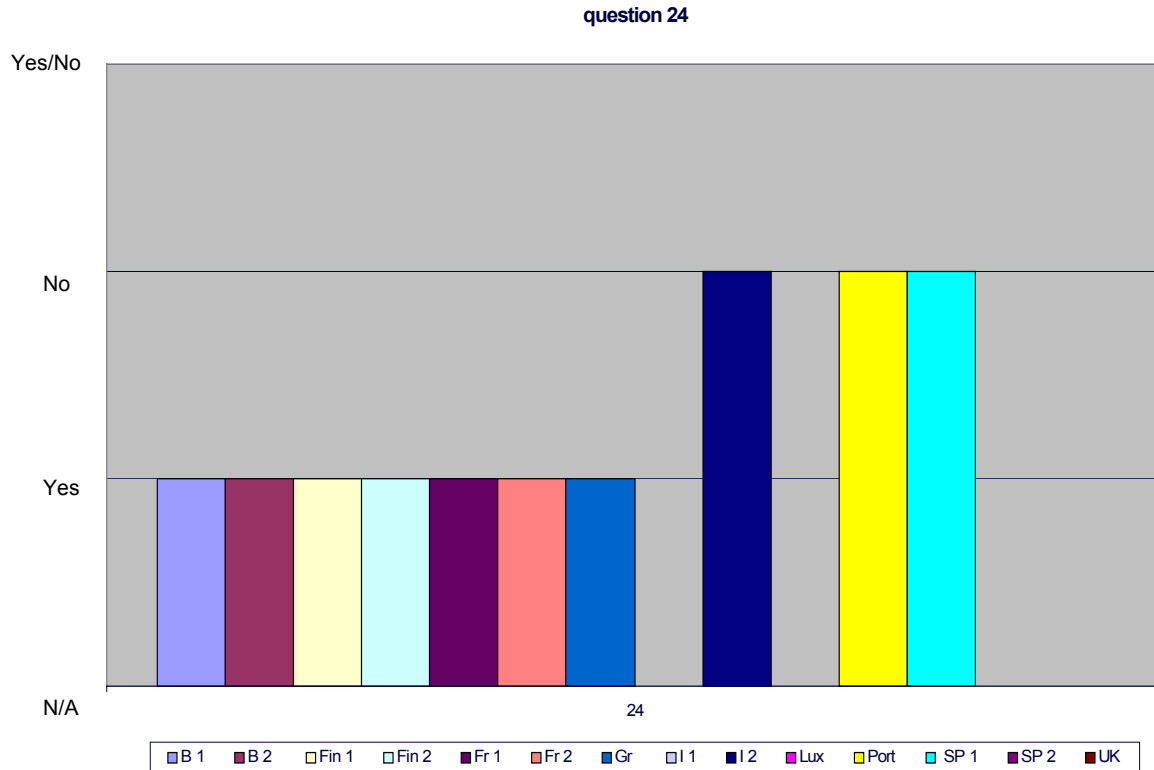
23. Should the legislator promote a fresh start and eliminate stigma for fraudulent bankrupt persons?



The majority of the targeted organisations considered that the legislator should not work to promote the elimination of stigma in cases of fraudulent bankruptcy.

The position adopted in the questionnaire was also confirmed during the interviews.

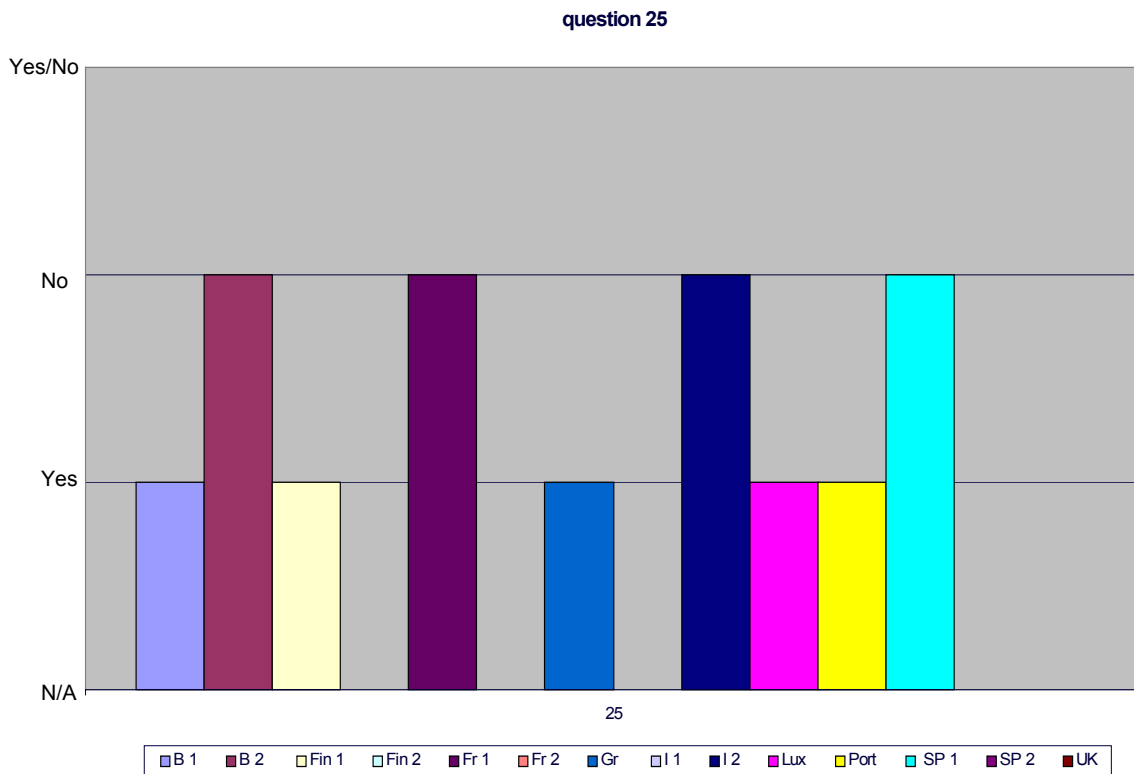
24. Do your members agree with the idea that failed entrepreneurs often learn from their mistakes and that they will be more successful in the future?



7 out of the 12 organisations responding were convinced that failed entrepreneurs generally learn from their mistakes and will be more successful in the future.

The Italian organisations questioned considered that bankruptcy should be considered as an accident in business life, therefore, it is normal that the entrepreneur can become more experienced.

25. Would the risk of bankruptcy/business failure dissuade your members from becoming entrepreneurs?



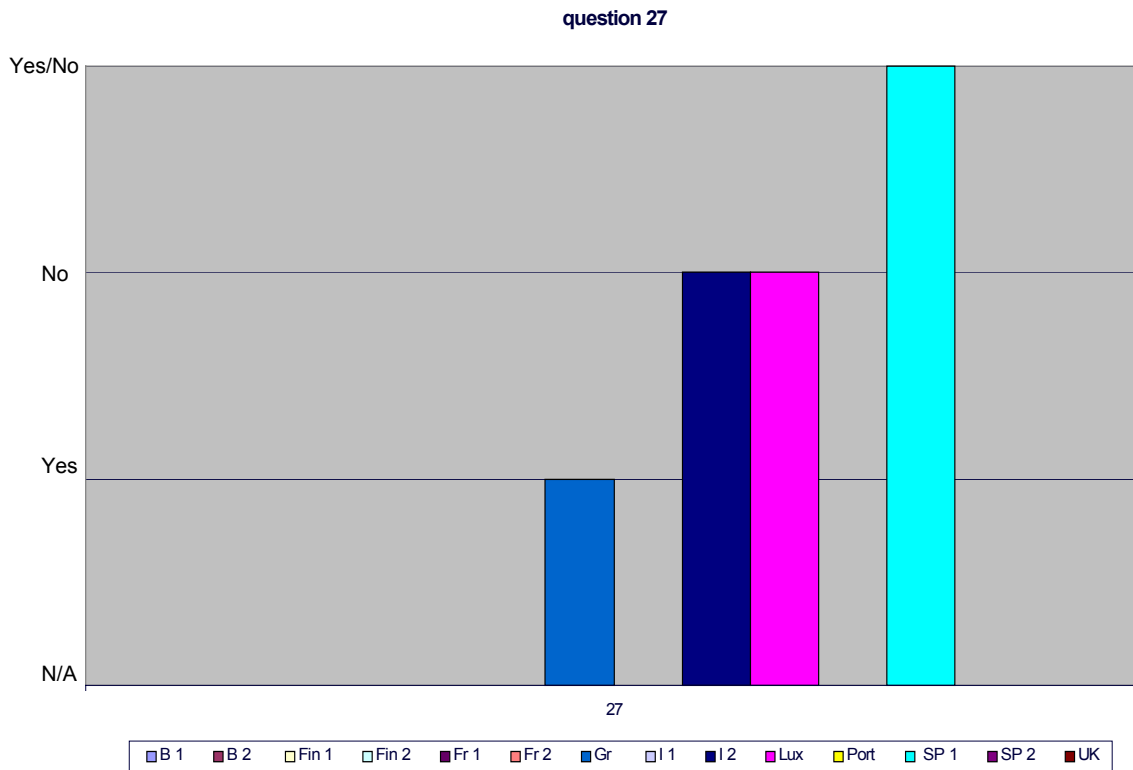
On the basis of the information received, it appears the risk of bankruptcy can discourage the creation of new businesses.

The statement of a Belgian organisation that was expressed during an interview and was confirmed in question n° 26 is very clear: the reason for not starting a new business, is the stigma of possible bankruptcy.

26. Why?

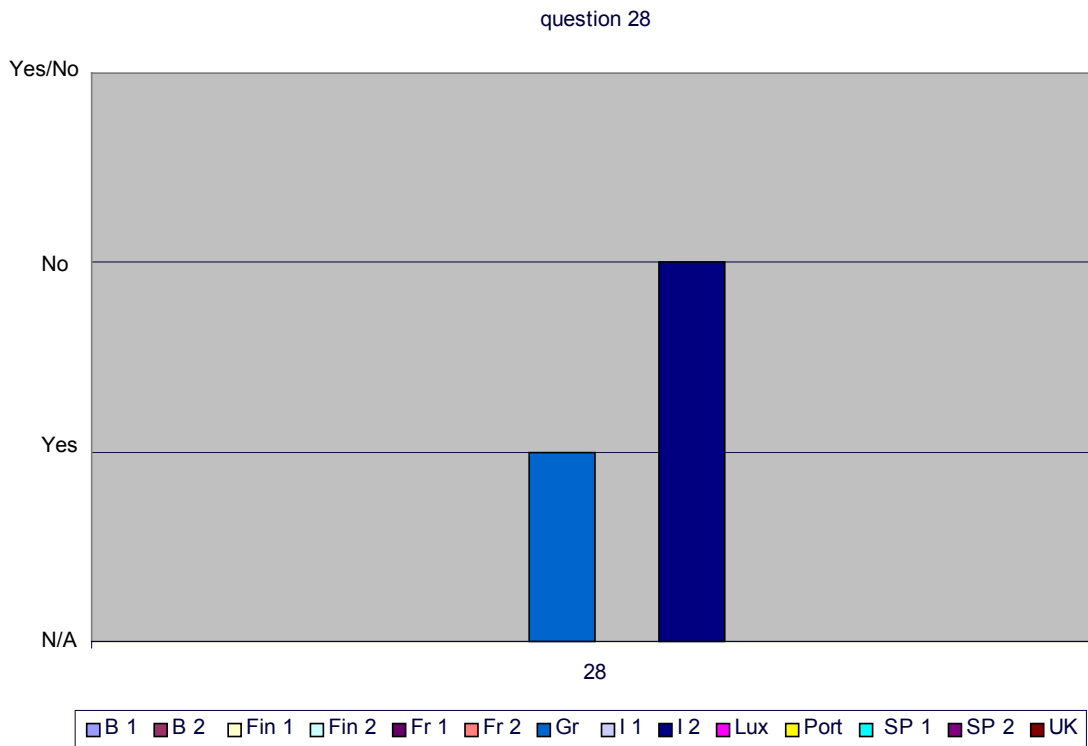
We received just 2 answers (Gr/B). Both state that bankruptcy can be considered as a deterrent to the creation of a new business.

27. Do your previously failed entrepreneur members, if any, continue to be entrepreneurs afterwards?



The targeted organisations are not in position to provide this information. The data is not available. The organisations that replied to the questionnaires declared that the information provided was solely the personal opinion of the representative.

28. If yes, does the stigma of bankruptcy make it more difficult for them to achieve good results?



Unfortunately, only 2 responses to this question were received. The vast majority of targeted organisations interviewed refused to give any official feedback, as it did not relate to consumer protection.

29. How?

Only three responses to this question were received.

According to one Belgian and one Finnish organisation, an entrepreneur who had previously failed would not be able to find new sources of credit to continue his activities.

A Greek organisation pointed out that the entrepreneur would not find a commercial partner.

3.2. QUESTIONNAIRE FOR THE BUSINESS COMMUNITY AT NATIONAL LEVEL

The present comparative analysis is based on answers to the questionnaires received from targeted organisations in Austria, Belgium, Finland, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Spain, and the UK.

No responses were received from targeted organisations in Denmark, France, Norway, Portugal, Sweden, and the USA.

“Yes” and “No” answers are illustrated under the form of graphs.

A number of questions were not answered/ answered “we do not know”: they will appear as blank.

Additional comments were occasionally provided by the various organisations questioned and will be referred to alongside the comparative analysis.

The identities of the targeted organisations are confidential; their answers will not, therefore, be personally identified in the present report, but will be assessed on a country by country basis.

1. Does your association /community represent:

Category	Number in figures	Percentage
Large enterprises (+ 250)	—	—%
Medium sized enterprises (50-250)	—	—%
Small enterprises (10-50)	—	—%
Micro enterprises (-10)	—	—%
Total	—	100 %

This question was designed in order to assess the degree of representation of the targeted organisations.

The targeted organisations were asked to identify whether they generally represented large enterprises (employing more than 250 persons), medium sized enterprises (employing between 50 and 250 persons) small enterprises (employing 10 to 50 persons) or micro enterprises (employing less than 10 persons)

The targeted organisations for the business community represented business (approximately) in the following proportions:

- Mainly micro and small enterprises: 5/8 (of which more than half mainly represented micro enterprises)
- Mainly medium enterprises: 1/8
- Mainly large enterprises: 2/8

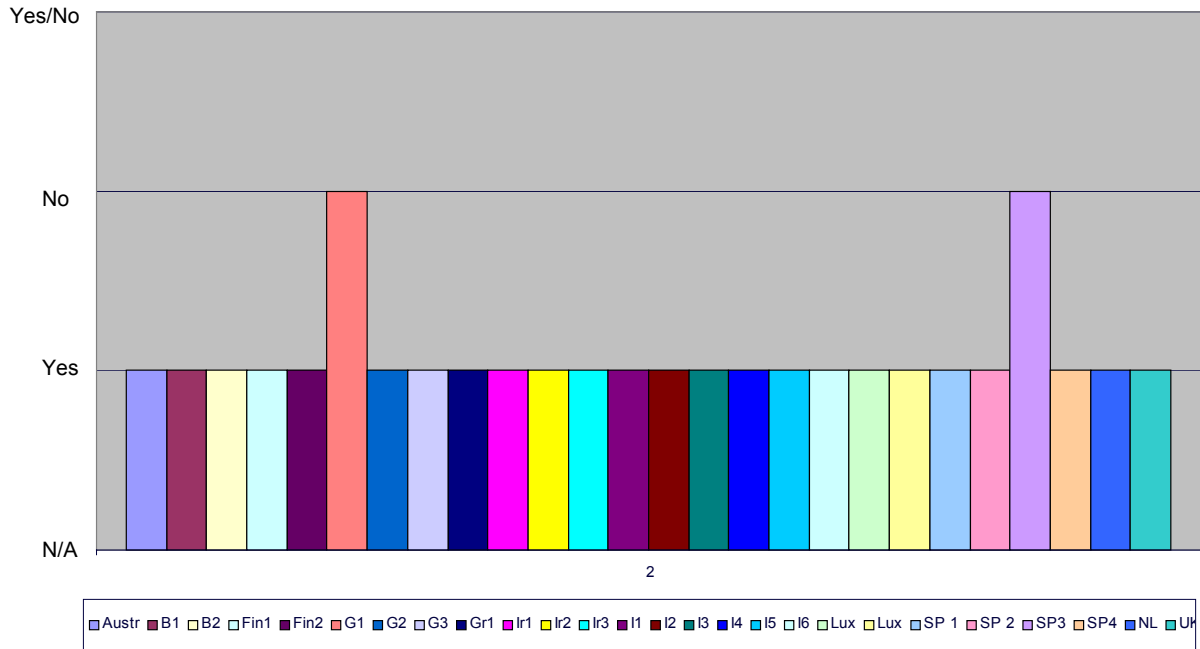
The number of enterprises represented by the targeted organisations, in numbers, varied from 55 to 379.300, thus guaranteeing a wide range of representation.

The sample therefore represented all types of enterprises.

□ **Stigma**

2. Within the business community, is there a stigma surrounding the failure of a business and/or bankruptcy?

question 2 b



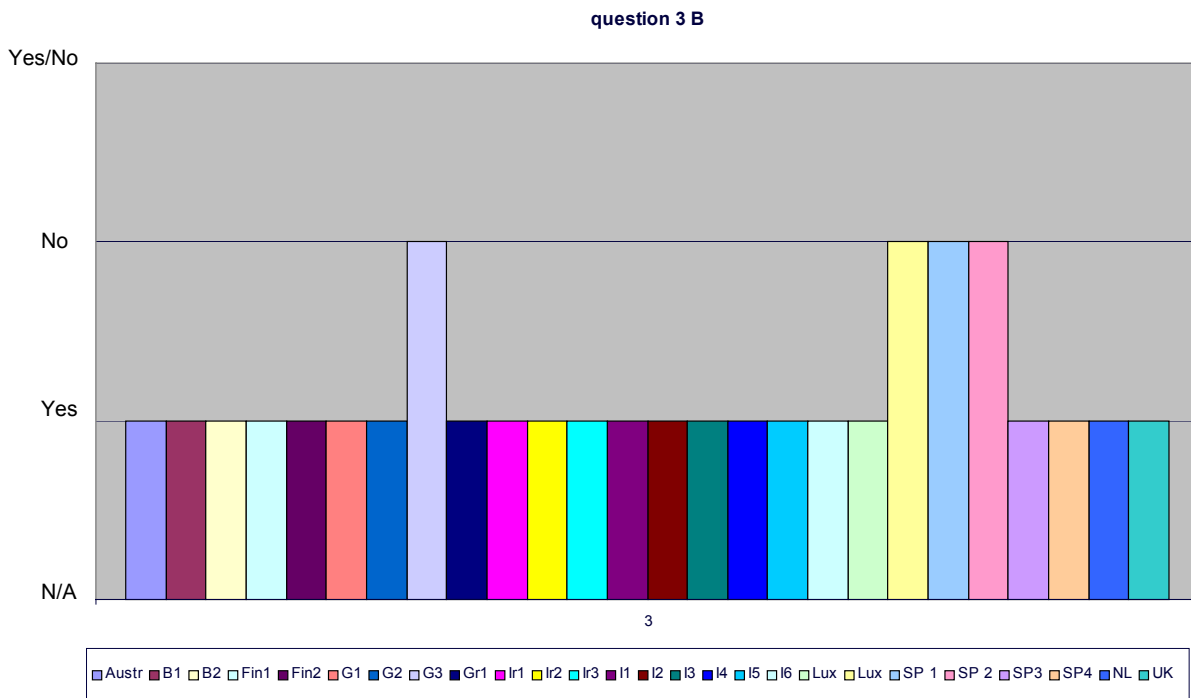
Within the business community, it appears that a stigma does surround the failure of a business and/ or bankruptcy.

- A Belgian organisation justified this statement with the idea that business failure is considered to reflect badly on the management of the under-performing company.
- A Greek organisation indicated that such stigmas consist in negative incentives, high taxation, financial difficulties, and failure in facing competition.
- In Luxembourg, it was stated that bankruptcy is always considered as something negative, and often implies the notion of fraud.
- A Dutch organisation observed that a business failure is generally regarded as a personal failure of the owner/manager.
- A British organisation pointed out to the negative consequences of failure in terms of both creditworthiness and trust.

Bankruptcy and a fresh start: stigma on failure and legal consequences of bankruptcy

- A Finnish organisation nevertheless pointed out that such a statement is true only to some extent: during the recession of early 1990's, bankruptcy became so common that today, there is less stigma than 15 years ago.
- The existence of such stigma was denied both by a German organisation and by a Spanish organisation.

3. According to your experience, do entrepreneurs make a distinction between a business in distress and a business that has recovered from distress?

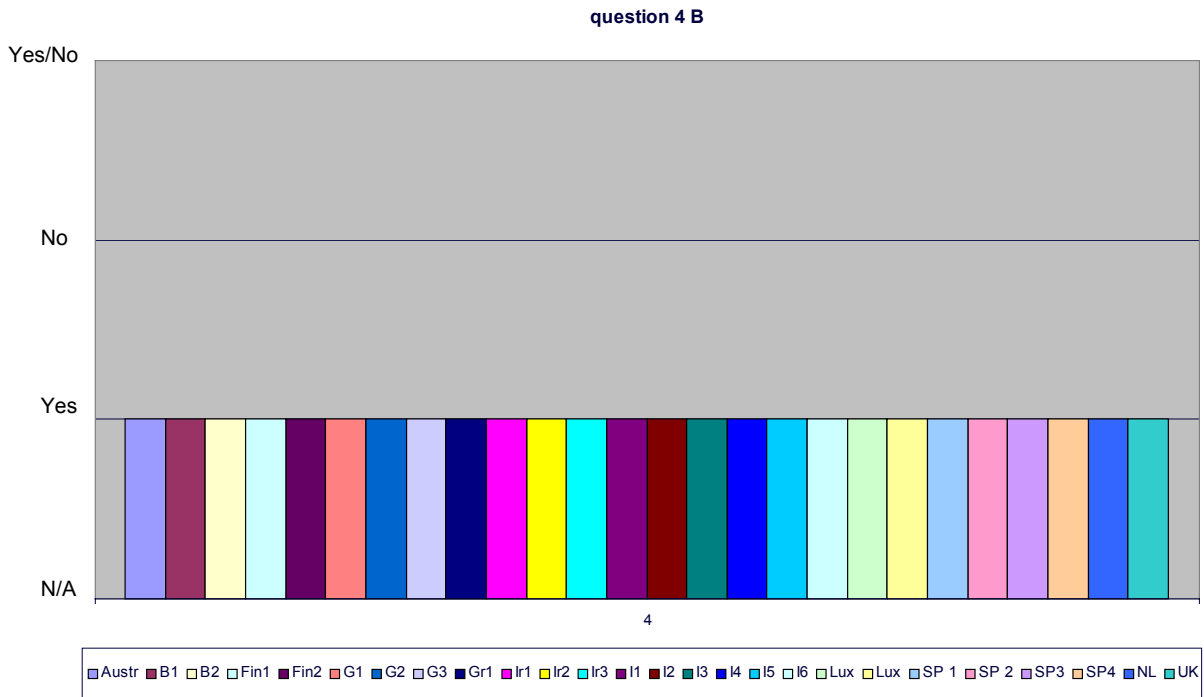


The majority of targeted organisations of the business community believe that entrepreneurs distinguish between a business in distress and a business that has recovered from distress.

The general consensus was that any negative associations attached to a business previously in distress were mitigated by later recovery of that business

- A Dutch organisation explained that trading with a company in distress is stressful on both sides. When a business has recovered from a distressed situation whereby the creditors were aware of the problems – and possibly even informed of and asked to cooperate in dealing with the problems – there seems to be a sense of relief in the market. This organisation further observed that a company that has recovered from distress is respected as long as the creditors did not have to “bleed.”
- As pointed out by a British organisation, recovering from distress demonstrates acute management abilities.
- However, several organisations in Greece, Luxembourg, and Spain indicated that businessmen do not make a distinction between a business in distress and a business that has recovered from distress.

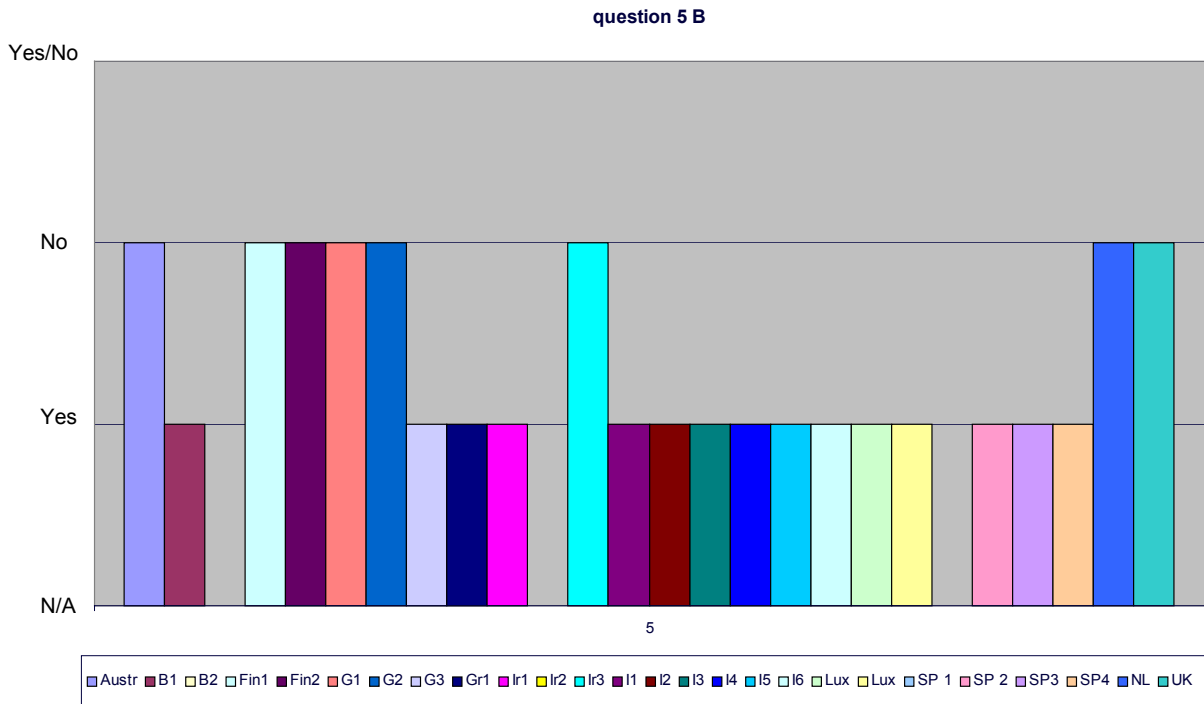
4. Does your business community differentiate between a fraudulent bankrupt business and a non-fraudulent bankrupt business?



All targeted organisations of the business community unanimously agreed that a fraudulent bankrupt business is not viewed in the same way as a non-fraudulent bankrupt business.

- A Spanish organisation further pointed out the distinction is made by the law.
- A Dutch organisation observed that in many cases where there is or might be a case of fraud, management of the company is not legally prosecuted, but held emotionally accountable for a lack of control or plain lack of “healthy suspicion” in dealing with third parties.
- A British organisation mentioned a general lack of trust of a bankrupt business.
- A German organisation observed that in a case of outright fraud not revealed by the auditor, the latter may be held liable.
- Several organisations suggested that the case of fraud is often difficult to establish.

5. Is your community more tolerant towards a young IT start-up than towards an established firm with a significant number of employees?



The business community does not hold a significant position in one way or another regarding tolerance towards young IT start-ups in contrast to the attitude towards established firms.

- Targeted organisations from Belgium, Greece, Ireland, Italy, Luxembourg, and Spain indicated a more favourable attitude towards young IT start-ups.
- The organisation in Luxembourg justified its position on the basis of the number of salaried employees.
- Similarly, a Belgian organisation stated that the community can be extremely angry when an established firm employing many staff over a long period of time goes bankrupt and staff are made redundant. The public might therefore be more tolerant towards a young company going bankrupt than towards a more established company.
- An Irish organisation that indicated an attitude of higher tolerance towards young IT start-ups also stressed that the recent downturn in the high technology sector has increased the level of anxiety towards IT start-ups.
- A Greek organisation expressed a general attitude of tolerance towards young start-ups.

- Several targeted organisations in Austria, Finland, Germany, Ireland, Greece, Italy, the Netherlands and the United Kingdom expressed attitudes of intolerance toward IT start-ups.
- The Dutch organisation stated an attitude of tolerance toward IT start-ups in terms of availability of financing, but anxiety in dealing with these young companies on a business level, as compared with more established companies.
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- A targeted Finnish organisation stressed that IT enterprises are not favoured, whereas so-called “old enterprises” are.

Availability of information

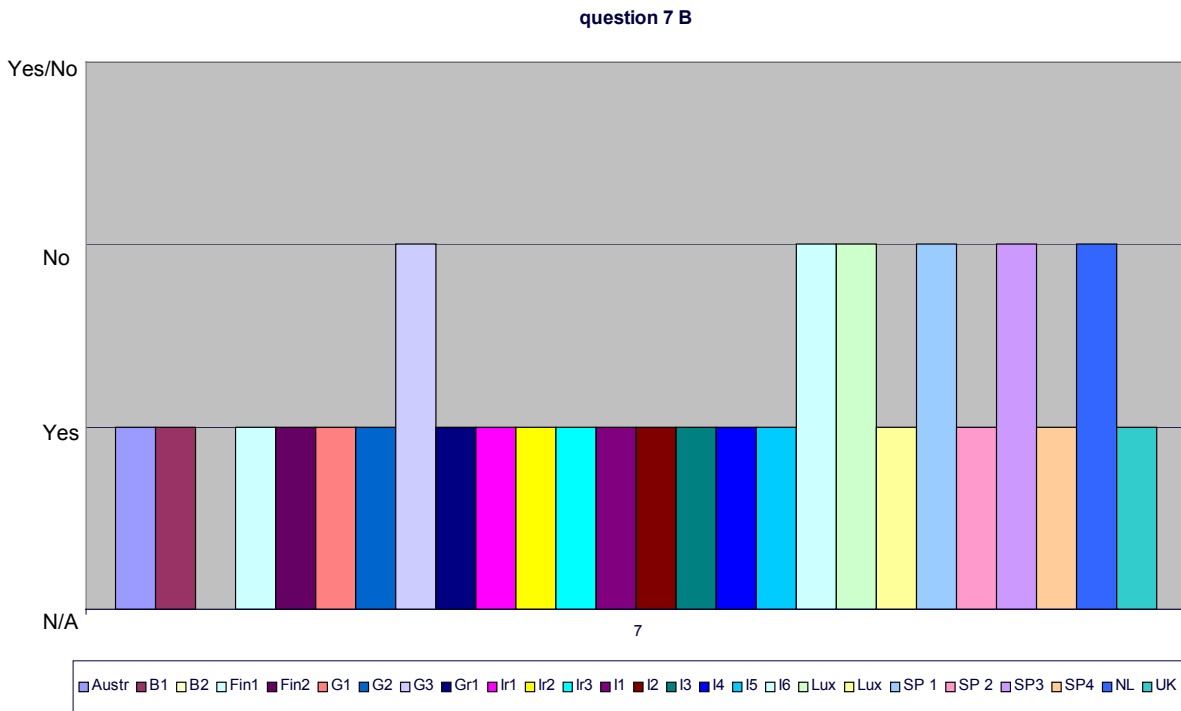
6. To the best of your knowledge, how does a business discover that a potential or actual counterpart faces difficulties?

The targeted organisations were provided with multiple-choice possibilities, and answered as following:

- Media
(Austria x2, Belgium x2, Finland x2, Germany x2, Greece, Ireland x2, Italy x3, Luxembourg x2, Spain)
- Databanks
(Austria, Belgium, Finland, Germany, Greece, Italy (access open only to authorised bodies) x4, Spain x3)
- Information provided by colleagues, competitors or the business sector
(Austria, Belgium x2, Finland x2, Germany x2, Greece x2, Ireland, Italy x4, Luxembourg x2, Spain x2, Netherlands, UK)
- Credit and/or financial institutions
(Belgium, Finland x2, Germany x2, Greece, Ireland x2, Italy x3, Luxembourg, Spain, Netherlands, UK)
- The counterpart
(Austria x2, Belgium (obs: late info: when difficulties have become severe) x2, Finland, Germany, Greece, Ireland, Luxembourg)
- Creditors
(Belgium, Finland, Germany x2, Greece x2, Ireland x2, Italy x3, Luxembourg x2, UK)
- Other
(Germany: supervisory authority
Ireland: through contacts in business networks and socially, ie at social events etc)

It appears from the information provided by the study participants that all sources of information are used in detecting a business (actual or potential counterpart) facing difficulties. The most commonly used sources seem to be colleagues, competitors, the general business sector, media, and credit/ financial institutions. Information provided by creditors is also important, limited by countries with banking secrecy. Lastly, one German organisation pointed to information provided by the supervisory entity as being an important source.

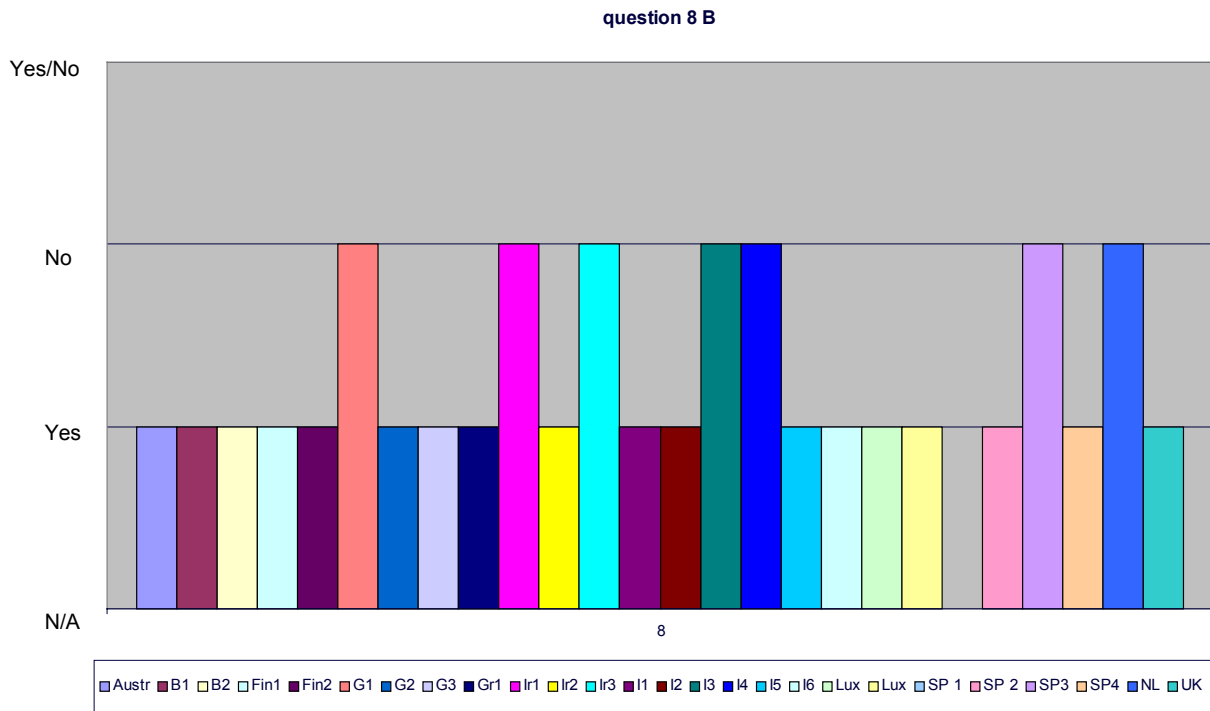
7. Within your community, do your members enquire whether a bankrupt person is fraudulent or not?



It seems that a majority of those organisations targeted agree that their members do enquire as to whether a bankrupt person is fraudulent or not.

- A Belgian organisation observed most people do not actively search to find out whether or not the bankrupt person is fraudulent, but are curious about it anyway.
- The majority of organisations pointed to a significant level of concern by their members on this issue. The information is usually sought out informally.
- However, a small number of those organisations targeted rejected the idea of such an enquiry. Among these were two Luxembourg organisations, one of which stated that such information is difficult to discover, a Greek organisation, Spanish organisations, and a Dutch organisation.

8. Within the business community, are entrepreneurs listed in databanks according to solvency ratings?



A majority of the business organisations targeted stated that within the business community, entrepreneurs and businessmen are listed in databanks according to solvency ratings.

- A Greek organisation provided that the information includes evidence of non-payments by cheques or by notes.
- German, Irish, Italian Dutch and Spanish organisations did not agree with this statement.
- A Dutch organisation stressed that although no public databases on solvency ratings exist, banks and other financial institutions have databases that provide information to departments on certain “entrepreneurs” and how to deal with their future financing requests.
- An Austrian organisation observed that only a small number of entrepreneurs are listed on such databanks according to solvency ratings.
- A Luxembourg organisation observed that the available databanks are not official, but are private sources of information.

9. If yes, please indicate the sources of this information?

Out of the multiple-choice possibilities on solvency ratings of businesses, the organisations answered as follows:

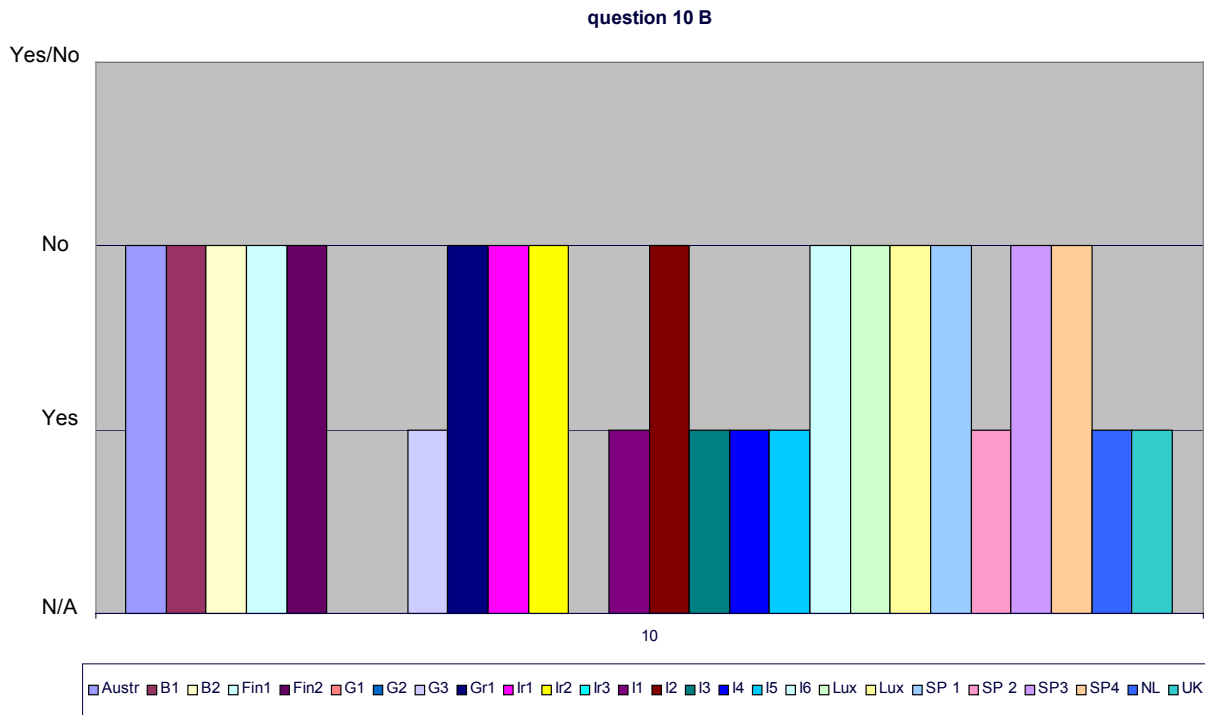
- law firms
- public institutions (courts or other justice bodies)
(Belgium x2, Ireland, Italy x2, Spain x2)
- private databanks
(Austria, Belgium x2, Finland x2, Germany (voting agencies), Greece, Ireland, Italy x3, Luxembourg x2, Spain, Netherlands, UK)
- your own organisation
(Germany, Italy, Spain)
- other organisations (chambers of commerce, professional associations...)
(Austria, Italy x2, Spain)

The overwhelming source of information on insolvency ratings of entrepreneurs seems to be private databanks, described as banks and financial institutions with restricted access to this information.

Law firms do not appear to be source of information at all.

Public bodies, other organisations, and several of the participant organisations identified themselves as being sources of information.

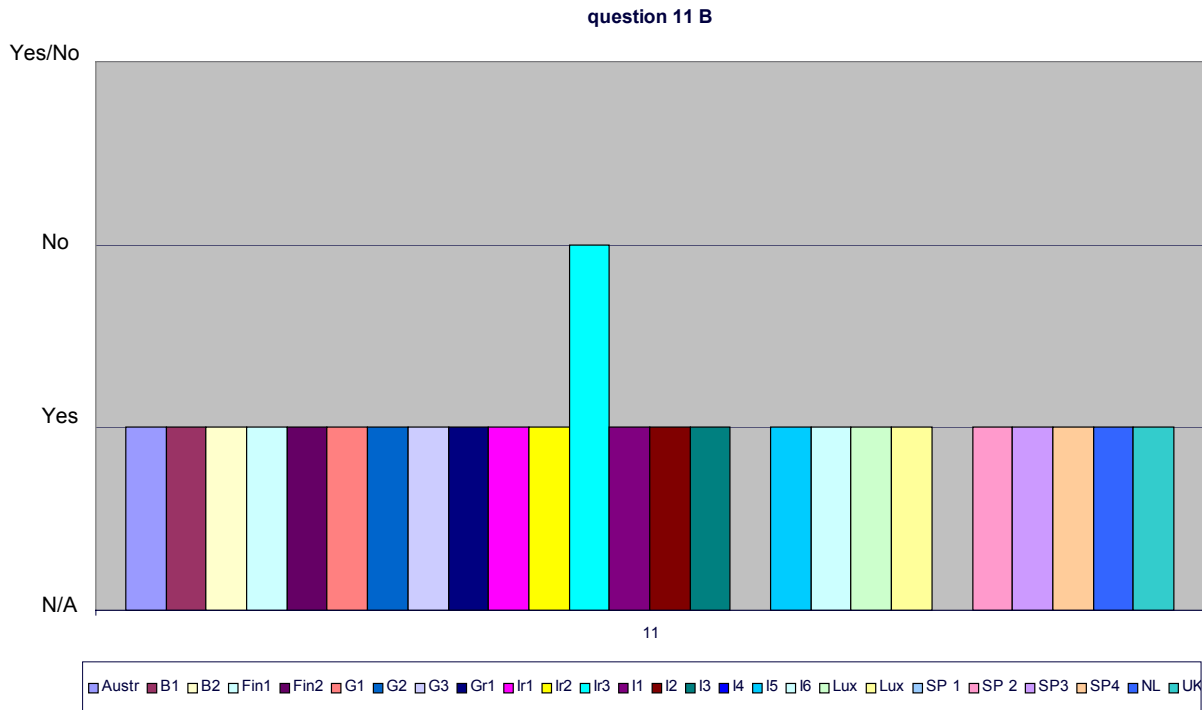
10. Do these databanks differentiate fraudulent bankruptcy, and non-fraudulent bankruptcy?



The targeted organisations mainly expressed the opinion that the available databanks of information do not differentiate between fraudulent bankruptcy and non-fraudulent bankruptcy.

- A Greek organisation observed that only justice bodies, as opposed to their community make such distinction.
- The distinction seems to be made primarily in Italy, the Netherlands, and the UK.

11. Do you consider this information relevant for your business sector?



The study participants strongly agreed that information relating to the distinction between fraudulent and non-fraudulent bankruptcies is relevant to the business sector.

- A Belgian organisation observed that when dealing with a potential new client, it needs to know whether the client had previously been in bankruptcy due to circumstances outside of its control or due to fraud, in which case they would not be accepted as a client. This clearly expresses a stigma linked to fraudulent bankruptcy.
- A German organisation noted that in the absence of the above-described sources of information, such a databank would allow statistics to be drawn up, which would be helpful for reorganisation operations.
- A Dutch organisation pointed out that although this information is relevant, they do not mean to suggest that “once a thief always a thief”, and that one should not be stigmatised for the rest of his/ her “business life”...

12. According to the practice of your organisation and/or your members, which organisation provides the most reliable information on the solvency rating of a business?

The proposed sources of information with regard to their reliability were ranked as follows by the targeted organisations:

- Law firms
(Ireland)
- Public institutions (courts or other justice bodies)
(Germany, Italy x2, Spain x2)
- Private databanks
(Austria, Belgium x2, Finland, Germany, Greece, Ireland, Italy x2, Luxembourg x2, Spain, UK)
- Your organisation
(Italy, Spain, Netherlands)
- Other organisations (chambers of commerce, professional associations)
(Austria, Germany (chamber of commerce), Italy, Spain)

The majority of targeted organisations confirmed that private databanks are the most reliable sources of information in rating the solvency of a business. Generally speaking, the business community is satisfied with the quality and availability of information databanks for solvency ratings. In addition, consulting firms and chambers of commerce were also identified as reliable sources of information.

Only one Irish organisation mentioned law firms as being reliable sources of information.

Credit institutions were referred to by some business organisations as being good sources of information.

□ ***Reasons for failure***

13. According to your experience and/or your business vision which are the most common reasons for business failure?

The targeted organisations were asked to identify the most common reasons for business failure and distinguish between large enterprises and medium to micro enterprises.

The answers compared hereafter are based on the causes ranked by the targeted organisations as the first three ones.

Highest ranked reasons appear in **bold**.

Large enterprises

- Financial (guarantees, securities given to lenders, lack of working capital, poor cash flow, loss of long term finance, bad debts)
*(Austria x2, Belgium, Finland, Germany x2, Greece, Ireland, **Italy** x5, Luxembourg x2, **Spain** x3, Netherlands, UK)*
- Fraud
(Belgium)
- Personal extravagance, excessive drawings or remuneration
(Ireland)
- Management skills, poor management
*(Austria x2, Belgium, Finland, **Germany** x2, **Greece**, **Ireland** x3, **Italy** x5, Luxembourg, **Spain**, **Netherlands**, UK)*
- Legal disputes
(Italy)
- External business conditions (loss of market, main customer, rent review, other increases overhead)
*(Austria, **Belgium**, **Finland**, Germany x2, Ireland, **Italy** x5, **Luxembourg** x2, Spain, Netherlands, UK)*
- Failure to deal with income tax, corporation tax affairs or VAT
(Luxembourg)

The comparative analysis of the answers received from the business community with regard to large enterprises highlights that the most common highly ranked reason for business failure is management skills and poor management. The two other main reasons (both were very often identified) seem to be linked on the one hand, to financial problems, and on the other hand, to the external business conditions, such as loss of market, main customer, rent review, other increased overheads.

Reasons relating to fraud, personal extravagance, and failure to deal with income tax, were exceptionally identified.

Medium/ Small/ Macro enterprises

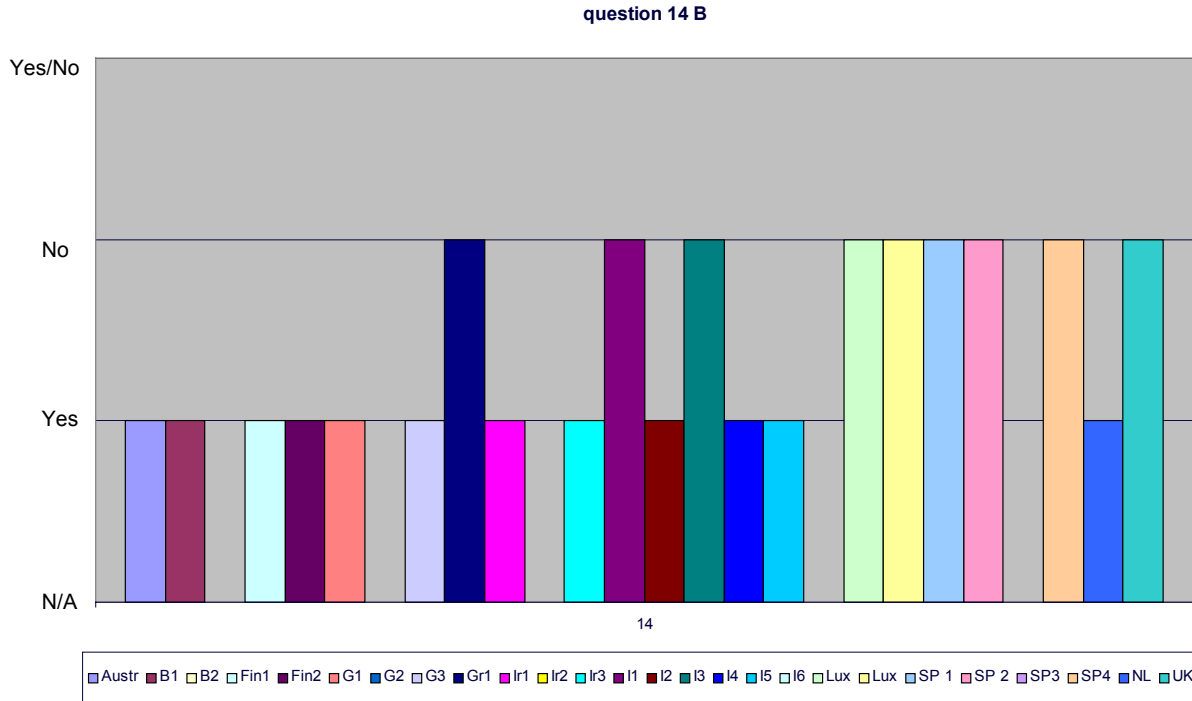
- Relative youth or lack of experience of the entrepreneur
(Austria x2, Belgium, Greece, Ireland x2, Italy x5, Luxembourg, **Spain**, Netherlands, UK)
- Financial
(Austria x2, Belgium x2, Finland, **Germany** x2, **Greece** x2, Ireland x2, **Italy** x5, Luxembourg x2, **Spain** x3, Netherlands, UK)
- Fraud
(Greece)
- Management skills
(Austria x2, Belgium x2, **Germany**, **Greece**, Ireland x2, **Italy** x5, Luxembourg x2)
- Personal extravagance
(Belgium)
- Legal disputes
(Italy)
- External business conditions
(Austria, **Belgium** x2, **Finland**, Germany x2, **Ireland**, **Italy** x5, **Luxembourg**, Spain, Netherlands, UK)
- Failure to deal with income tax, corporation tax affairs or VAT
(Finland, Germany, Italy)

The comparative analysis of the answers received from the business community with regard to medium, small and macro enterprises shows that the most common highly ranked cause for business failure was financial difficulties followed very closely by external business conditions, youth/ lack of experience, and then lack of good management skills. It must be pointed out that contrary to large enterprises, the young age or the lack of experience of the entrepreneur is considered as an important and widely spread reason for medium to micro business failures: it was ranked first only by two targeted organisations, but was identified among the three most important reasons by a majority of targeted organisations.

Fraud, personal extravagance, legal disputes were only exceptionally identified, whereas failure to deal with income tax, corporate tax affairs and VAT was ranked among the first three reasons for failure for smaller businesses by more organisations than with regard to large enterprises.

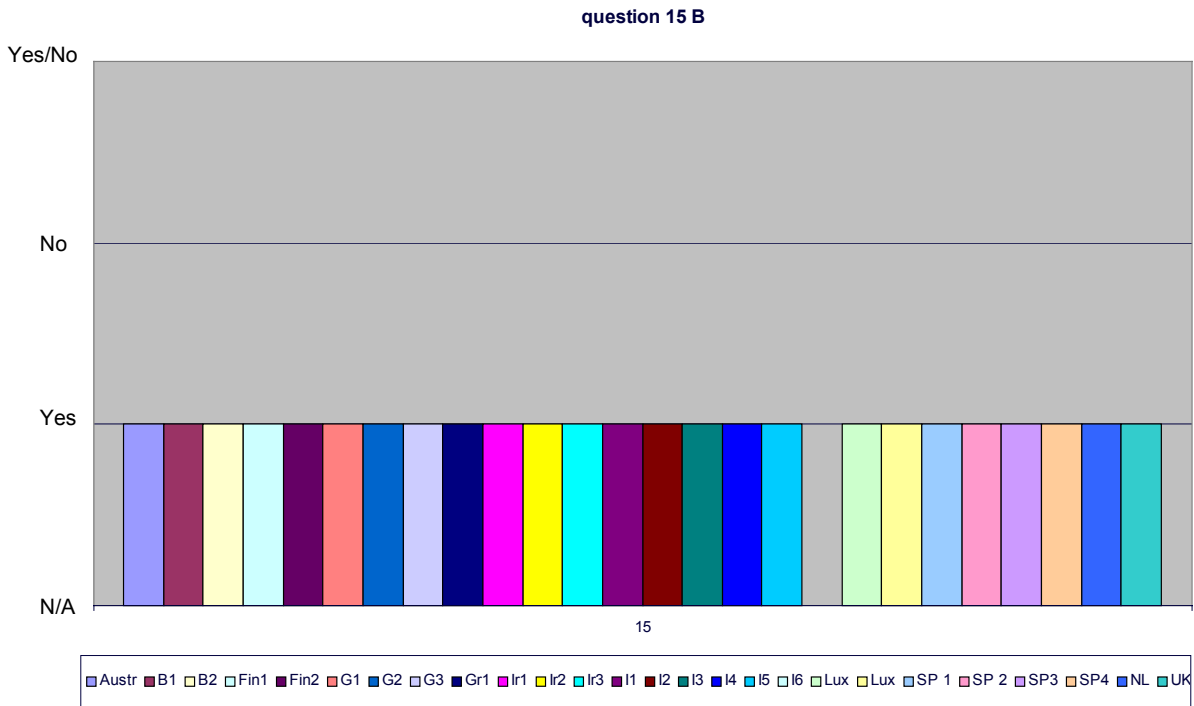
□ *Consequences of failure*

14. Within your business community, are your members willing to deal with a business facing difficulties?



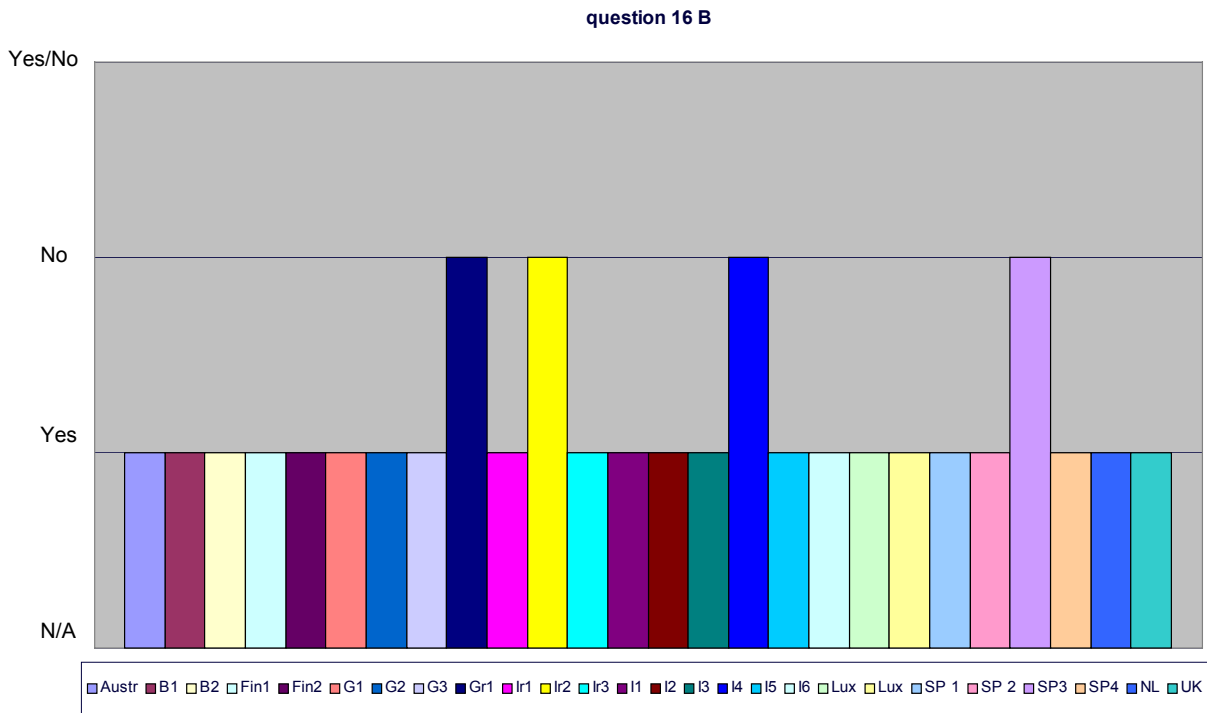
The targeted organisations were split in their opinion on the willingness within the business community to deal with businesses facing difficulties. The attitude adopted towards the latter would often depend upon the current economic situation and the importance of the customer relationship. However, there appears to be a general reluctance to deal with a business facing difficulties. Several targeted organisations pointed out that dealing with a business facing difficulties would involve stricter control, including provision of guarantees, or even cash payments.

15. Within your business community, are your members willing to deal with a business that has failed but recovered?



Very encouragingly, all the targeted organisations unanimously agreed that their members would be willing to deal with a business that has recovered after failure. Only slight reluctance was expressed, including adopting a precautionary attitude, taking into account the reasons for the failure and asking for guarantees.

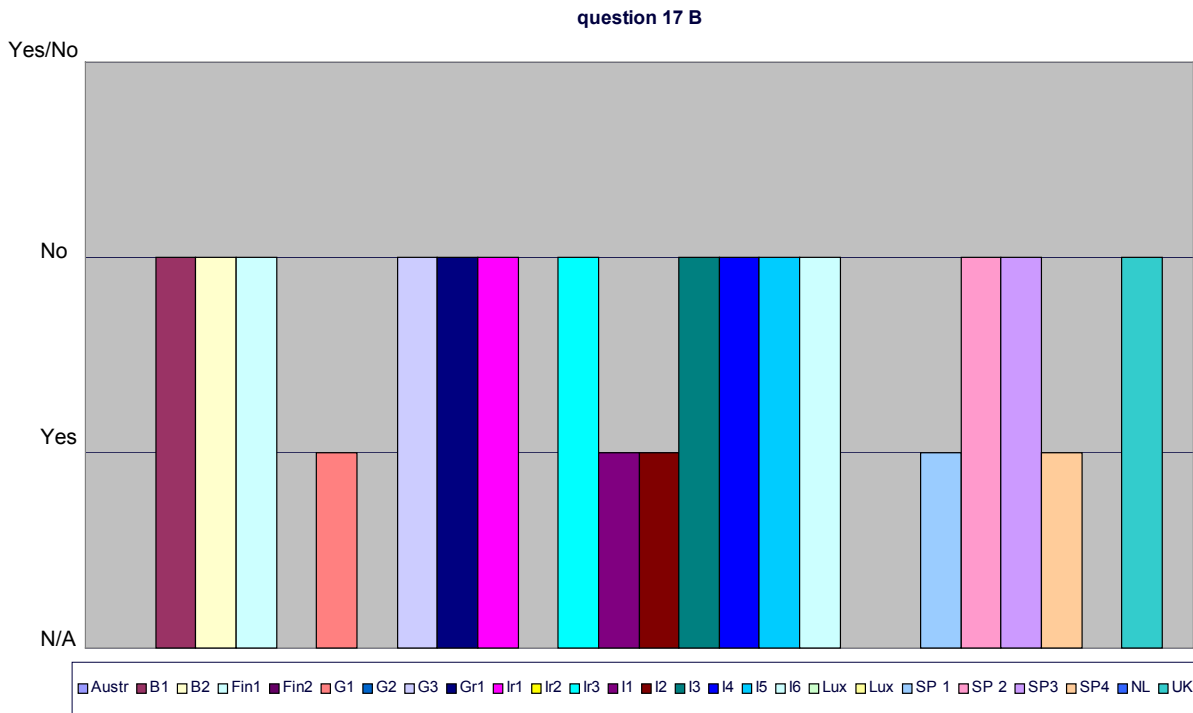
16. In your opinion, are the members of your community aware of the restriction regime applicable to a bankrupt business?



The majority of targeted organisations considered that the members of the business community whom they represent are aware of the restriction applicable to a bankrupt business.

- A German organisation observed that due to the particular rules applicable in insolvency matters, specialists should be resorted to.
- However, a Greek, Irish, Italian and a Spanish organisation expressed the opposite opinion.

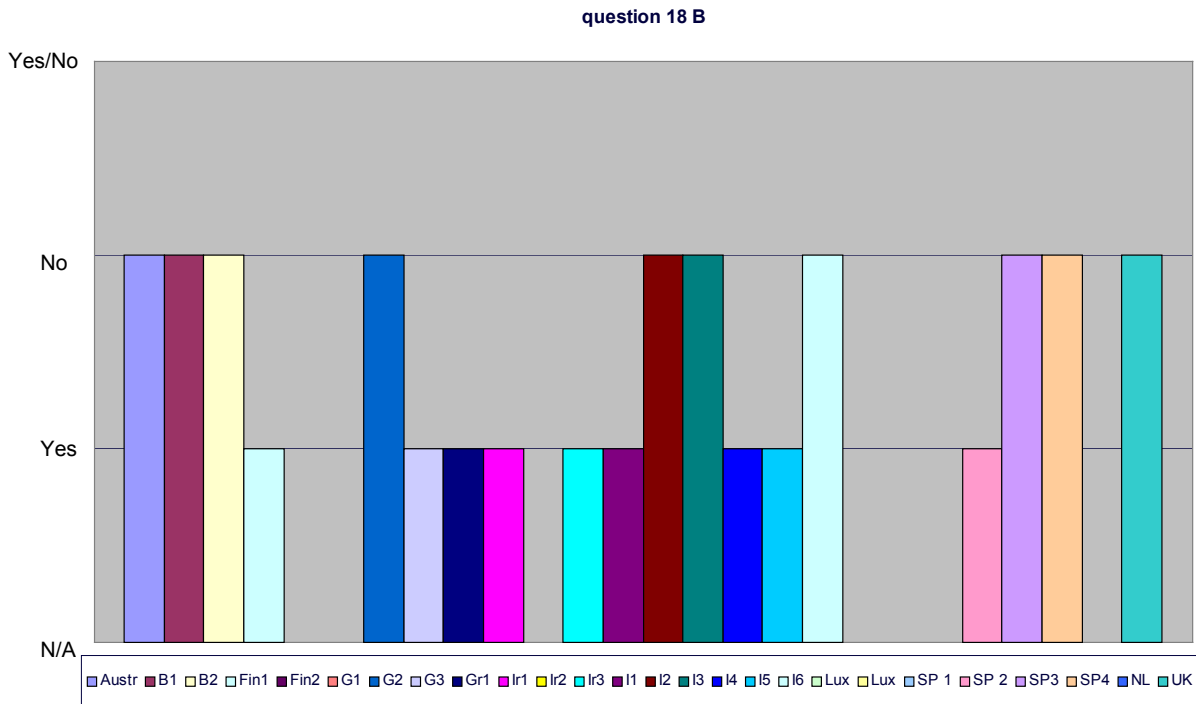
17. Should the restriction regime prevent other partners from dealing with a business in insolvency status?



A majority of the targeted organisations stated that any restrictions placed on a bankrupt business should not prevent other partners from dealing with a business in insolvency status.

However, several organisations either did not answer, or answered that restrictions placed on a business should prevent partners from dealing with that business.

18. According to your experience, would a business be willing to get involved in the management of a bankrupt person?

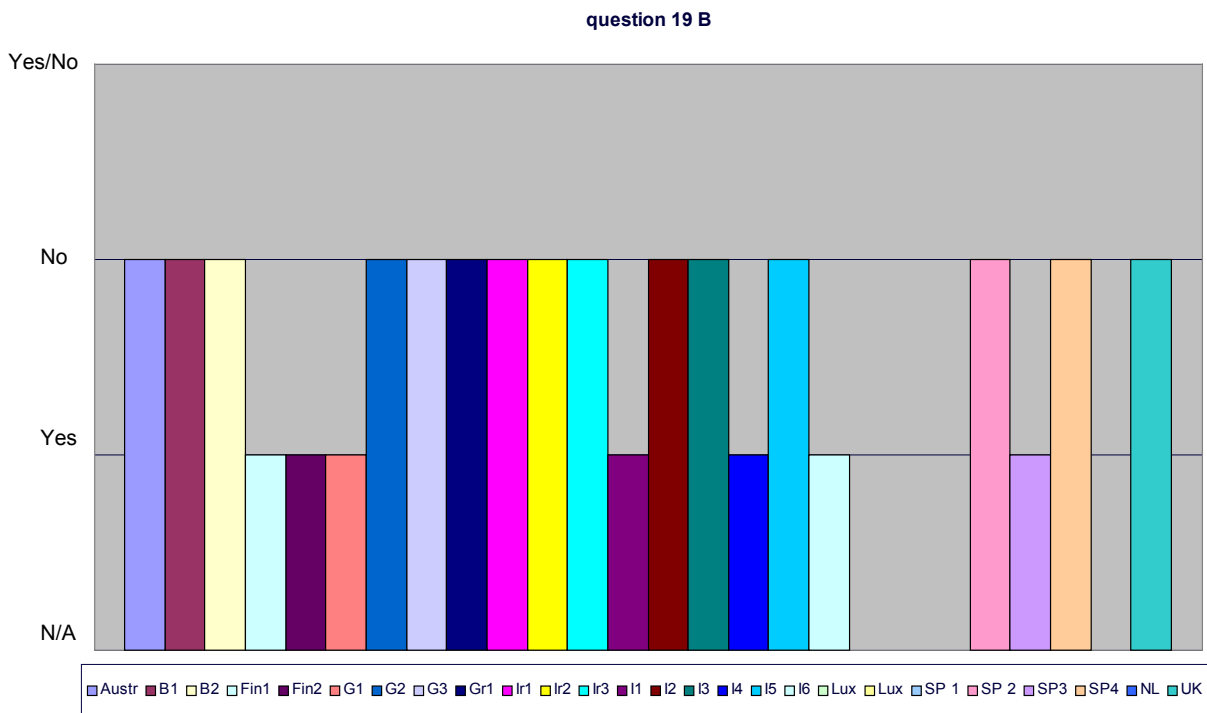


Organisations were divided on whether or not they would be willing to get involved in the management of a bankrupt person.

Businesses generally seem to be reluctant to getting involved in management of a bankrupt person in the case of fraud or potential fraud.

- Several organisations, including one German organisation in particular, observed that only individuals are willing/ allowed to be involved in the management of a bankrupt person.
- A Dutch organisation also pointed out that such management should be entrusted to specialised companies only.

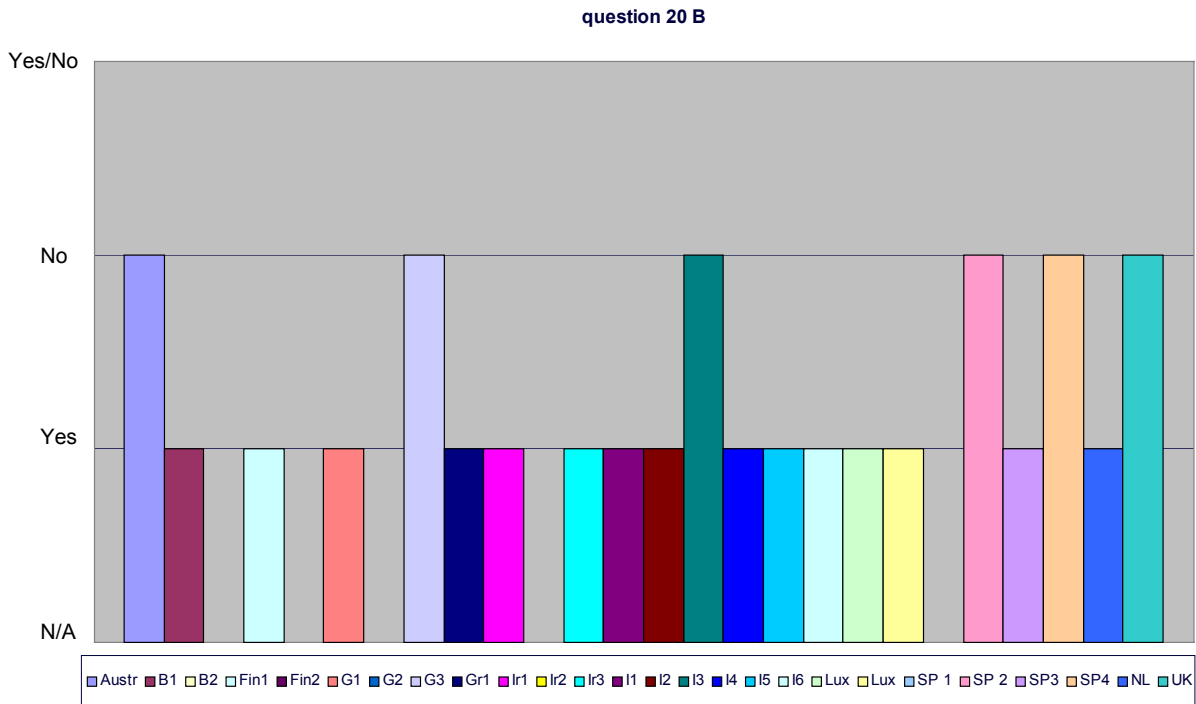
Bankruptcy and a fresh start: stigma on failure and legal consequences of bankruptcy
19. Would a business be disposed to sell shares to a bankrupt person?



Most targeted organisations answered that businesses would not be likely to sell shares to a bankrupt individual.

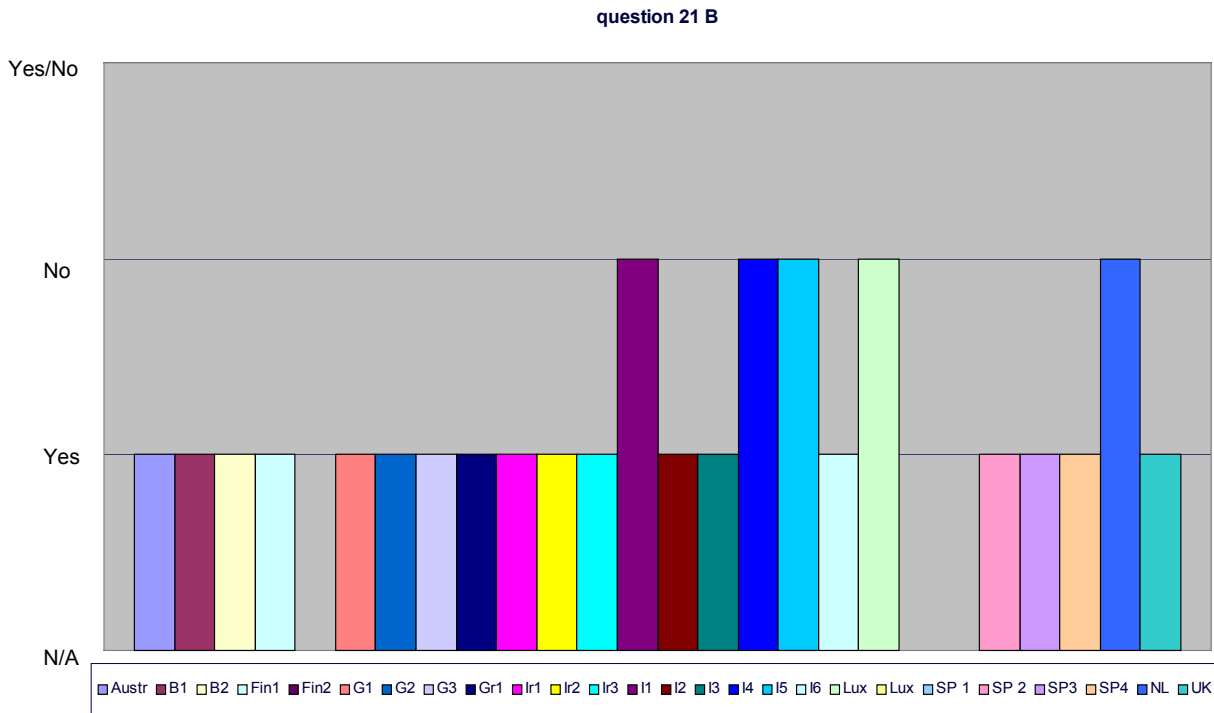
- A Belgian organisation observed that presumably the business would not be paid for the shares and hence would not sell them, and that small companies would not want a bankrupt to be a shareholder.
- Several organisations, which agreed to such an operation, however subjected their position to the absence of any fraud, or provided that it would depend on the reasons for the bankruptcy.
- A German organisation suggested that this would be contingent upon guarantee of the payment of the price.

20. Would an entrepreneur be disposed to employ a bankrupt person in their business? If yes, which position could the bankrupt occupy?



Several targeted organisations admitted that an entrepreneur would agree to employ a bankrupt person in their business. The positions that such a person could occupy in their view would depend on the reasons for the bankruptcy and on the person’s management skills. Some specified that there should not have been any fraud. Some positions such individuals would be likely to fill include adviser or manager, but overall, these persons would be excluded from the highest management levels.

21. Do business request extra guarantees or attach extra conditions when doing business with a person who has failed in the past?



The majority of organisations targeted agreed that businesses generally would request extra guarantees or conditions when doing business with a person who has failed in the past.

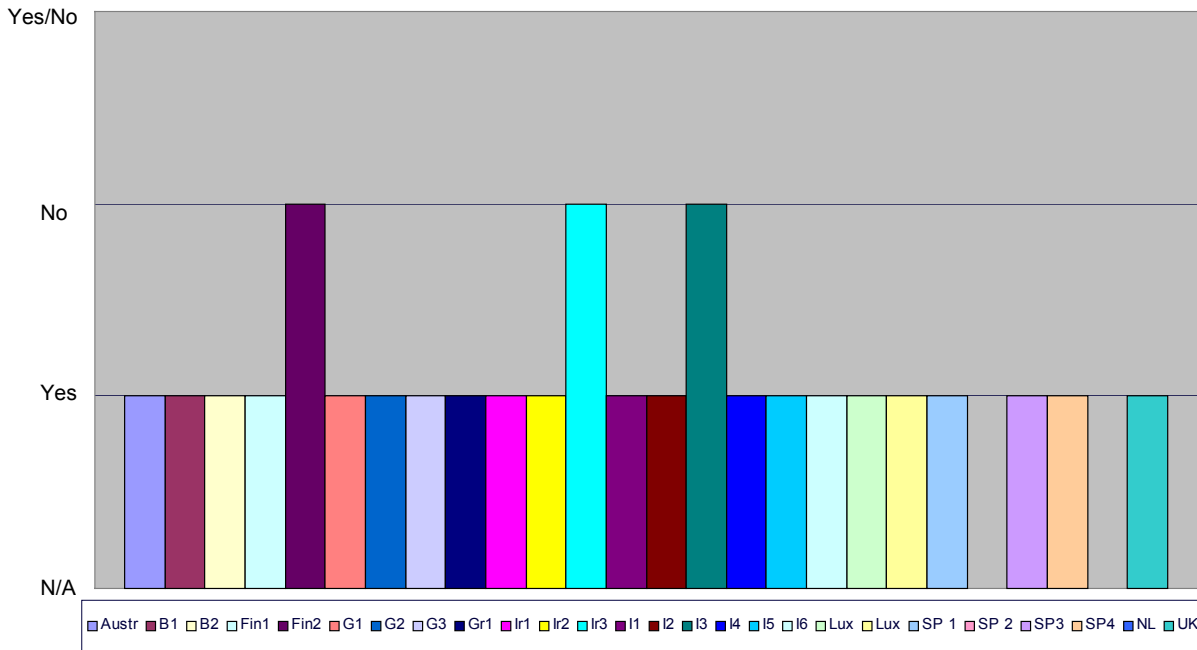
22. How does a business facing difficulties secure additional credit?

The targeted organisations indicated that businesses facing difficulties can secure additional credit through insurance, deposits, the use of personal relationships, the provision of personal guarantees over its own assets if it cannot give anymore charges over the business assets, bank guarantees, the requirement of cash payments, real securities, payment terms, or collateral.

□ *A fresh Start*

23. Do you think that the legislator should promote opportunities for a fresh start for a business previously involved in bankruptcy?

question 23 B



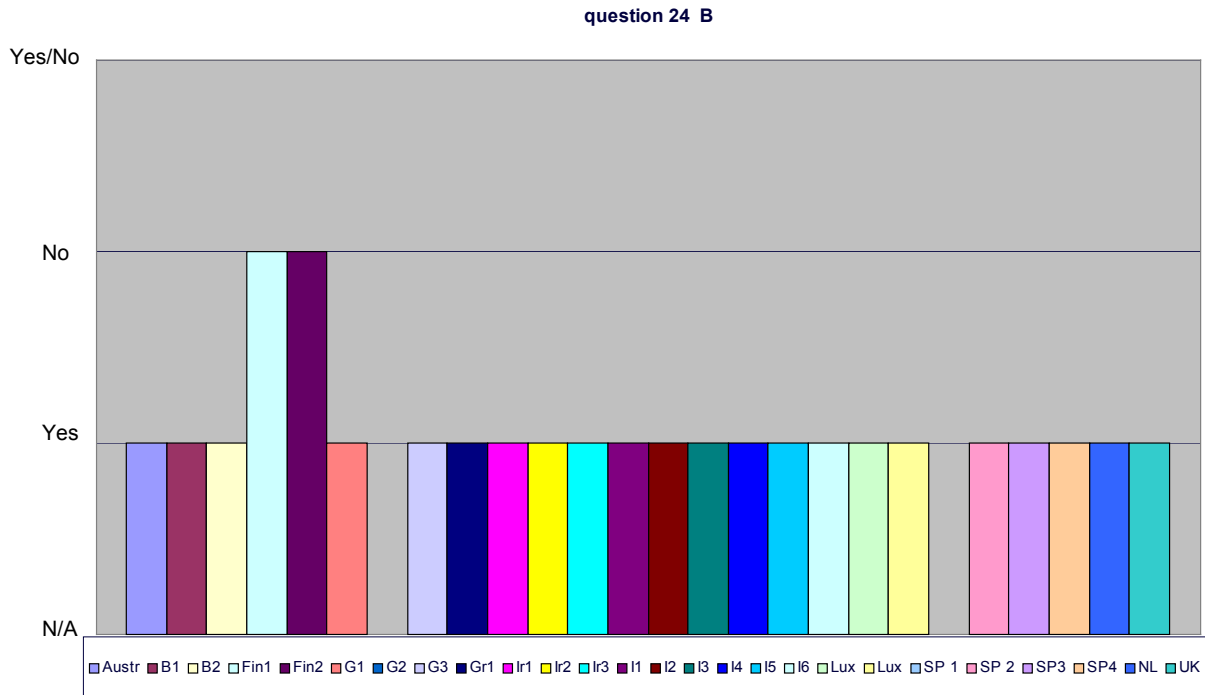
A majority of the targeted organisations appear to favour legislative support for granting opportunities for a fresh start to businesses previously bankrupt.

- A Belgian organisation added that 70% of bankrupts already continue later on in leading positions in companies, and that therefore a fresh start is already a possibility, at least for individuals.
- A German organisation observed that a start-up is necessary fragile at first, thus justifying external assistance – which ought however to comply with competition rules.
- A Greek organisation observed that companies should be allowed a fresh start under careful monitoring.
- It was also pointed out by several organisations that in the case of a non-fraudulent bankruptcy, there is no reason to put extra restrictions on businesses wishing to have a fresh start.

Bankruptcy and a fresh start: stigma on failure and legal consequences of bankruptcy

- The Dutch targeted organisation took a more conservative position on restricting businesses wishing to start fresh. It argued that a lot of entrepreneurs went bankrupt last year because of a lack of realism in their business plans and should therefore not be easily restored.

24. Do you think that the legislator should work to eliminate the stigma affecting the business life of an entrepreneur previously involved in a bankruptcy?



As for the above question, almost all organisations (with the exception of the two Finnish organisations) seem to believe that the legislator should work to eliminate the stigma affecting the business life of an entrepreneur previously involved in a bankruptcy.

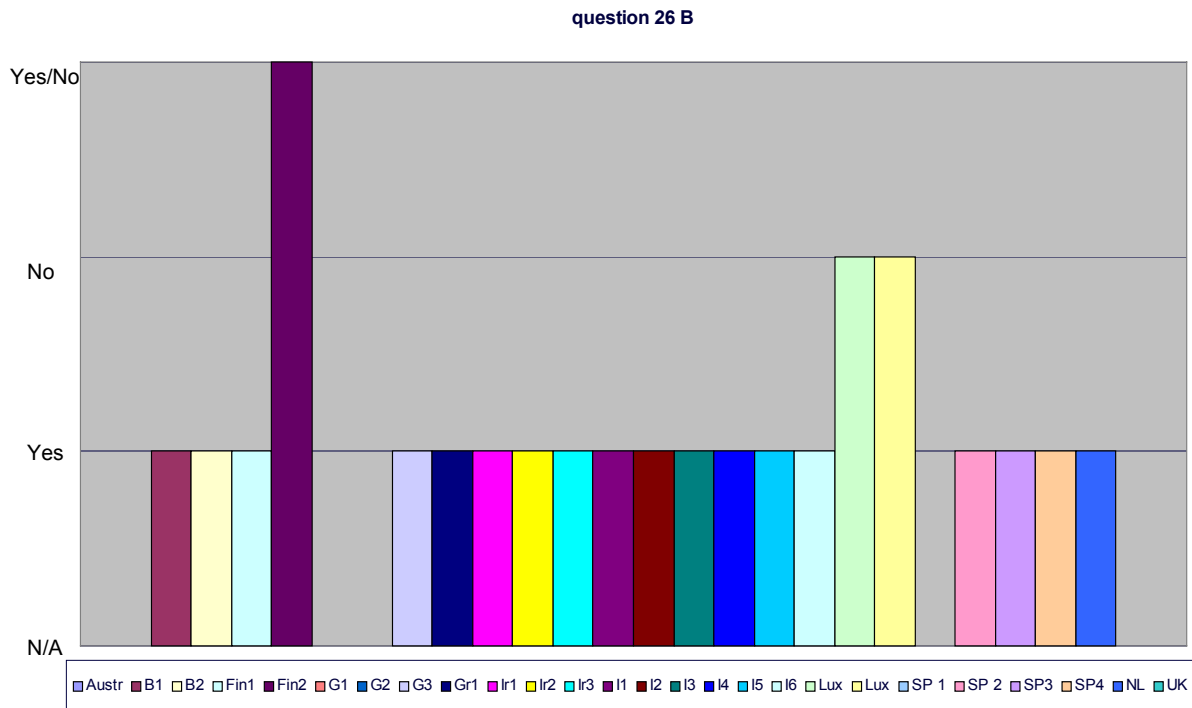
- A Finnish organisation observed that this is not a problem that can be solved by legislation.
- A Dutch organisation, preferring elimination of the stigma by the legislator, observed that in general, a failed entrepreneur in the Netherlands is treated as a “loser” (weak management etc). Lifting this stigma would be advisable. However, this organisation also doubted whether the legislator should enforce the elimination, preferring that the Dutch business morale would migrate towards a more positive approach on entrepreneurs in general.
- Similarly, a German organisation pointed out that the stigma stems from society rather than from the legislator.

25. Should the legislator promote a fresh start and eliminate stigma for fraudulent bankrupt persons?

Almost all organisations took the position that the legislator should not promote the fresh start and elimination of stigma for fraudulent bankrupt individuals.

The Dutch targeted organisation expressed a strong intolerance toward bankruptcies involving fraud and towards the elimination of stigma associated with fraudulent bankrupt individuals.

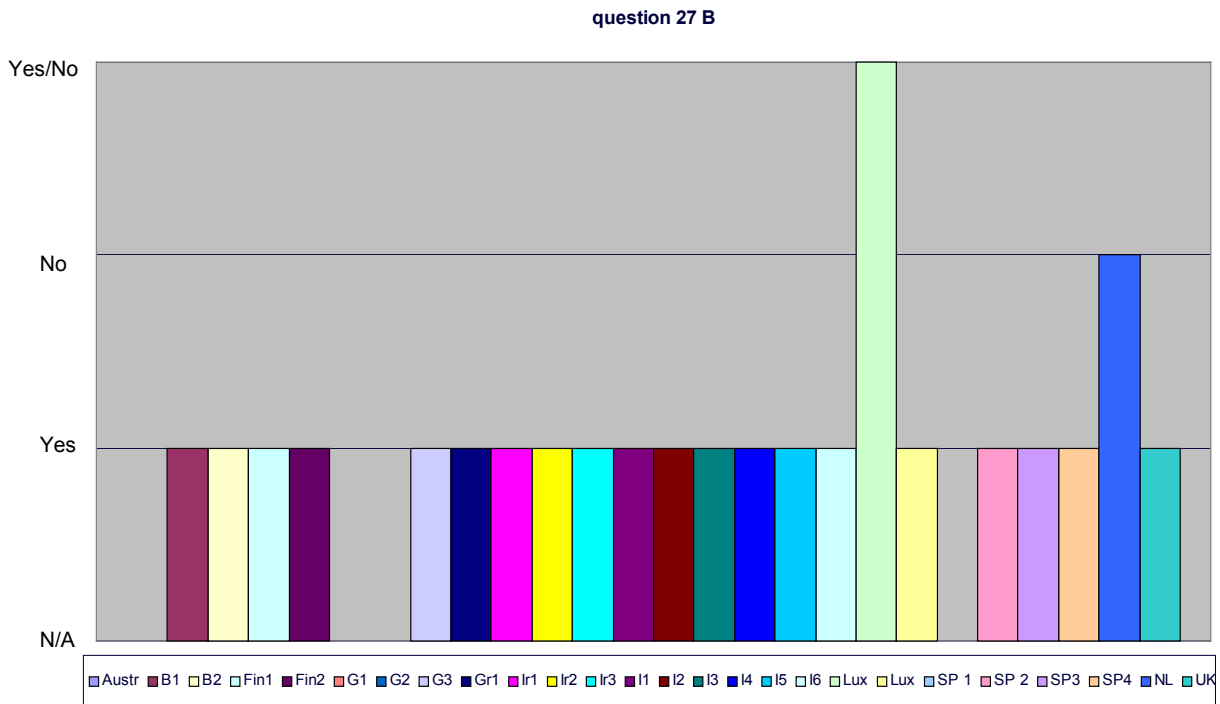
26. Do your members agree with the idea that failed entrepreneurs often learn from their mistakes and that they will be more successful in the future?



Almost all targeted organisations agreed with the idea that failed entrepreneurs often learn from their mistakes and that they will be more successful in the future, thus expressing a positive “second chance” attitude.

- A Dutch targeted organisation proposed distinguishing between the reasons for prior failure in order to adapt the restart strategy by adding additional conditions. *I do not understand this comment?*
- Two Luxembourg organisations however expressed a contrary position. *What contrary position?*
- A Finnish targeted organisation expressed reserves with regard to businesses facing several bankruptcies. *What kinds of reserves?*

27. For entrepreneurs in your business community who failed, but restarted, if any, does the stigma of bankruptcy make it more difficult to achieve good results?



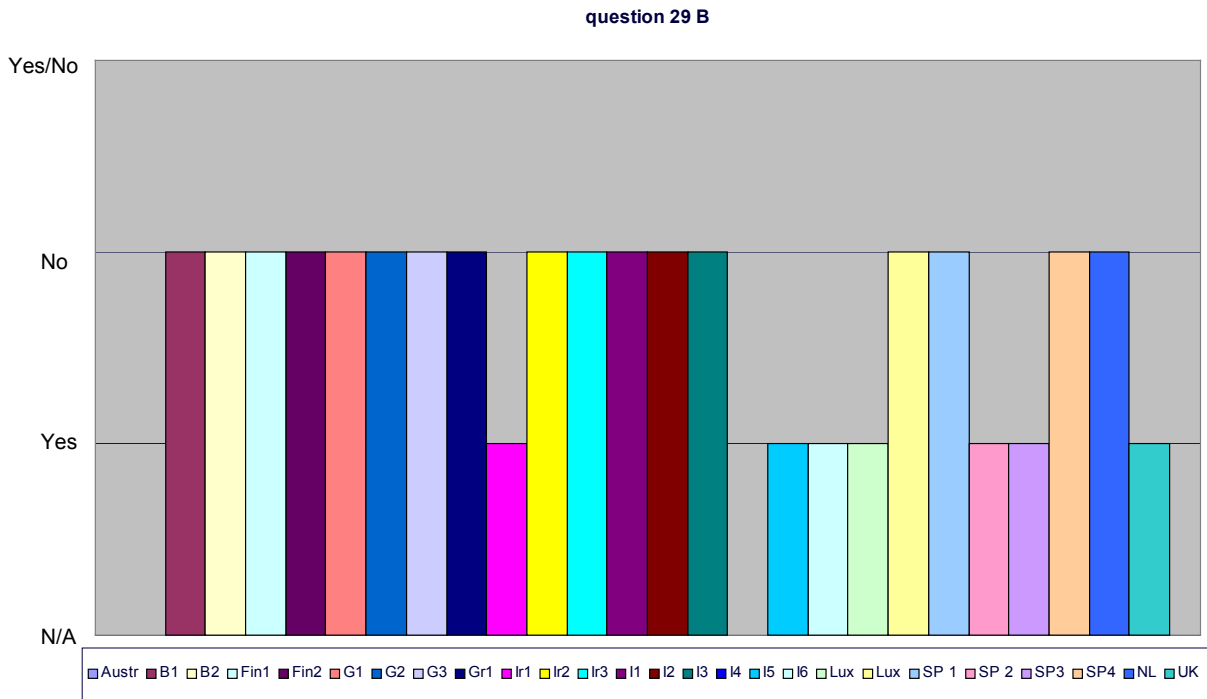
Despite the generally positive attitude under the previous question, most organisations agreed that for entrepreneurs who have failed, the stigma of bankruptcy in their respective business communities does indeed make it more difficult to achieve good results.

28. How?

Among the proposed answers, the inability to find credit was noted as being the single most important reason for failed entrepreneurs to achieve good results when attempting a fresh start. The second most important reasons included the inability to find commercial partners and, less commonly, the fact that previous clients have turned into their competitors.

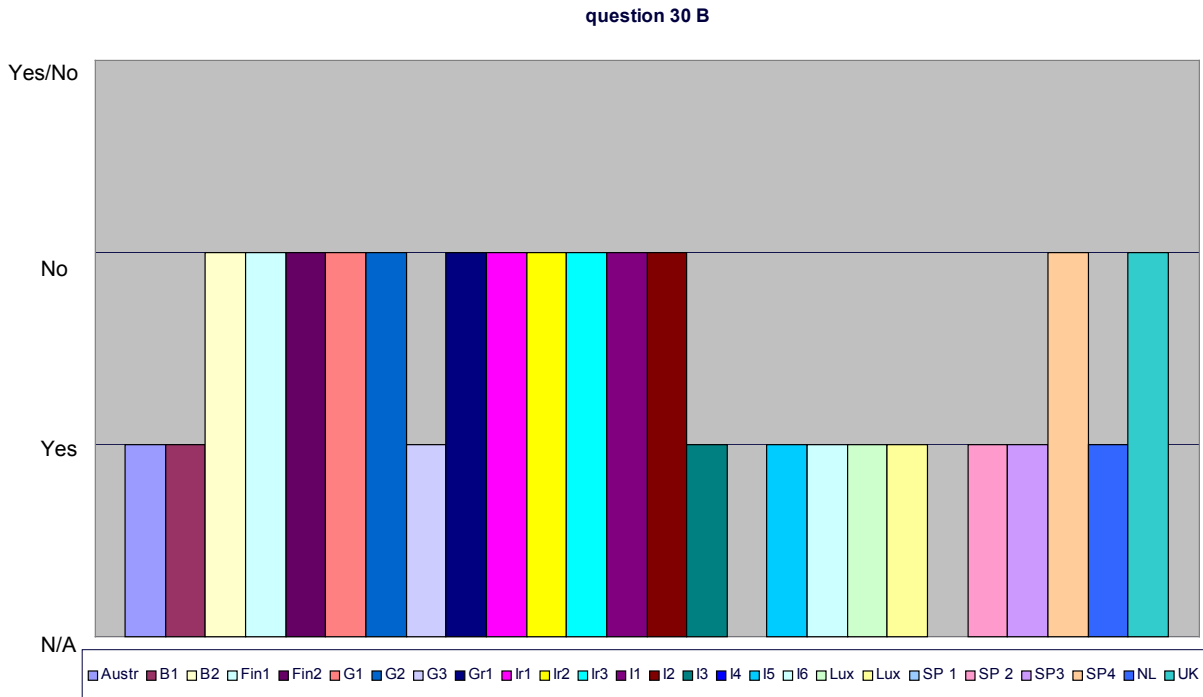
□ **External control**

29. Do you think that the legislator should strengthen the level of control over the business life of an entrepreneur previously involved in a bankruptcy experience?



According to the answers received from the targeted organisations, the business community generally does not believe that there should be more legislative control over the business affairs of an entrepreneur previously involved in a bankruptcy. Most organisations believe that the present legislation is sufficient in controlling previously bankrupt businesses and individuals.

30. Do you think that the legislator should strengthen the level of control over the business life of an entrepreneur facing difficulties?

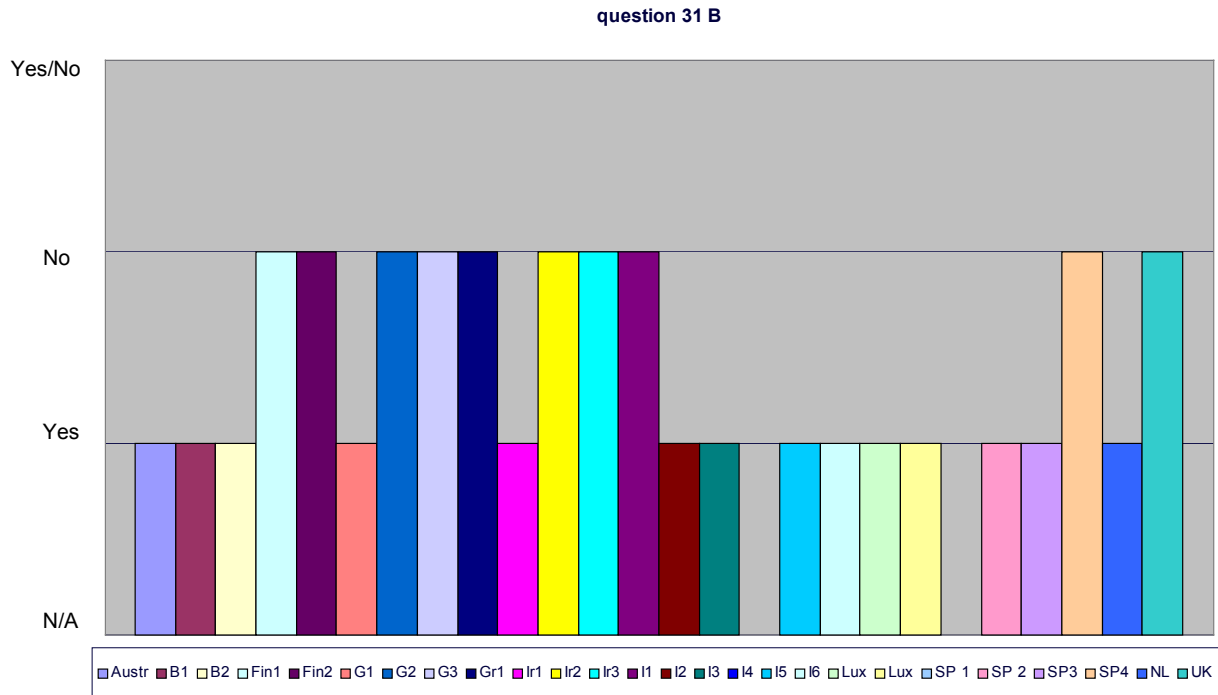


Organisations seem to favour strengthening the level of legislative control over the activities of an entrepreneur *actually* facing difficulties.

Only half of the organisations adopted the above-stated position. Some of the other organisations made the following comments:

- A Dutch targeted organisation observed that in general businesses facing difficulties should be more strongly “encouraged” to ask for assistance (probably enforced by legislation) at an early stage.
- Some organisations pointed out that strengthening the control would impose further delays on the outcome of the process.
- A German organisation observed that the legislator cannot exercise this control and should therefore delegate third parties to do so.

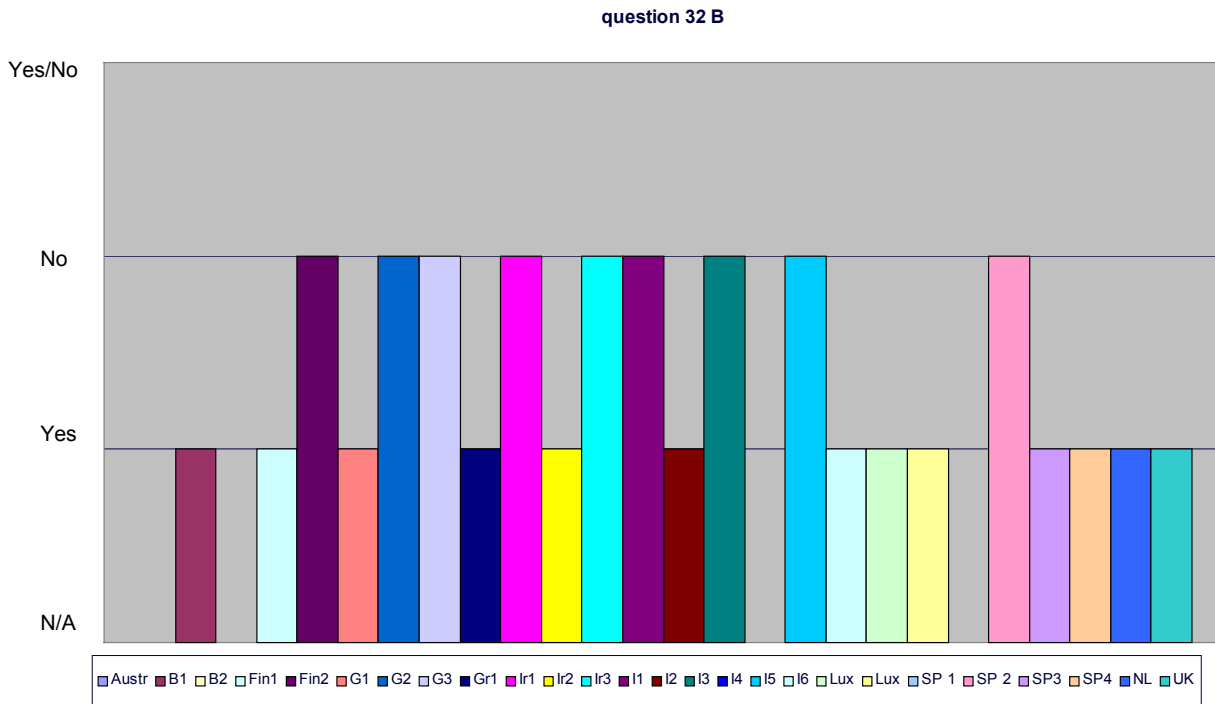
31. Do you think that the legislator should encourage the growth of external controls over a business facing difficulties?



A slight majority of the targeted organisations expressed an opinion that the legislator should encourage external controls over a business facing difficulties.

- A Dutch organisation observed that it is helpful for management facing difficulties to be “guided” towards external feedback, including experienced external managers/ advisers.
- A German organisation stressed that encouraging such outside assistance would enable earlier detection – and treatment - of insolvency situations.
- Some organisations indicated that the current regime already provides sufficient guarantees and control over businesses facing difficulties.

32. According to your experience, does the entrepreneur consider that an external manager can reduce the level of stigma surrounding a business facing difficulties?

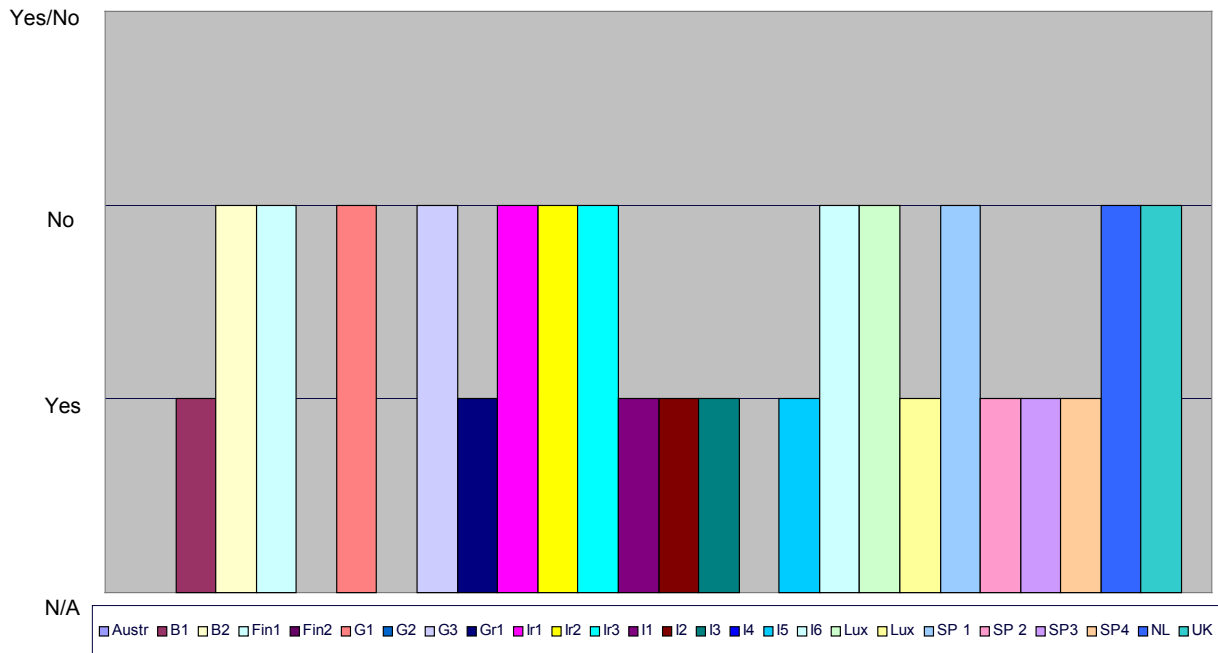


A conclusion to the above issue could not be made, considering the opinions were divided evenly among the participating organisations.

- A Dutch organisation observed that an external manager can mediate between the debtor and angry stakeholders and thereby reduce the negative stigma associated with a business facing difficulties.
- However, an Irish organisation stated that the stubbornness and ego often found in businessmen and company management might result in a general reluctance to allow an external manager to intervene in the company.

33. Do you think that the external control should be under the power of the judicial authorities?

question 33 B



A slight majority of the targeted organisations stated that external control and monitoring of companies should not be under the power of the judicial authorities.

- A Finnish organisation argued that the present legislation regulating business reorganisation is sufficient.
- According to a German organisation, the judicial power does not have a sufficiently good vision of the enterprise’s economic situation.

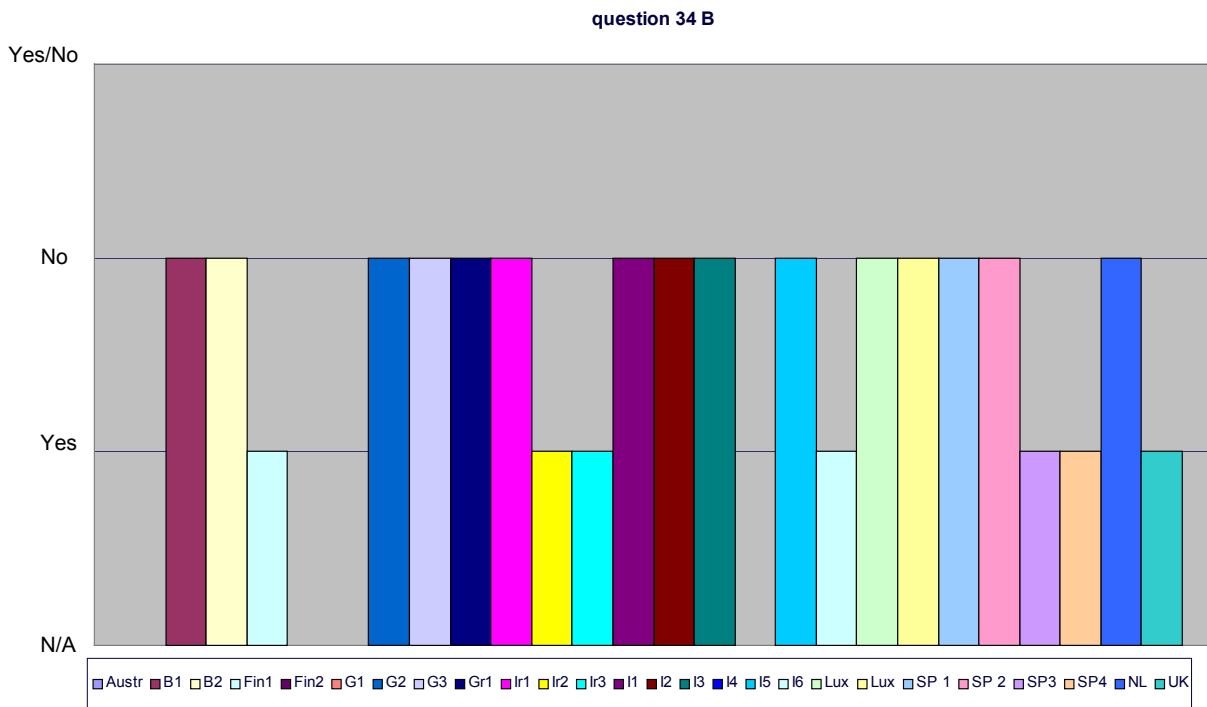
The targeted organisations that answered in favour of placing the external control under the judicial authority often complemented this solution with additional suggestions. For example,

- An Austrian organisation further suggested additional support by lawyers and chartered accountants.
- Similarly, a Greek organisation observed that the judicial authorities must be assisted by a body of experts.
- Several organisations also observed that the external control should be placed under the power of the judicial authority only in case of bankruptcy.

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- A Dutch organisation proposed an alternative solution, based on a combined effort of legislation and finance as these two ‘parties’ are the main stakeholders dealing with companies facing difficulties.

34. Do you think that the external control should be under the control of creditors?



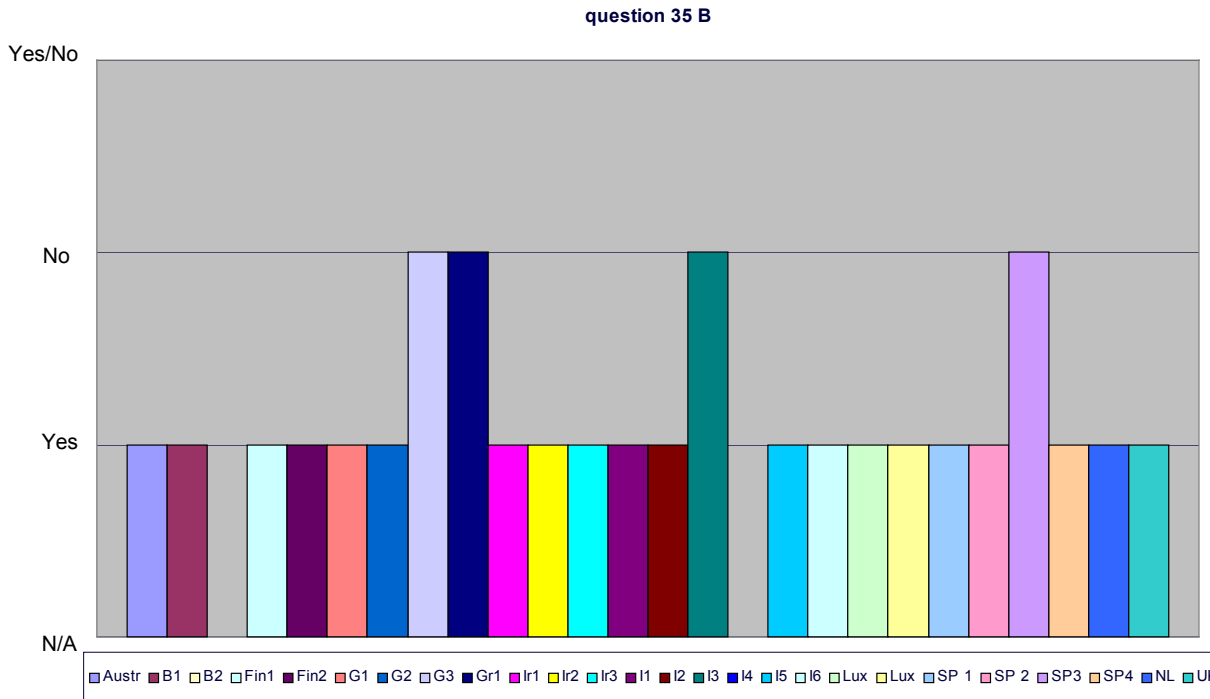
The majority of the targeted organisations of the business community seem to be against the idea of placing the external control of companies under the jurisdiction of creditors.

- A Dutch targeted organisation pointed out that in case of the presence of a large number of creditors, it is likely that a few might block any possibility in coping with the problem.
- According to a German organisation, creditors are generally not interested in performing such duties, as this is not their line of business.

However, several organisations agreed to the idea of creditor control.

- A Finnish organisation expressed a preference for creditor control rather than control by public authorities.

35. Would the appointment of a crisis manager be considered an appropriate measure by the creditors of a business facing difficulties?

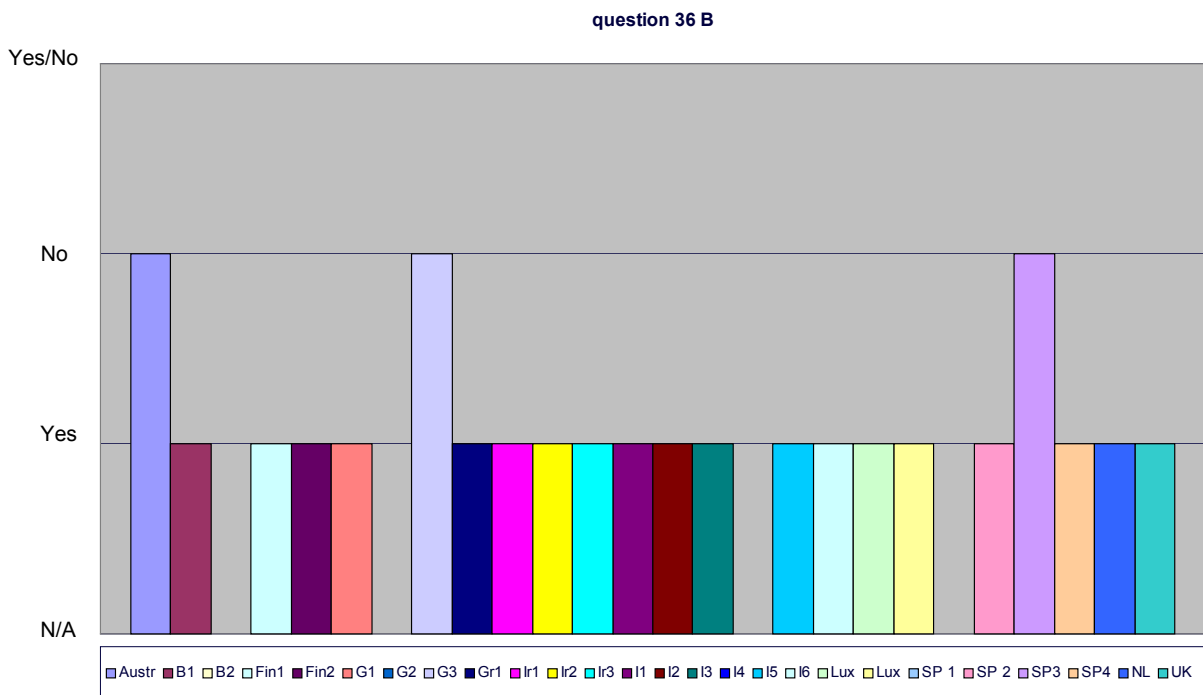


The questionnaire suggested to the targeted organisations the appointment of a crisis manager to deal with a business facing difficulties. The question was asked, whether this would be considered adequate in view of creditors.

Most organisations added that creditors would encourage the appointment of a crisis manager in distressed situations.

- A German organisation observed that the appointment of such manager is already possible.
- An Irish organisation pointed out that such crisis manager should be endowed with clearly identified and understood powers of accountancy.
- An Italian organisation observed that the appointment of a crisis manager could be considered an appropriate measure by creditors of medium sized enterprises, as opposed to micro enterprises. Nevertheless, according to this organisation, small or medium sized enterprises could play an important role to stimulate a better business dialogue among the interested parts.

36. Would the appointment of a crisis manager be considered an appropriate measure by the employees of a business facing difficulties?



Most of the targeted organisations stated that the appointment of a crisis manager would be considered an appropriate measure in a distressed situation by the employees of a business facing difficulties.

Some however pointed out that this would depend upon the reason for the crisis.

- A Greek organisation observed that hiring a crisis manager is usually considered to be the most effective tool to face the difficulties encountered by a distressed business. However, according to this organisation, employees are concerned that a crisis manager is usually the cause for many dismissals in a distressed company.
- An Italian organisation voiced the opinion that the appointment of a crisis manager would probably be considered an appropriate measure in a distressed situation by the employees of medium size enterprises, but not of small enterprises.
- A British organisation argued that the appointment of such crisis manager would contribute to business recovery and job sustainability.

3.3. QUESTIONNAIRE FOR THE FINANCIAL COMMUNITY AT NATIONAL LEVEL

The present comparative analysis is based on answers to the questionnaires received from targeted organisations in Austria, Finland, Italy, Luxembourg, Portugal, Spain, Sweden, Netherlands and the UK.

No response was received from the targeted organisations in the following countries: Belgium, Denmark, France, Germany, Ireland, Norway, and the USA.

“Yes” and “No” answers are illustrated in graphical form.

A number of questions were not answered or answered “we do not know”: These will be displayed as blank.

Additional comments provided by the targeted organisations will be referred to alongside the comparative analysis.

The name of the targeted organisations is confidential, their answers will not be personally identified in the present report, but will be assessed using a country trend.

1. Do your members represent:

Category	Number in figures	Percentage
Large enterprises (+ 250)	___	___%
Medium sized enterprises (50-250)	___	___%
Small enterprises (10-50)	___	___%
Micro enterprises (-10)	___	___%
Total	___	100 %

This question was designed to assess the degree of representation of the targeted organisations.

The targeted organisations were asked to identify whether they generally represented large enterprises (employing more than 250 persons), medium sized enterprises (employing between 50 and 250 persons) small enterprises (employing 10 to 50 persons) or micro enterprises (employing less than 10 persons)

Those organisations targeted within the financial community were represented approximately in the following proportions:

Mainly micro enterprises: 1/4

Mainly small enterprises: 1/6

Mainly medium enterprises: 1/4

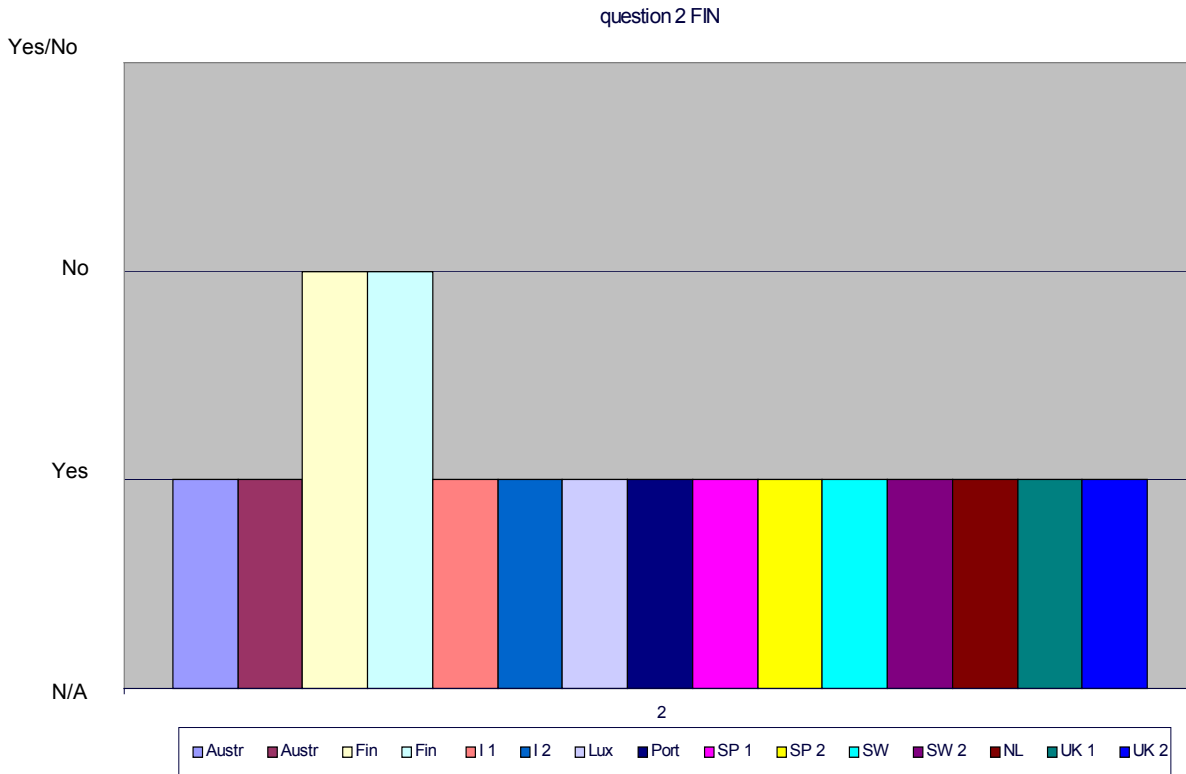
Mainly large enterprises: 1/3

The number of enterprises represented by the targeted organisations, in numbers, ranged from 11 to 5000, thus guaranteeing a wide range of representation.

The sample therefore represented uniformly all types of enterprises.

□ **Stigma (attitude négative)**

2. Within the financial community, is there a stigma surrounding the failure of a business and / or bankruptcy?



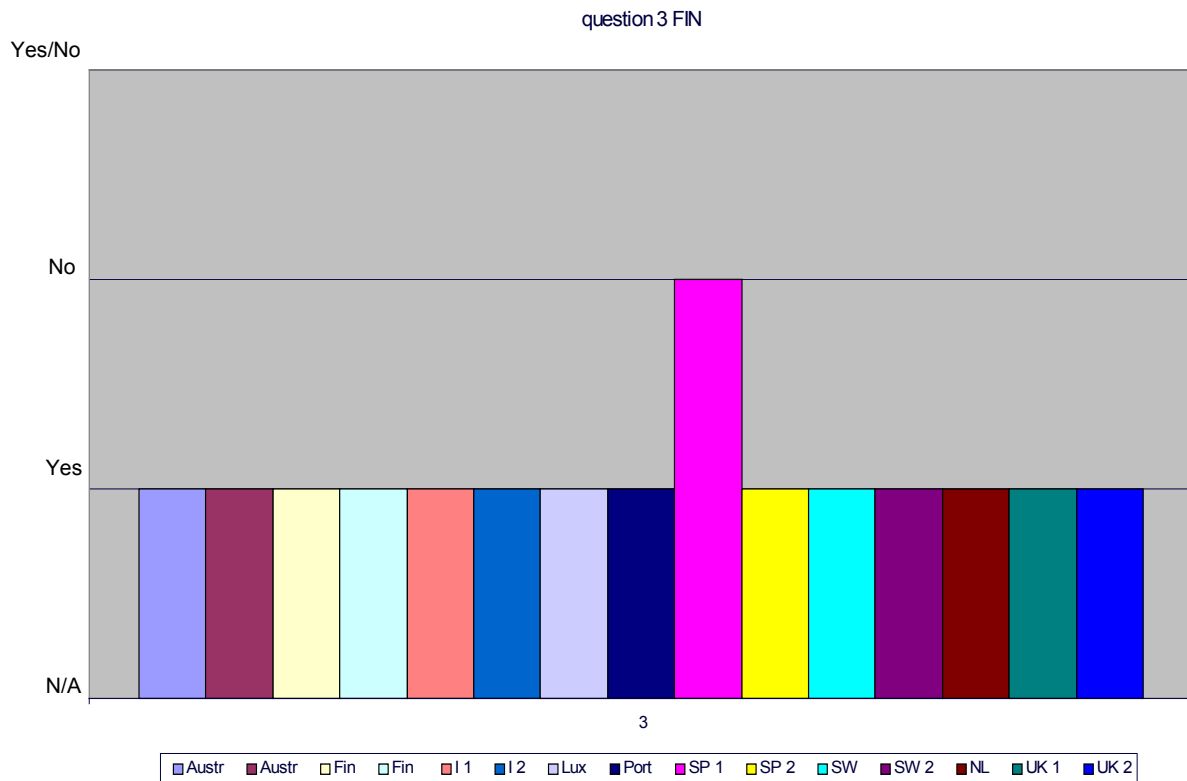
It appears that in the majority of Member States, the financial community considers that the failure of a business or its bankruptcy results in stigma.

The targeted organisation in Luxembourg justified the existence of such stigma by the fact that there have been an increasing number of insolvency proceedings and bankruptcy procedures in Luxembourg.

The British targeted organisation observed that the stigma is more specifically attached to bankruptcy, whilst attitudes to business failure are still negative, they are changing slowly. The financial community therefore is relatively aware of the consequences for a business of distress/ insolvency.

The only targeted organisations to reject the existence of stigma in cases of business failure were those organisations targeted in Finland..

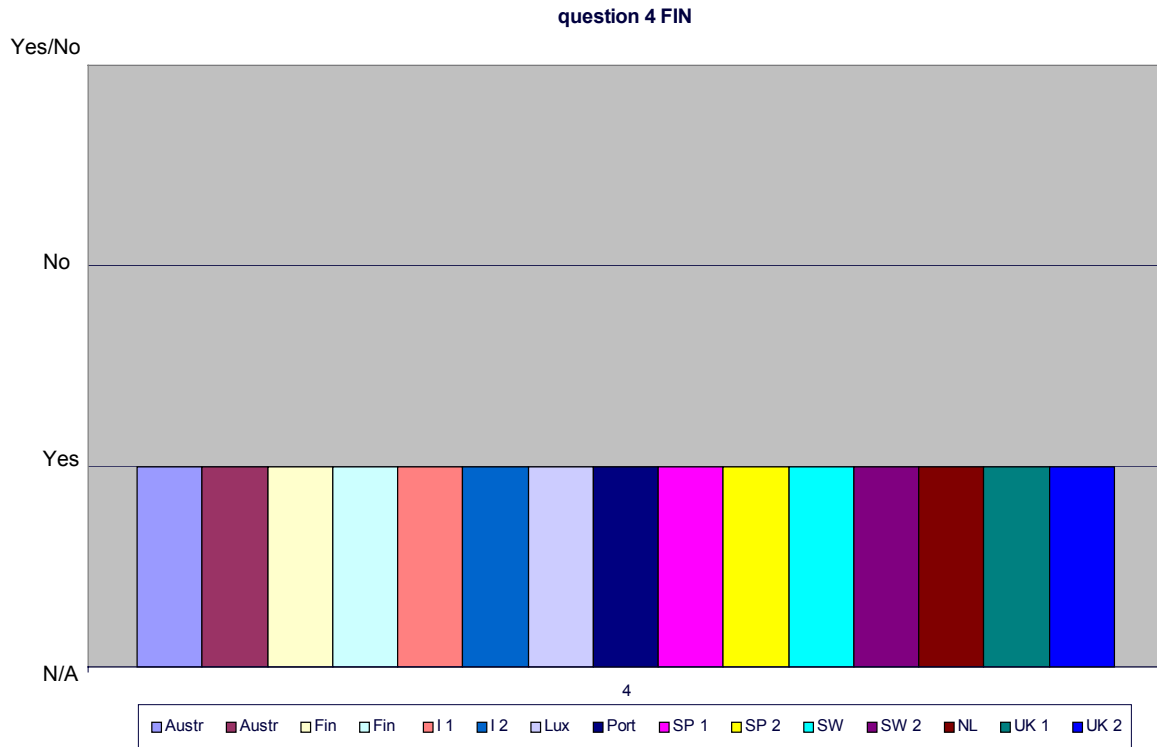
3. Does your community make a distinction between a business in distress and a business that has recovered from distress?



Most countries appear to make a distinction between a business in distress and a business that has recovered from distress. A UK organisation pointed out that a business that has recovered from distress usually does so because of the introduction of a new and improved management team, which its members sometimes contribute to alongside investment. According to this result, it thus appears that recovering from distress results in an increased level of trust from the financial community towards the business.

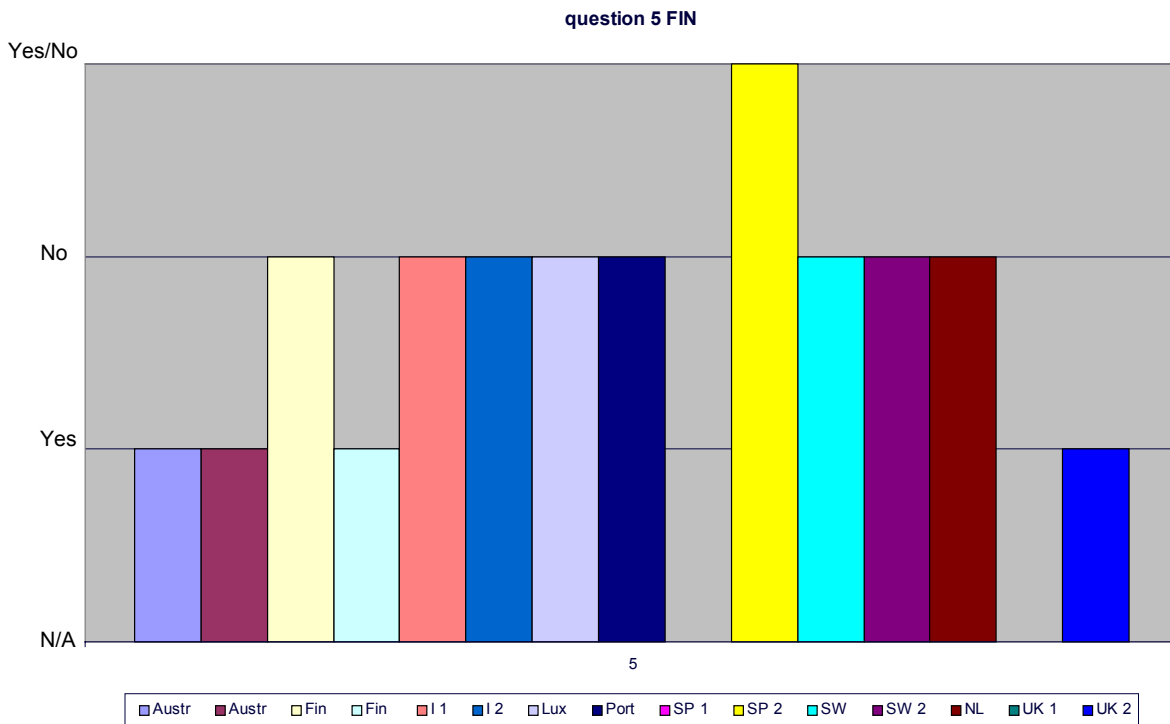
However, one of the Spanish targeted organisations replied in the negative.

4. Does your community differentiate between a fraudulent bankrupt business and a non-fraudulent bankrupt business?



All the targeted organisations stated that businesses involved in bankruptcy proceedings are treated differently by the financial community where fraud was involved. An UK organisation stressed that “fraud is regarded as very serious indeed”.

5. Is your community more tolerant towards a young IT start-up in difficulty than towards an established firm with a significant number of employees?



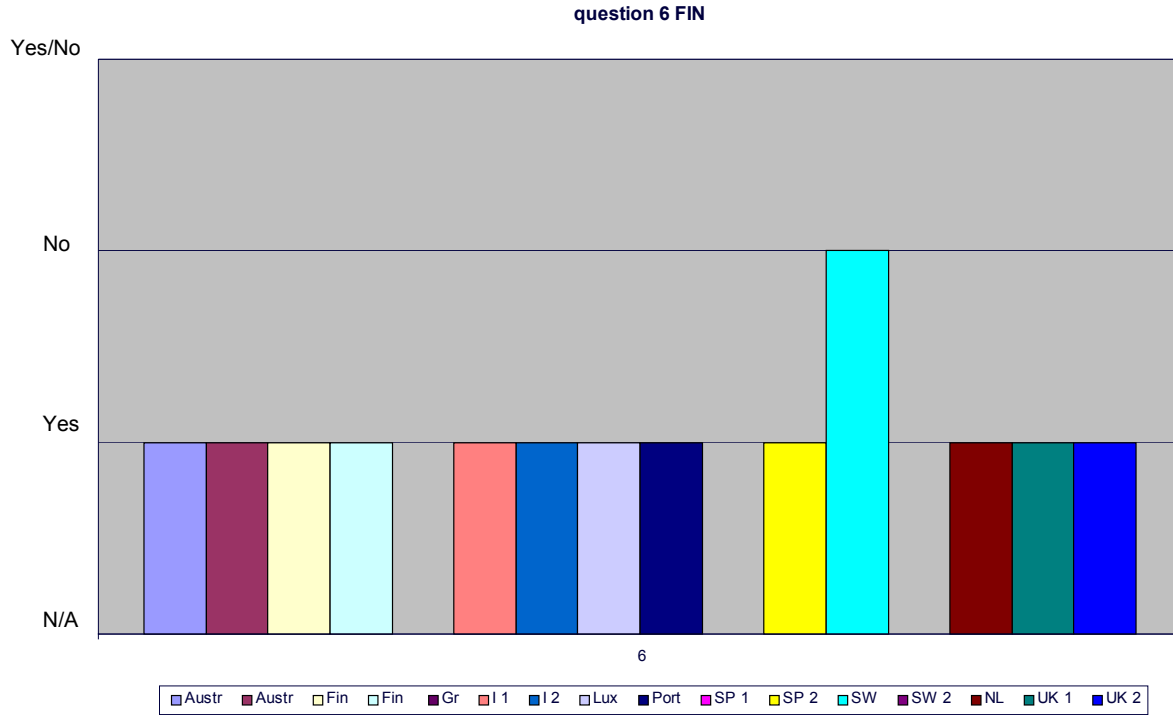
The attitude of the financial community appears to be more varied with regard to the situation of young IT start-ups.

A more tolerant attitude was expressed by the two targeted Austrian organisations, one of the two Finnish organisations, and one of the British organisations.

On the contrary, one of the Finnish targeted organisations, the two Italian organisations, the Luxembourg, Portuguese, the two Swedish and the Dutch targeted organisations did not take such a tolerant approach. One of the Spanish organisations observed that it did not know, while the other observed that a flexible approach is adopted and that the attitude depends on the case in question. The Finnish Bankers' Association similarly observed that opinions are formed on a case by case basis. The Swedish Bankers' Association stressed that on the contrary, there is a feeling of solidarity vis-à-vis more established customers, thus expressing a feeling of suspicion towards young IT start-ups facing difficulties.

□ **Availability of information**

6. Do your members keep precise data on the history of their clients and on their eventual financial difficulties?



Most targeted organisations replied that the financial community does keep precise data on the history of their clients and on their eventual financial difficulties.

However, a Swedish organisation explained that only original data on credit assessment, limits and annual reports are kept. Otherwise, the financial community relies on local, individual knowledge of customers.

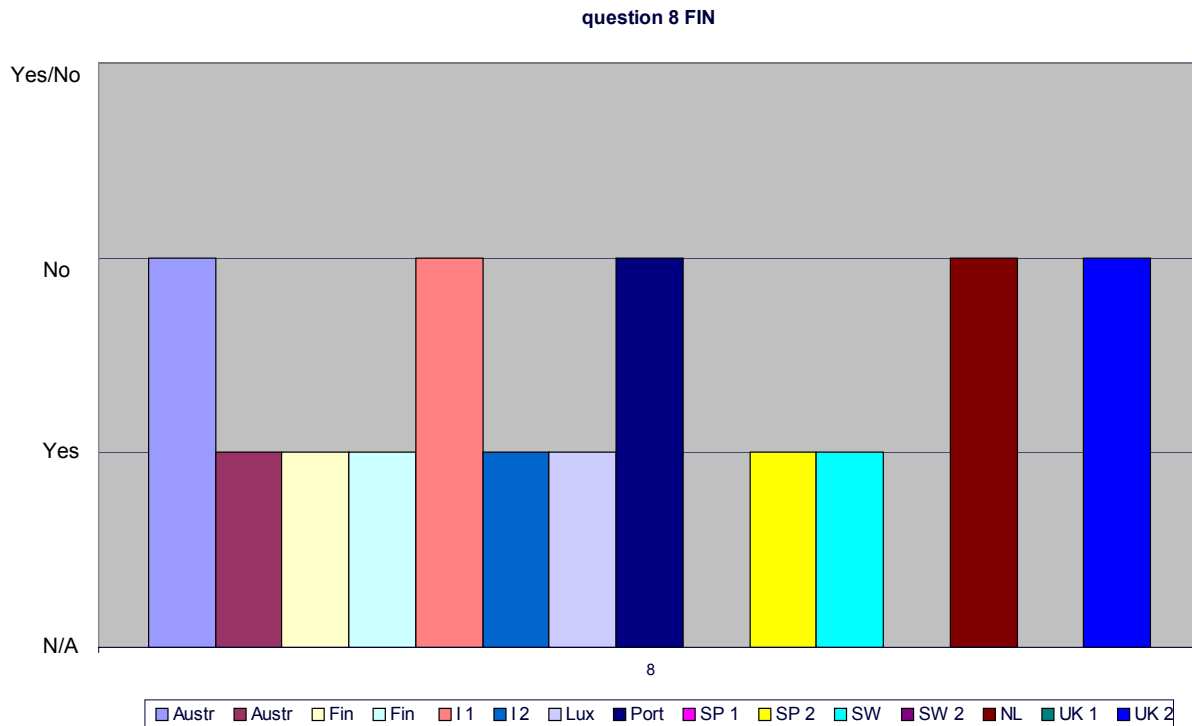
7. What kind of data?

Most targeted organisations focused on general credit information and on accounting information.

More specifically, the Austrian organisations quoted press releases, data about the business situation based on balance sheets, shares in the partnerships, and lists of clients who are a credit risk. The Italian organisations also pointed to balance sheets, income statements, and data concerning customer transactions. In Italy, it is possible to keep accounting documents for ten years. Reports made on transactions larger than €10,329.14 must be kept for 10 years. The Bank of Italy operates a public credit register and there are private registers of data on loan applications, including data on borrowers whose debts will be extremely difficult to recover because they may be

subject to collective bankruptcy procedures or forcible execution. In Luxembourg, data kept by the financial community includes data concerning financial difficulties such as unpaid cheques and bills of exchange and lists of annual bankruptcy judgements... Portuguese organisations pointed to general economic and financial data. The Spanish Bankers' Association stated that they basically keep data that are related to the relationship with the client and data that appear on the documentation concerning the activities carried out by the clients. A Swedish organisation stated that they kept only original data on credit assessment, limits and annual reports. Otherwise, the available data is based on local, individual knowledge of customers. A Dutch organisation observed that they keep all kinds of data, such as balance sheets etc. In the UK, an organisation pointed out to management accounts while another organisation observed that most UK clearing banks in addition to financial information, track account trends and characteristics and use these to identify businesses in difficulties at an early stage.

8. Do these data differentiate between fraudulent bankruptcy and non-fraudulent bankruptcy?



The data stored by the financial community does appear to differentiate between fraudulent bankruptcy and non-fraudulent bankruptcy in a (small) majority of countries (Austria, Finland, Italy, Luxembourg, Spain and Sweden).

Examination of the data on customer relationships in general reveals whether the customer’s failure has had penal consequences, such as charges of bankruptcy against the customer.

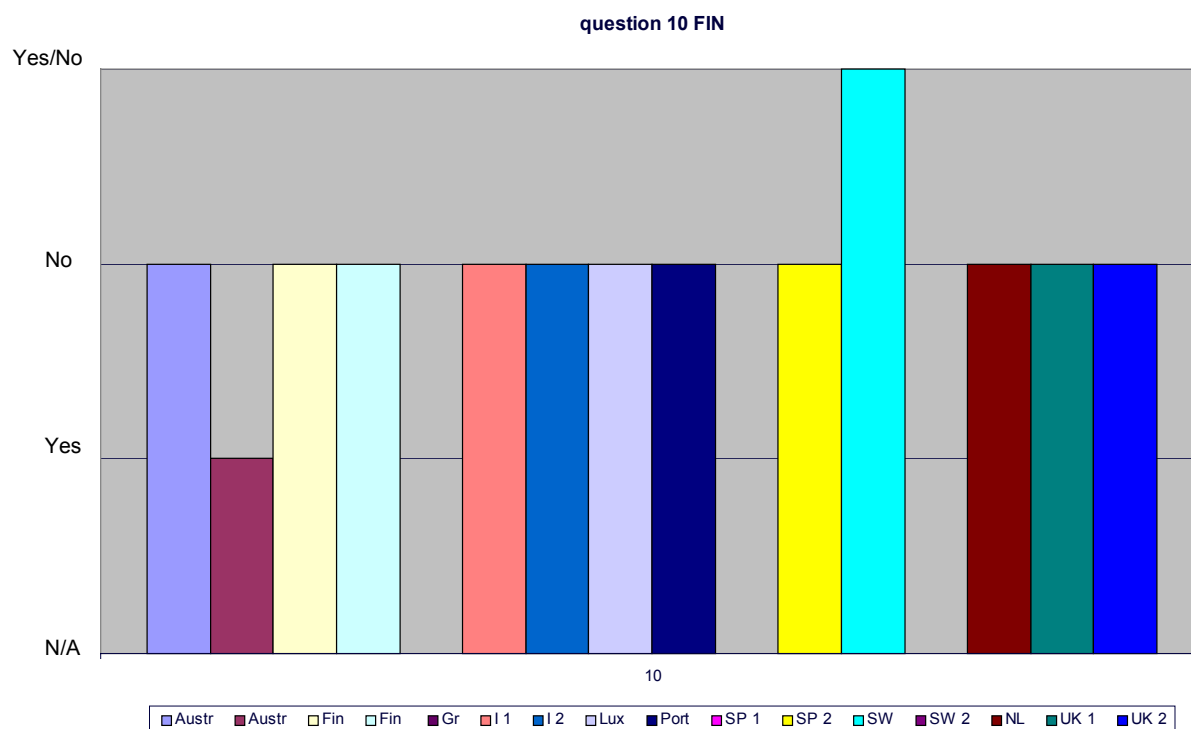
The Luxembourg targeted organisation however observed that the attitude towards enterprises/traders having caused fraudulent bankruptcy should be more severe. The data are kept in special files, as these activities are followed by criminal prosecution.

9. How long do you keep those data?

Although several answers pointed out that the duration would depend on the specific case, an overall assessment can be made that the data are generally kept between 6 to 10 years:

UK: approximately 7 years; Spain: at least 6 years (legal time period for keeping such information); Portugal: a few years; Luxembourg: at least 10 years; Italy: concerning banks' accounts books or correspondence: 10 years; otherwise, the data is kept for the duration of the participation in the target company; Austria: as long as the business relation is maintained and thereafter, for a period of 5 to 10 years depending on the type of data. A Swedish organisation stated a stricter policy for the retention of data: the information is kept forever.

10. Are these data shared with other financial institutions?



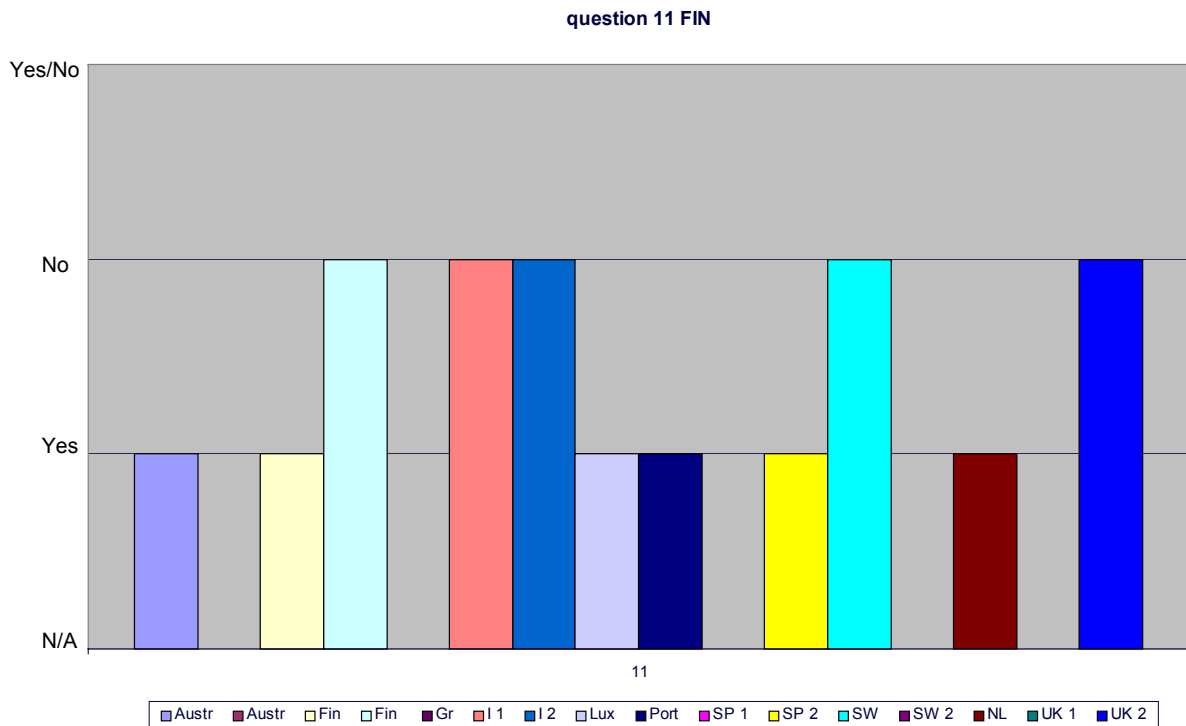
It appears without any doubt from the answers provided by the financial community that in the majority of countries, data on the history of their clients and on their eventual financial difficulties is not shared with other financial institutions.

In Italy for instance, the data are accessible only to those persons directly affected by and involved in the procedures. All financial intermediaries have access to the Central Credit Register kept by the Bank of Italy. Only members have access to private registers. However, access is limited to the amount of the single borrower’s debt with the entire system, not the exposure of individual lenders.

Austria exceptionally answered positively.

Only a small majority of the targeted organisations however expressed the opinion that sharing such information would be useful, an opinion that is also apparent from the responses given to the following question.

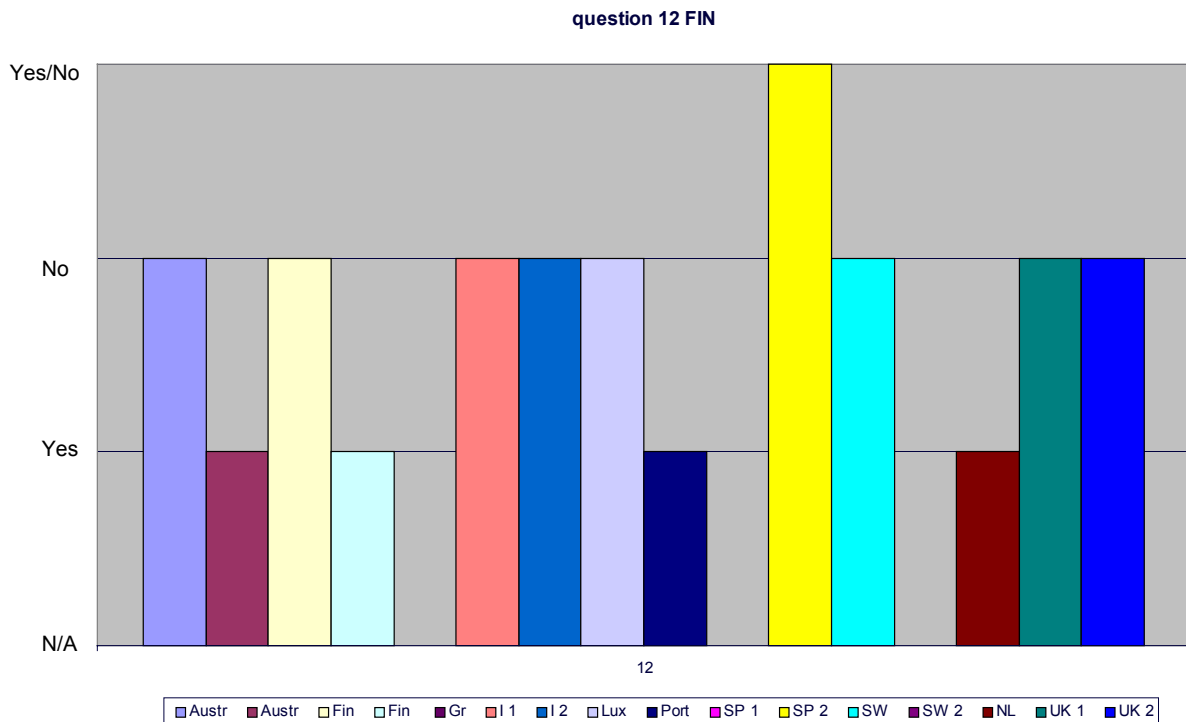
11. If not, would your community consider it useful?



Only a small majority of the targeted organisations considered that sharing the data they keep concerning businesses in difficulties might be helpful. A Luxembourg organisation observed that the main reason would be to prevent “bank shopping”.

However, opposite arguments were based on various principles, such as the violation of the principle of confidentiality if third parties were to learn of elements relating to criminal proceedings or of information on individual accounts (an Italian organisation and a UK organisation), bank secrecy legislation (a Swedish organisation), and anti-competition (a UK organisation).

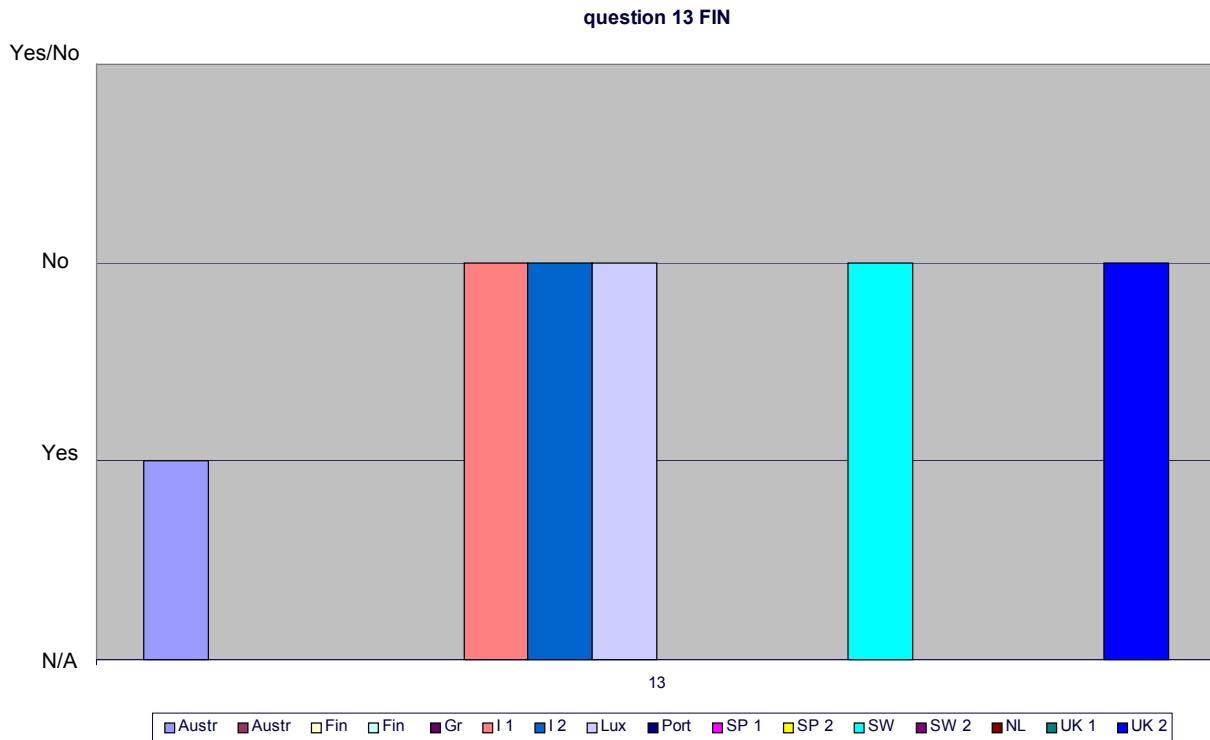
12. Are these data shared with your business partners?



A larger number of targeted organisations belonging to the financial community share the data concerning the history of their clients and their eventual financial difficulties with their business partners than they do with other credit institutions. Thus, an Austrian organisation observed that such data is shared as far as they are not subject to bankers’ discretion. The same observation was made by a Spanish organisation, according to which the data are shared on a case by case basis taking into account whether these data are public or protected by professional secrecy.

However, a majority of the targeted organisations denied sharing such data with their business partners. A UK organisation however admitted that a summary of progress would be passed to investors.

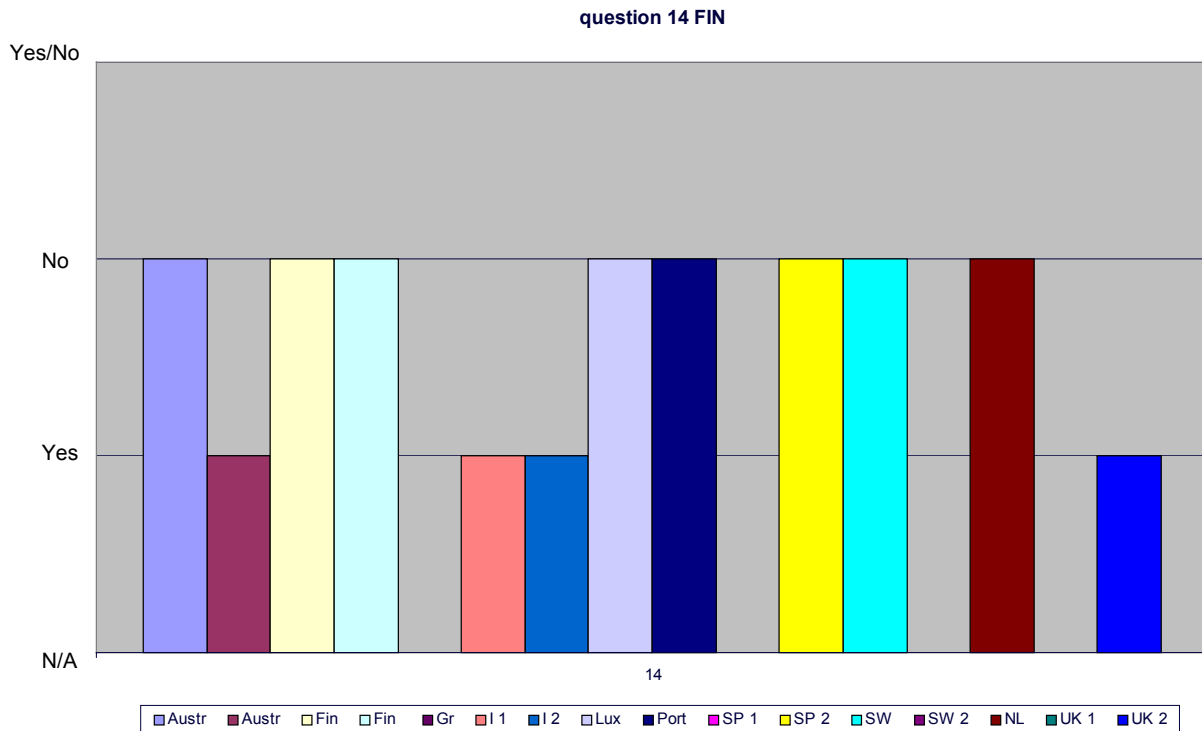
13. If not, would your community consider it useful?



More than half of the targeted organisations that responded to the survey did not provide an answer to this question.

The majority of the answers received relating to this question stated that the financial community does not consider it useful to share the data held on the history of their clients with business partners. The reasons given to the question on sharing these data with other financial institutions were also restated.

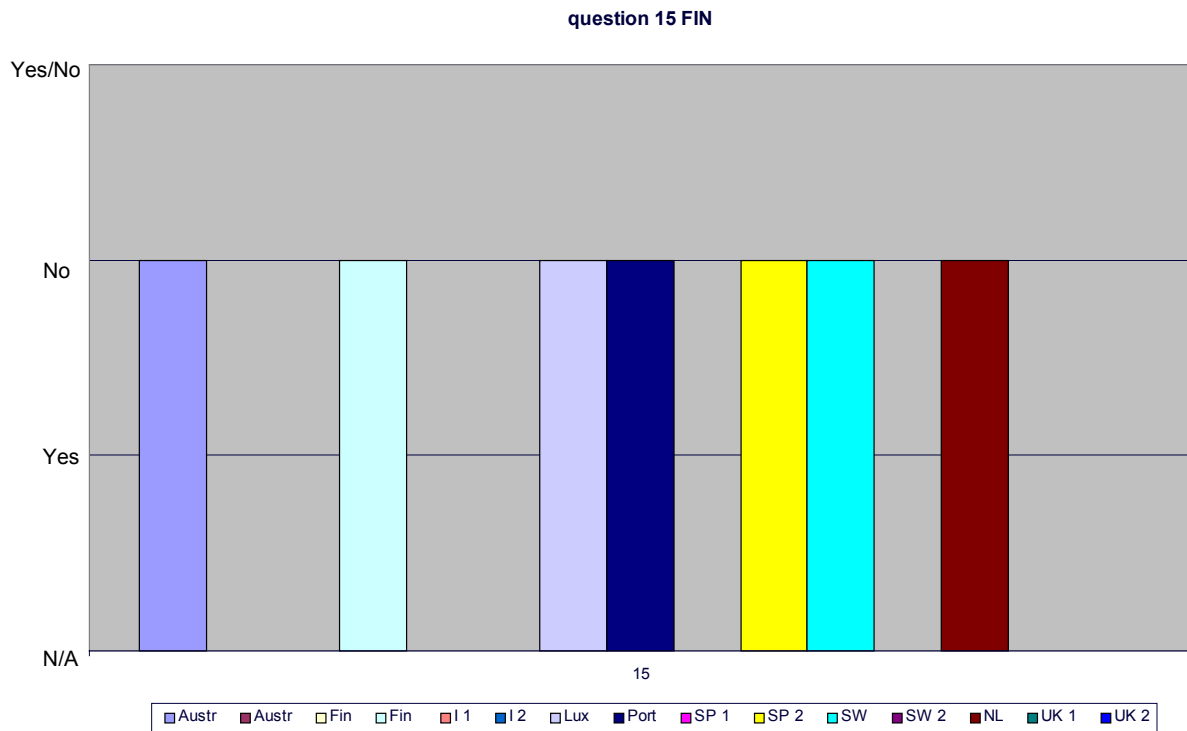
14. Are these data shared with your clients?



A majority of the targeted organisations stated that data relating to their clients were not shared with the latter. A Finnish and an Italian organisation explained that customers can view their own files, but not others; the only exception being guarantors, who can view debtors' data.

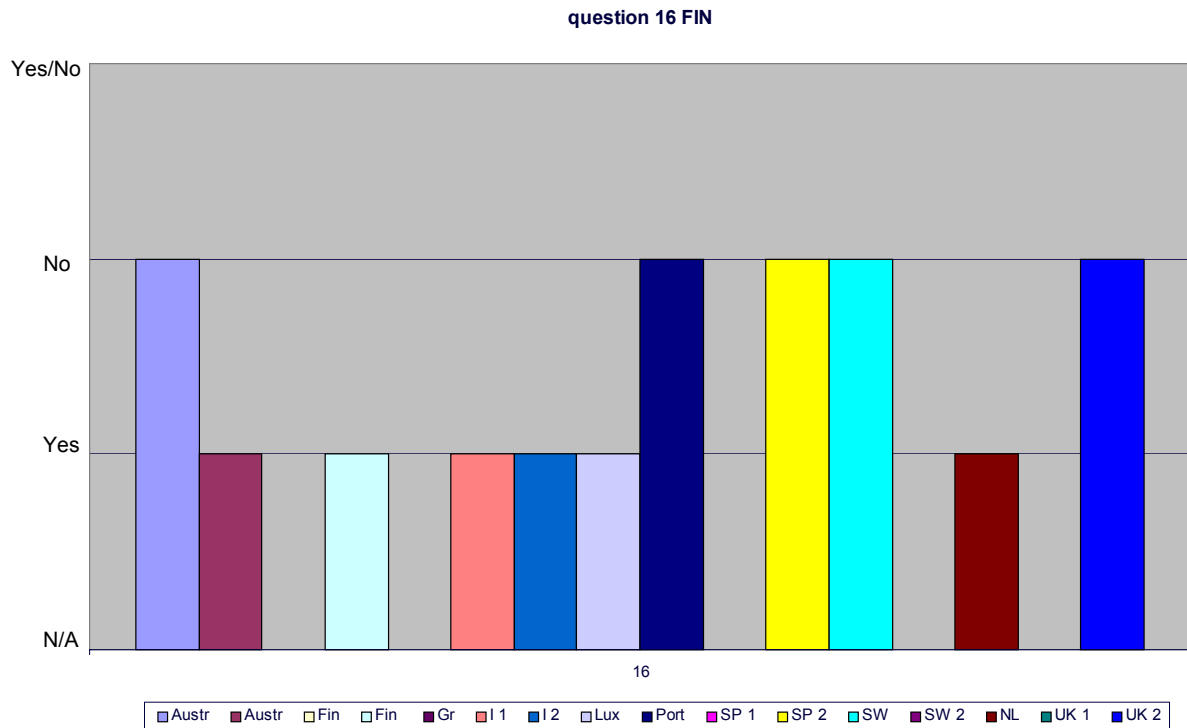
An Austrian observed that such data are shared in a limited way, i.e. within the scope of the bankers' duty of secrecy and only in the form of general information. In Luxembourg, banking secrecy regulation applies. A UK organisation stated that such data would be shared with their clients to the extent that any early warning signs would be discussed with the client.

15. If not, would your community consider it useful?



All answers provided by the financial community gave a negative response. The main reason for this was for reasons of confidentiality.

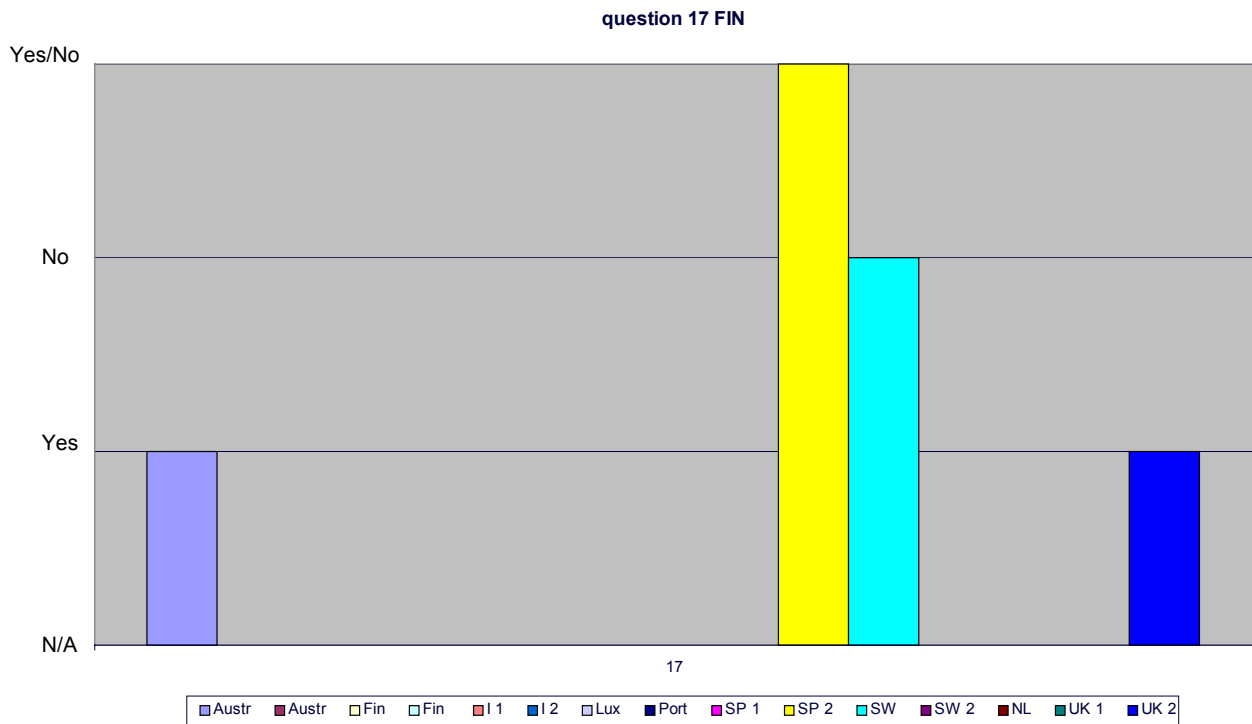
16. Does the applicable legislation and regulation require that such data is transmitted to the judicial authorities?



In Austria, the financial community is subject to the obligation to transmit financial data concerning their clients to judicial authorities only when criminal proceedings have been instituted. Such an obligation also applies in Finland, Italy, Luxembourg (a reporting of criminal/illegal activities must be made to judicial authorities by entities having knowledge of those activities), and the Netherlands.

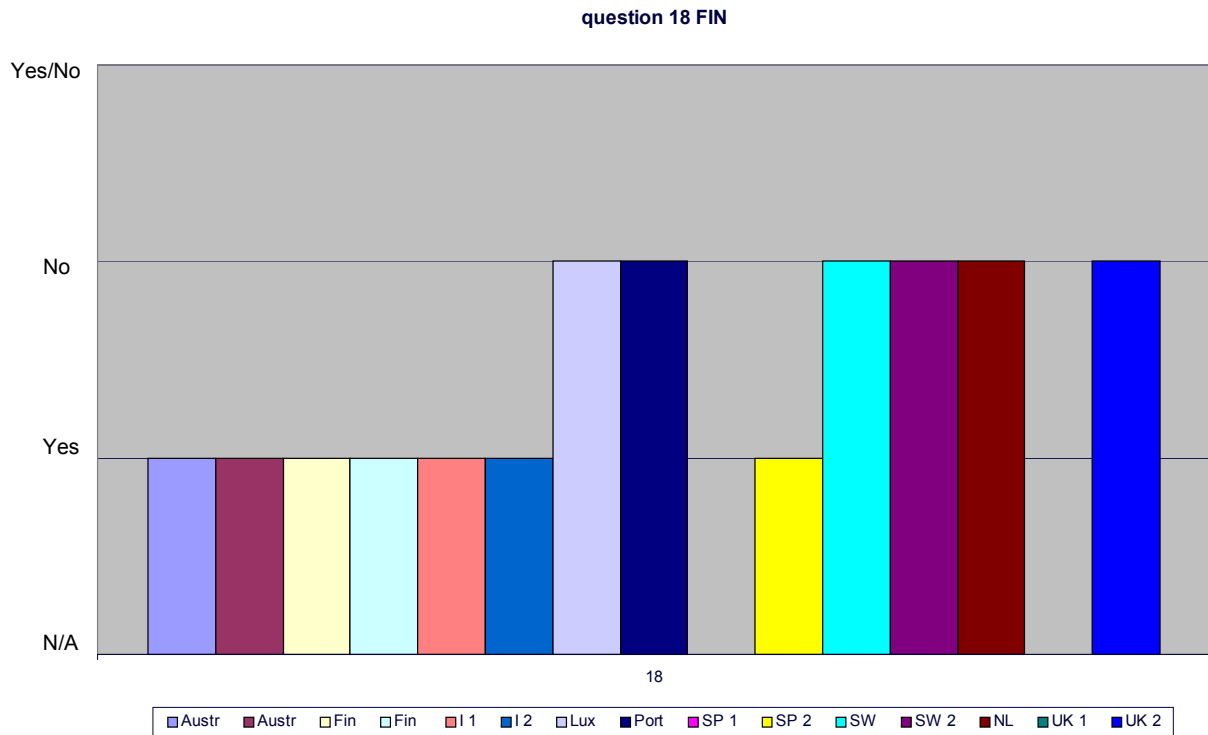
On the contrary, Portugal, Spain, Sweden and the UK do not have such legislation.

17. If not, would your community agree to do so?



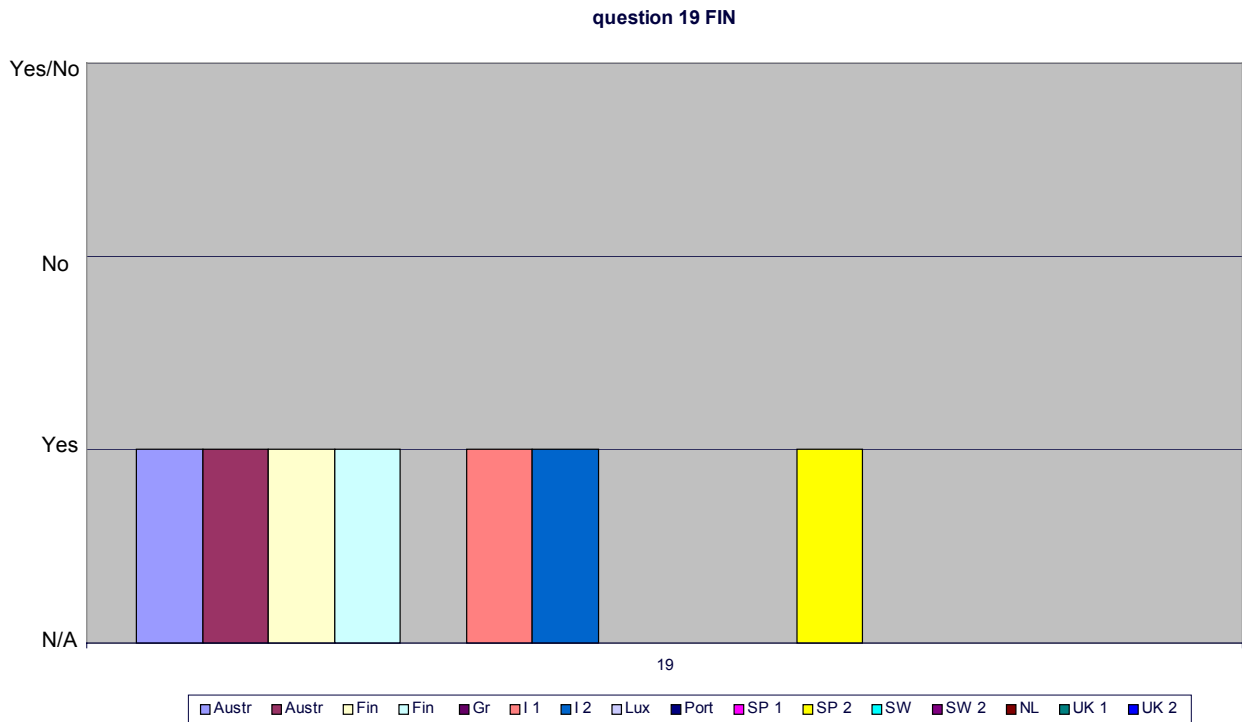
Among those countries that do not provide any legal obligation for financial organisations to provide judicial authorities with data on the financial situation of their clients, only the UK organisation stated that it would agree to do so.

18. Is there a national databank of failed entrepreneurs in your country?



The majority of targeted organisations are aware that their country maintains a national databank of failed entrepreneurs. Exceptions include Luxembourg, Sweden, the Netherlands and the UK. A UK organisation added that such a national data bank would not be acceptable, as it would be completely contrary to an entrepreneurial culture.

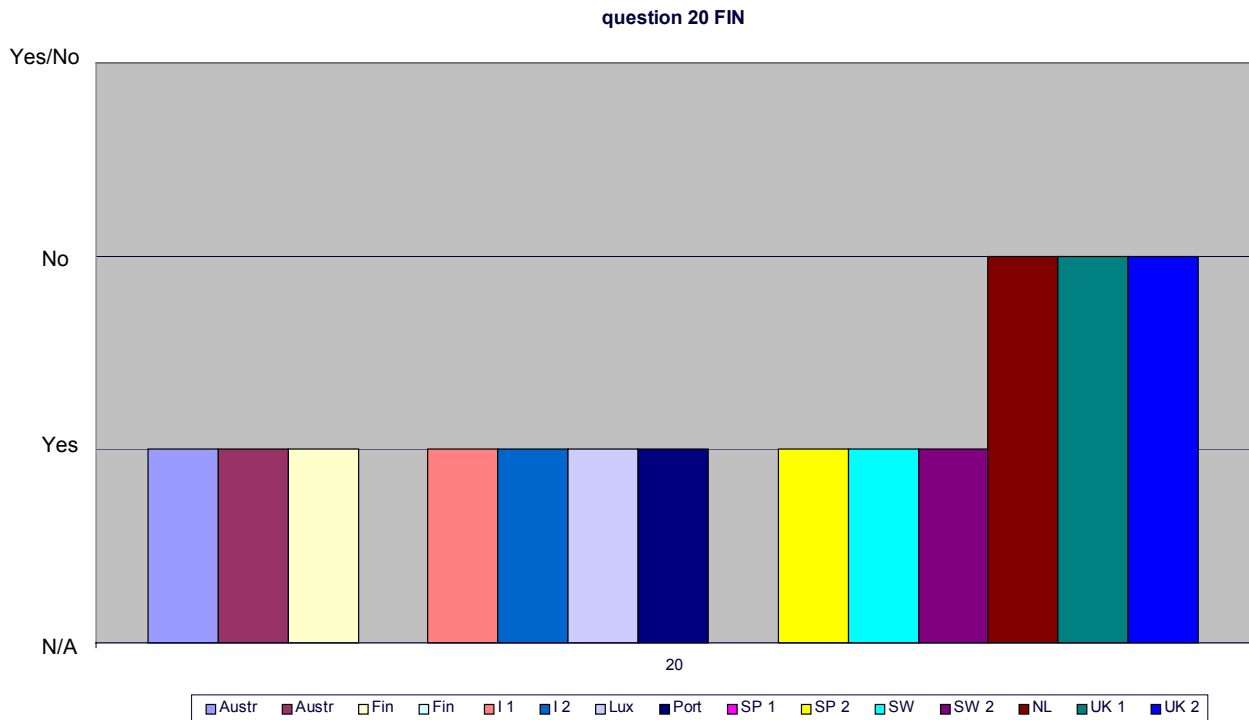
19. Is this databank open to consultation by financial institutions?



All targeted organisations within the financial community that answered stated that the existing national databank is indeed open to consultation by financial institutions.

A Spanish organisation answered that there was a limit to such a consultation: insofar as it is subject to prior agreement by the entrepreneur.

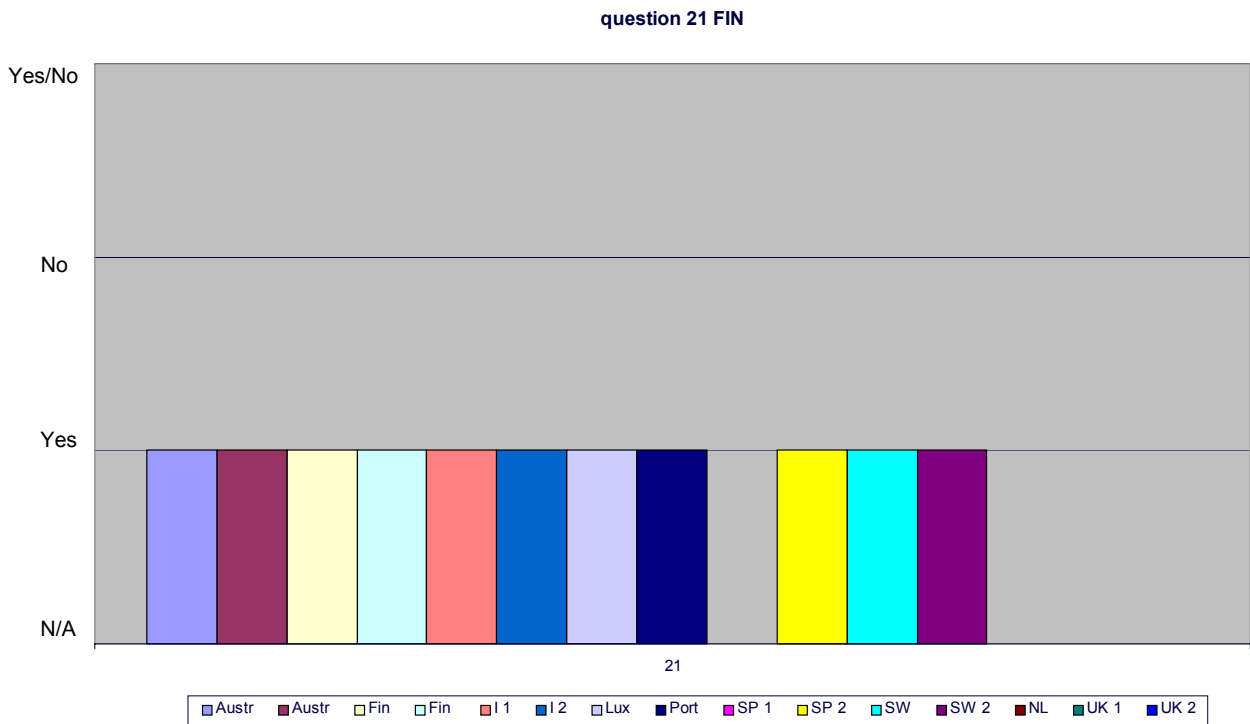
20. Does your community receive other external information about failed entrepreneurs?



The majority of targeted organisations within the financial community stated that they benefit from external sources of information about failed entrepreneurs: the Mercantile Credit Agency in Austria, several registers in Italy, several insolvency and late payers registers in Spain, through newspapers and by subscribing to material from the Credit Reference Agency in Sweden.

The Dutch and British organisations targeted were not aware of the existence of such external sources of information.

21. If yes, is it useful?



Those targeted organisations who have access to external sources of information about failed entrepreneurs unanimously agreed that it is useful.

□ ***Reasons for failure***

22. According to your experience and / or your business vision what are the most common reasons for business failure?

The targeted organisations were asked to choose the most common reasons from a provided list. A distinction was made between large enterprises on the one hand, and medium, small and micro enterprises on the other hand.

A cross-analysis of answers received from the targeted organisations highlights that according to the opinions of the financial community, the most common causes of business failure are:

For Large enterprises:

- management skills/ poor management
(Austria, Finland, Portugal, Spain, Sweden, Netherlands, UK)
- financial
(Austria, Finland, Italy, Luxembourg, Portugal, Sweden, UK)
- external business conditions (loss of market/ main customer; rent review/other increase overhead)
(Austria, Finland, Italy, Portugal, Spain, Sweden, UK)
- legal disputes
(Italy, Luxembourg,)
- failure to deal with Income Tax/ Corporation Tax affairs or VAT
(Luxembourg)
- personal extravagance/ excessive drawings or remuneration
(Spain)

For Medium/ Small/ Macro enterprises:

- management skills/ poor management
(Austria, Finland, Italy, Luxembourg, Portugal, Spain, Sweden, Netherlands, UK)
- external business conditions (loss of market/ main customer; rent review/other increase overhead)
(Austria, Finland, Italy, Portugal, Spain, Sweden, UK)
- relative youth or lack of experience of the entrepreneur
(Austria, Finland, Italy, Luxembourg, Sweden)
- failure to deal with Income Tax/ Corporation Tax Affairs or VAT
(Finland, Luxembourg)

- financial
(Finland, Italy, Portugal, Sweden, UK)

- personal extravagance/ excessive drawings or remuneration
(Portugal, Spain)

It appears from the answers received that the financial community considers a variety of reasons to be responsible for business failure.

The most commonly raised reasons for the failure of large enterprises are management skills/poor management, financial, and external business conditions.

For medium, small and micro enterprises, the reasons for failure appear to focus more on the individual entrepreneur: the issue of management skills was frequently raised. Also of importance important was the issue of the relative youth or lack of experience of the entrepreneur. Subject to those exceptions, the same reasons as for large enterprises seem to apply (financial difficulties, external business conditions). A limited number of countries raised the issue of personal extravagance.

Finally, it should be stressed that only one of the proposed causes was never raised: that of fraud. It therefore appears that within the financial community, fraud is not considered as a major cause of business failure. The financial community in this way appears to be more aware of “structural” problems (financial and management problems) and the positioning of the business on the market (external business conditions) as the main reasons for business failure.

□ ***Role of banks in the prevention of failure***

23. What would you modify in order to reduce the number of bankruptcies / business failure?

The targeted organisations were asked to choose from among a series of possible measures to reduce the number of bankruptcies/ business failures.

Several organisations failed to respond to this question.

Answers were ranged as follows:

- Use more severe criteria for the attribution of credits to companies
(*Austria, Portugal, Sweden*)

- Provide for a better control of companies
(*Austria, Italy, Luxembourg, Portugal, Spain, Sweden, UK*)

- Negotiations
(*Portugal*)

- Prevention and intervention by judicial organisms
(*Luxembourg*)

- Intervention by financial institutions
(*Netherlands*)

- Others

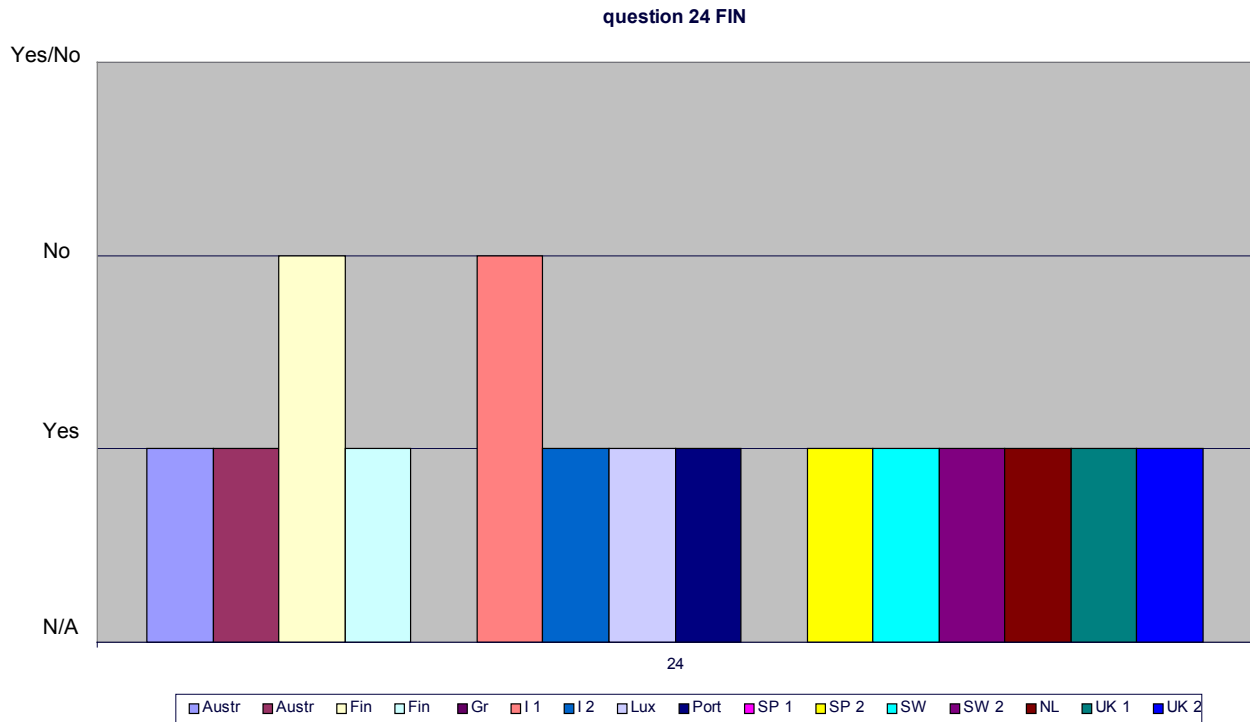
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(*Italy*: prevention by agreement with creditors. The Italian Bankers Association argued in favour of the adoption of an out-of-court procedure based on the drawing up of an adjustment plan aimed at overcoming the economic difficulties of the business, which may find itself only temporarily unable to discharge its obligations.

A *UK* organisation provided the survey with a complementary statement of principles issued by the BBA in 2001.)

It appears that for the targeted financial organisations, the preferred way for reducing the number of bankruptcies/ business failures would consist of providing for the better control of companies. However, the answers given highlight that the financial community does not believe that this control should be achieved through the use of judicial intervention or via intervention by financial institutions.

24. Do you believe that banks have an important role to play in the prevention of bankruptcy/business failure?



Surprisingly if considered in parallel with the answers to the previous question, the majority of targeted financial organisations agreed that they have an important role to play in the prevention of bankruptcy/ business failure.

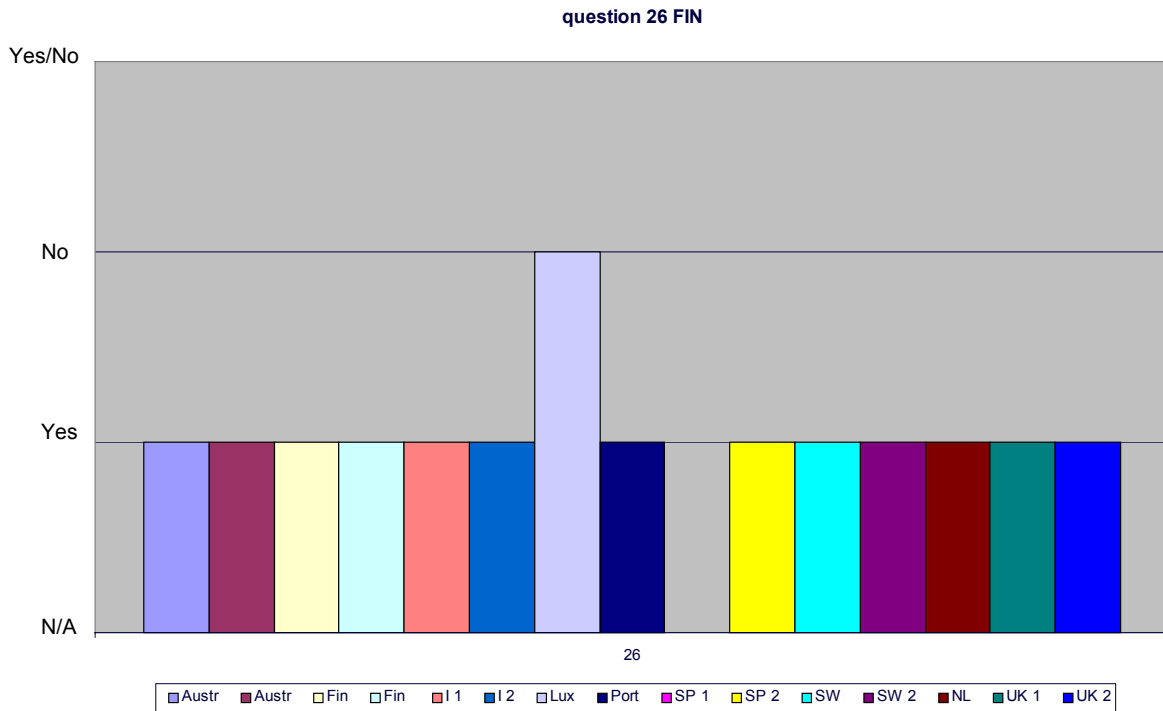
25. What are the criteria, used by your members, in order to evaluate whether the entrepreneur represents a risk?

The most commonly expressed criteria, used by members of the financial community, to assess whether an entrepreneur represents a risk were the following:

- age of the entrepreneur
- lack of experience
- business plan
- sector of activities
- previously failed
- previous external control
- judicial control (concordat/judicial composition)

Several of the targeted organisations chose to stress all criteria, and the majority of them chose at least: the lack of experience, the business plan, and the fact that the entrepreneur had previously failed. These latter three criteria would appear to be the most important reasons for the financial community's reluctance with regard to an entrepreneur who represents a potential risk.

26. Do your members have internal control mechanisms for the detection of companies that may be approaching distress?



The targeted organisations from all countries, with the exception of Luxembourg, agreed that their members have internal control mechanisms for the detection of companies that may be approaching distress.

27. Which control is most efficient for the detection of companies in possible financial difficulty?

Two primary means of control for the detection of companies in potential financial difficulties were identified by the targeted financial organisations.

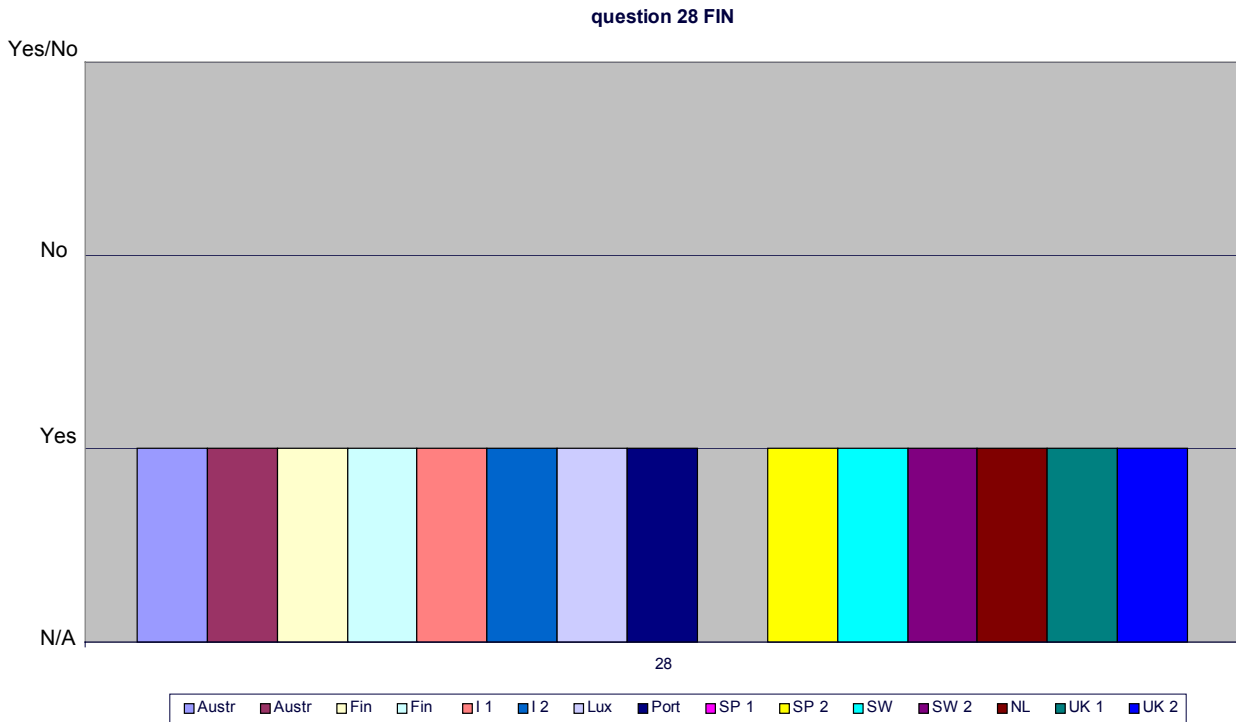
First, the presence of representatives of the organisation at the board of directors (Austria and Italy). Linked to this is the overall control over the management of the target company (Finland).

The second way identified by the majority of targeted organisations included: surveillance of the financial state of the company, of its business line and of the economic sector (Austria), regular reporting activity; requiring recent documents from the company (Luxembourg), deep control of balance sheets, accounts (Spain), close follow-up of results and cash flow and general financial situation (Sweden).

Italy also highlighted the constant monitoring of business customers by banks and the use of scoring systems.

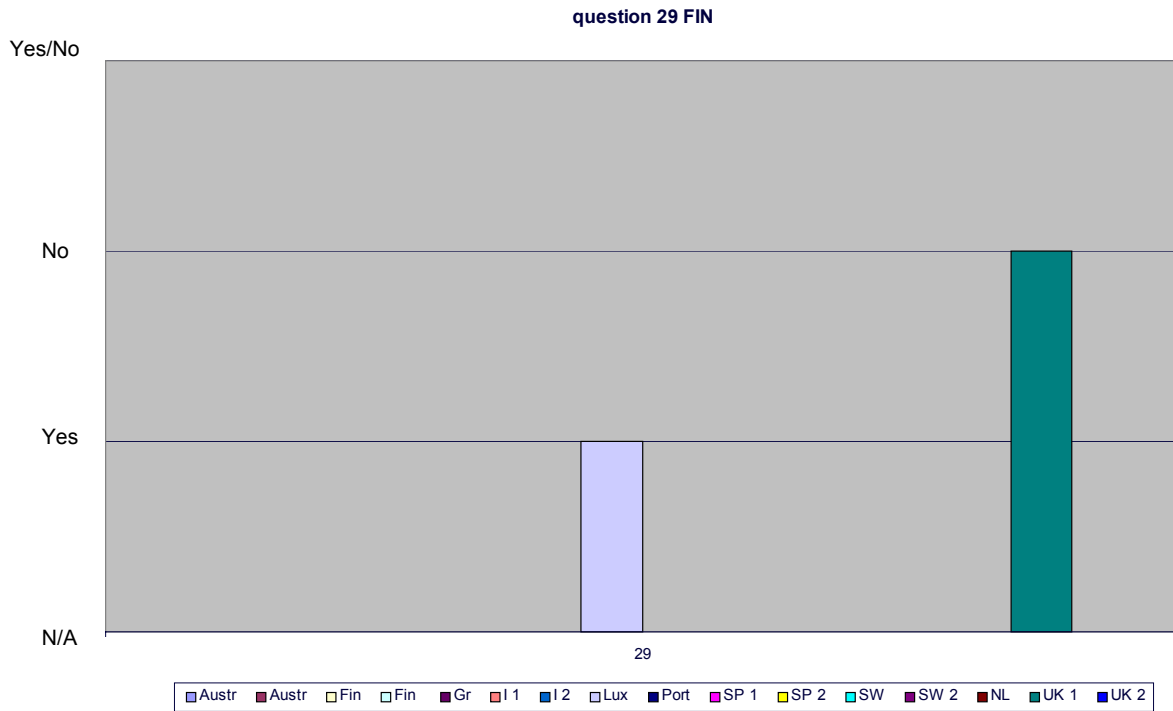
□ *Consequences of failure*

28. If a client is facing business failure, do your members, before providing new credit, evaluate its situation on a case-by-case basis?



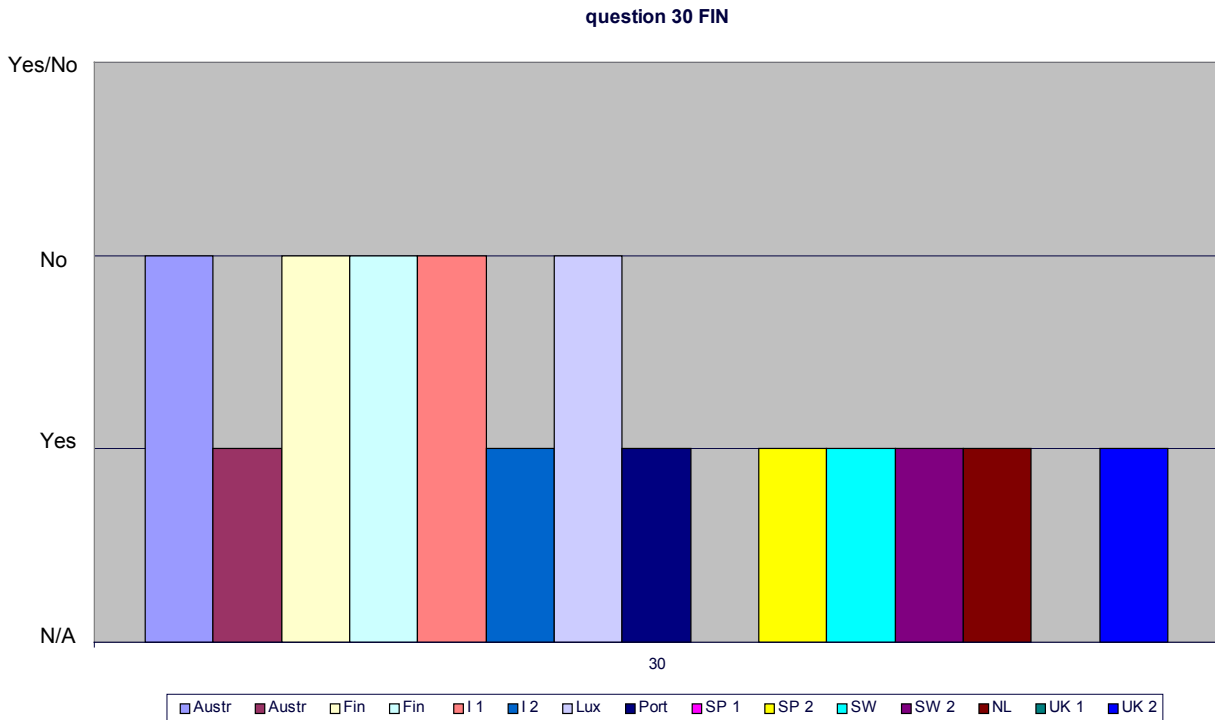
All the targeted financial organisations agreed that the provision of new credit to a client facing business failure is subject to a case-by-case evaluation of its situation. This unanimous attitude reflects the reluctance of the financial community to businesses having faced financial difficulties, and the stigma associated with these businesses.

29. If no, do your members apply a standard procedure?



In view of the limited number of responses received, it is impossible in this instance to highlight a trend.

30. Would your member's attitudes change if a professional expert assisted a client, facing business failure?



The opinion of the members of the financial community appears relatively divided on whether their attitude would change if an expert assisted the client facing difficulties.

Only a small number of organisations (4 out of 13) agreed that they would not change their attitude in such a case, while many of the targeted organisations still stated that such a measure would incur changes of attitude on their part.

**31. If yes, which expert do your members trust the most?
Please rank your choice.
(lawyer, accountant, auditor, crisis manager, others)**

Among the targeted financial organisations that stated that they would react more favourably if the client facing difficulties was assisted by an expert, the crisis manager was the preferred choice, followed by the auditor, the lawyer and the accountant.

However, the classification is not sufficiently precise for it to be representative of a definitive trend.

32. What are the consequences of the distinction, if any, between fraudulent and non-fraudulent bankruptcy?

Several targeted financial organisations failed to answer this question.

The Italian and Portuguese organisations pointed to the legal (criminal) consequences of fraudulent bankruptcy.

Some targeted financial organisations mentioned the very harsh consequences for a fraudulent bankruptcy.

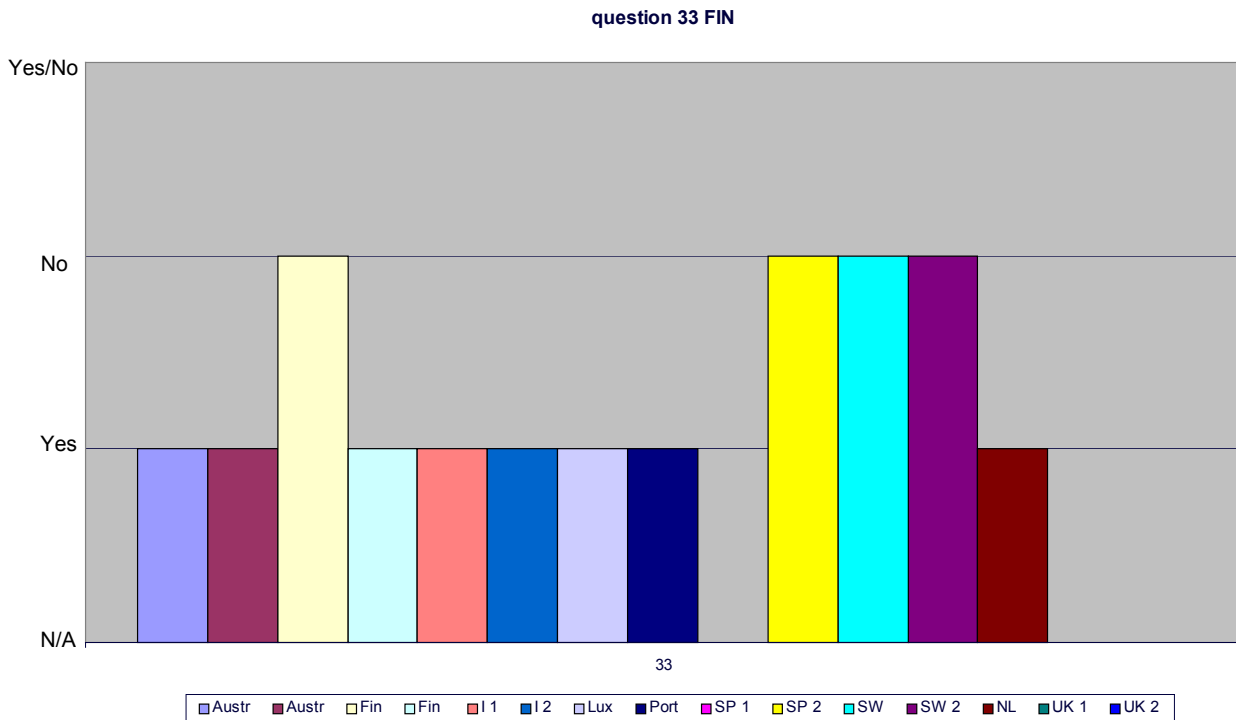
A Luxembourg organisation argued that customers having caused fraudulent bankruptcy would not be accepted anymore for new projects. Similarly, a Swedish organisation stated that fraudulent bankruptcy entails exclusion from the bank in the future.

An Austrian organisation argued that in both cases of fraudulent and non-fraudulent bankruptcy, the client is “absolutely unworthy of credit”. This is clear evidence of stigma.

A UK organisation observed that a fraudulent bankruptcy leads to future difficulty in raising credit.

□ *A fresh start*

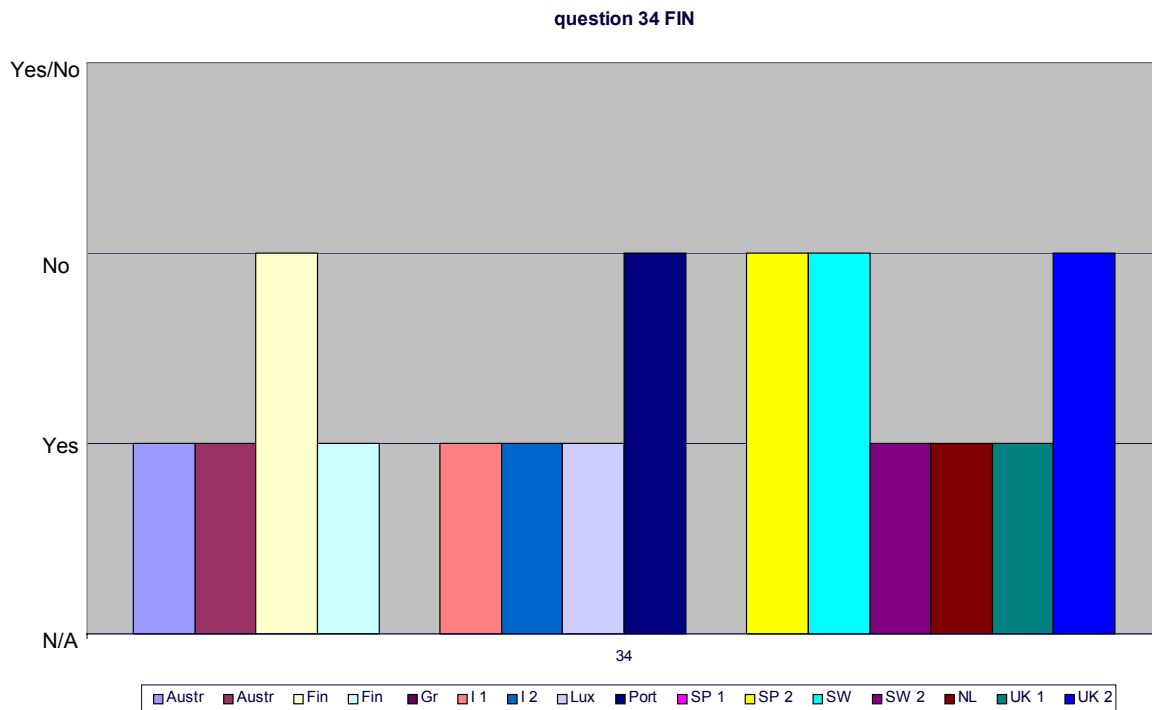
33. Do you think that the legislator should promote the opportunities for a fresh start for a business previously involved in bankruptcy?



The majority of the targeted financial organisations appear to be in favour of the promotion, by the legislator, of opportunities for a fresh start for a business previously involved in bankruptcy. However, they are far from unanimous on this question. No justifications were given either way, and we are forced to conclude that although there is some degree of will to enable businesses to benefit from a fresh start, the degree of reluctance towards such a proposition is still high. In the UK, an organisation supported the proposition, subject to the absence of fraud. Another organisation pointed out that the legislation is already flexible enough to encourage business (as opposed to company/ legal entity) rescue.

An Italian organisation observed that a firm’s insolvency may be caused by a slowdown in the economy, which inevitably affects the solvency of even a sound, and efficient company. The debtor must accordingly be allowed back into the market when the company is in a position to resume normal operations, possibly through new agreements with creditor (usually banks). To this end, the legal system must favour the granting of further finance (indispensable to the firm’s recovery), without running the risk of seeing such claims revoked or incurring other responsibilities, possibly penal ones.

34. Do you think that the legislator should work to eliminate the stigma affecting the business life of an entrepreneur previously involved in a bankruptcy?



The targeted financial organisations seem to be divided on the issue of whether the legislator should work to eliminate the stigma affecting the business life of an entrepreneur previously involved in a bankruptcy.

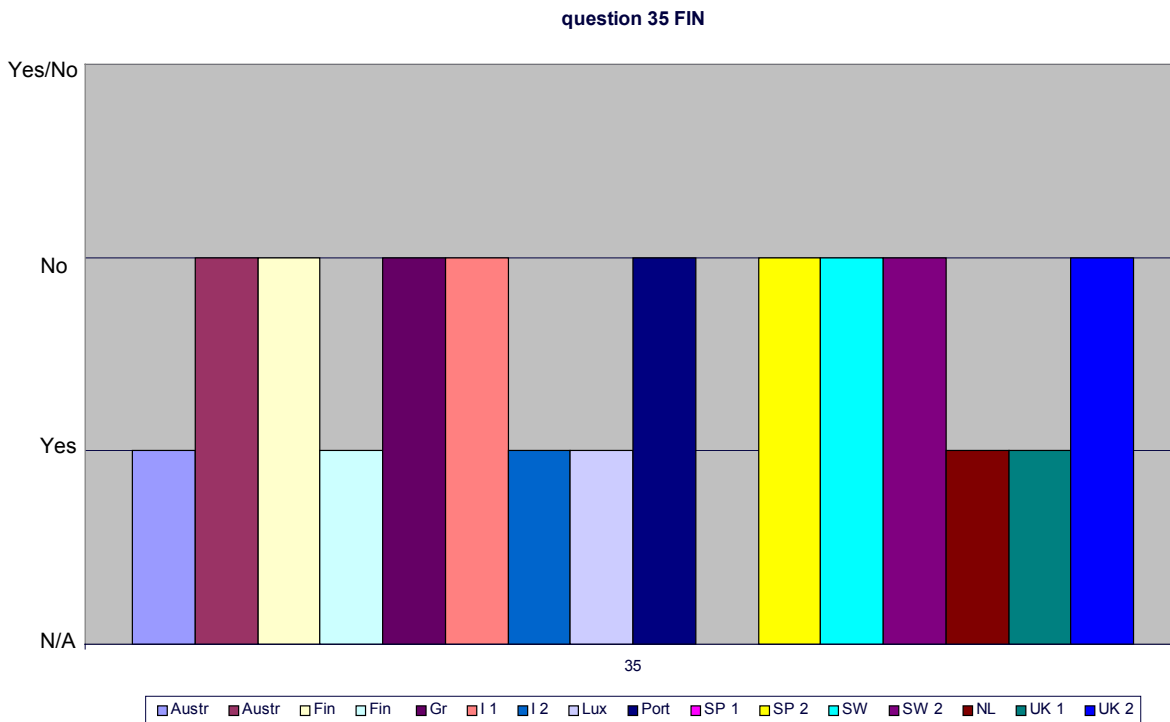
The most positive answer came from an Italian organisation, which appears to believe that the legislative reform should eliminate the personal restrictions in connection with entry into the public register and provide for their automatic cancellation when the collective procedure is concluded (at present, a court sentence is required). A targeted organisation in Luxembourg stated that the legislator should primarily establish rules in order to “force” liquidators (or other bodies involved) to close and regularise bankruptcy files as soon as possible/ within a reasonable period time.

A UK organisation observed that although the stigma exists, it is not so overwhelming as to prevent an entrepreneur starting again with a good business proposition.

A Swedish organisation limited its positive answer by the idea that the entrepreneur should not have been repeatedly involved in bankruptcies. On the contrary, the Swedish Bankers’ Association declared that such measures are not part of the legislator’s competencies.

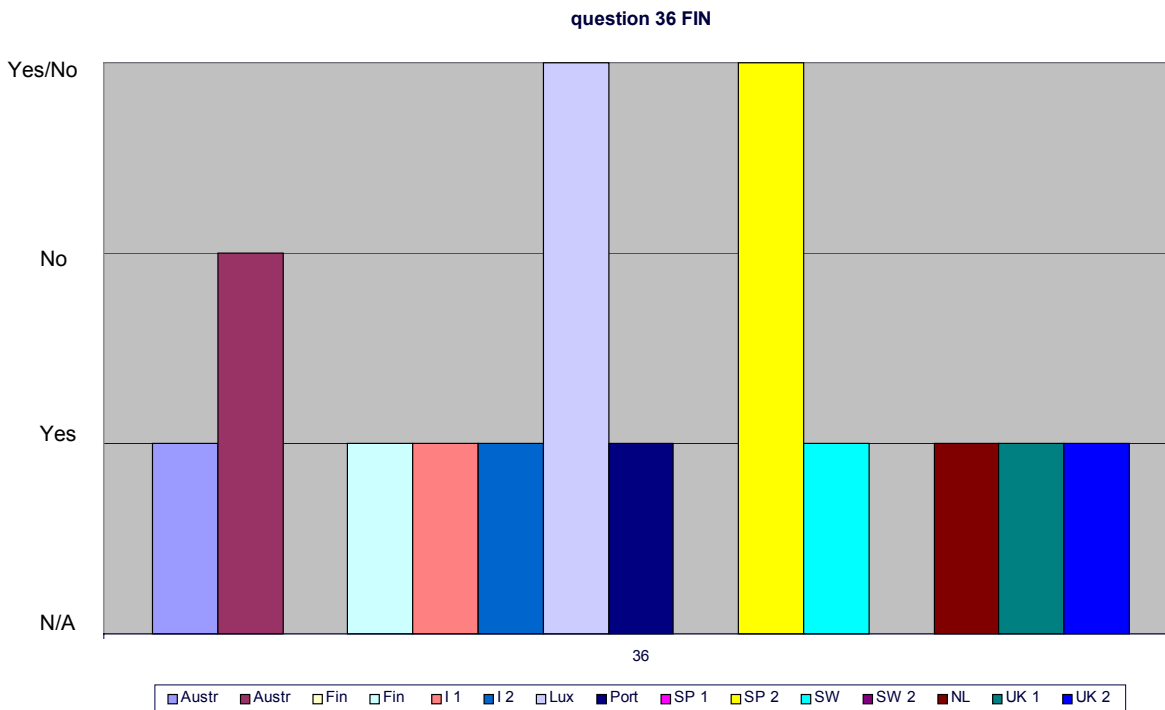
The financial community therefore seems interested in a very limited way in the stigma affecting the business life of an entrepreneur previously involved in a bankruptcy.

35. Should the legislator promote a fresh start and eliminate stigma for fraudulent bankrupt persons?



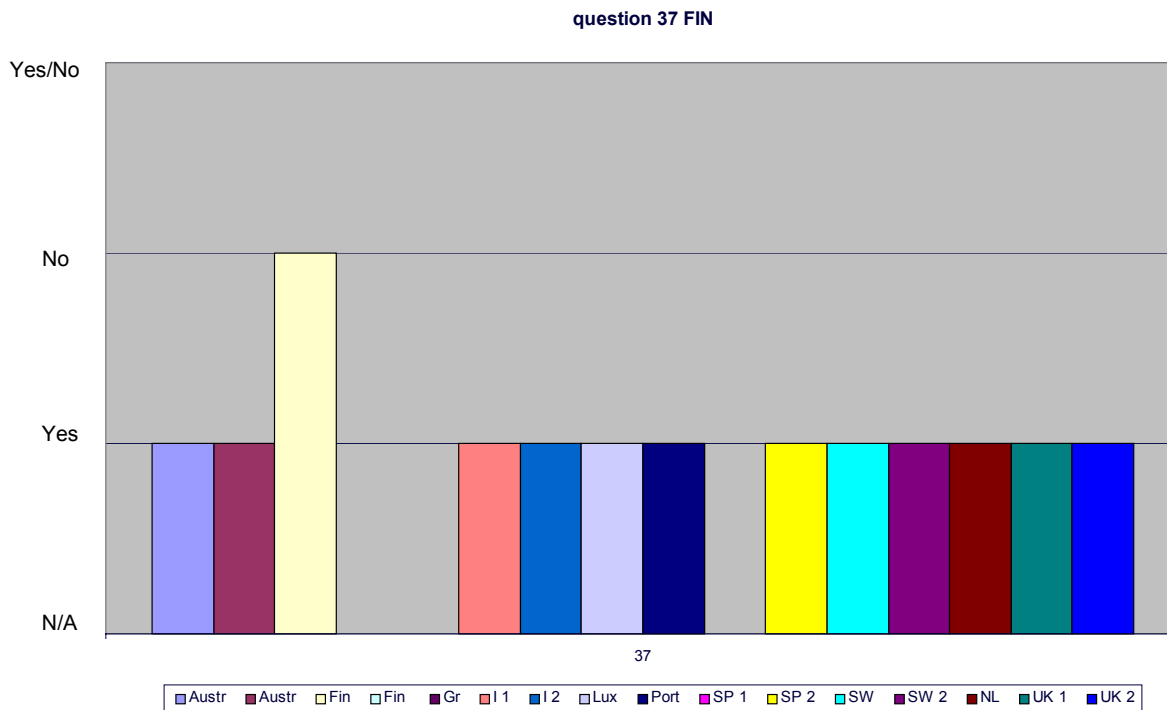
The responses received from targeted organisations in the financial community were divided on the issue as to whether the legislator should promote a fresh start and eliminate stigma for fraudulently bankrupt persons. A majority answered in the negative, thus expressing their reluctance to allow fraudulently bankrupt persons to benefit from a “clean” fresh start. Luxembourg observed that favouring such a fresh start should be subject to very severe conditions. A UK organisation indicated that stigma should be reduced, but not in the case of fraudulent bankruptcy.

36. Do your members agree with the idea that failed entrepreneurs often learn from their mistakes and that they will be more successful in the future?



The majority of targeted organisations answered positively that their members do believe that failed entrepreneurs often learn from their mistakes and that they will be more successful in the future, thus expressing a certain degree of trust in failed entrepreneurs. Two answers provided an opposing opinion, stating that this would depend upon the case in question. Several answers also highlighted that the failed entrepreneur’s new business would “probably” rather than “certainly” benefit from this failure. The financial community’s reluctance towards the failed entrepreneur is in this case again apparent. .

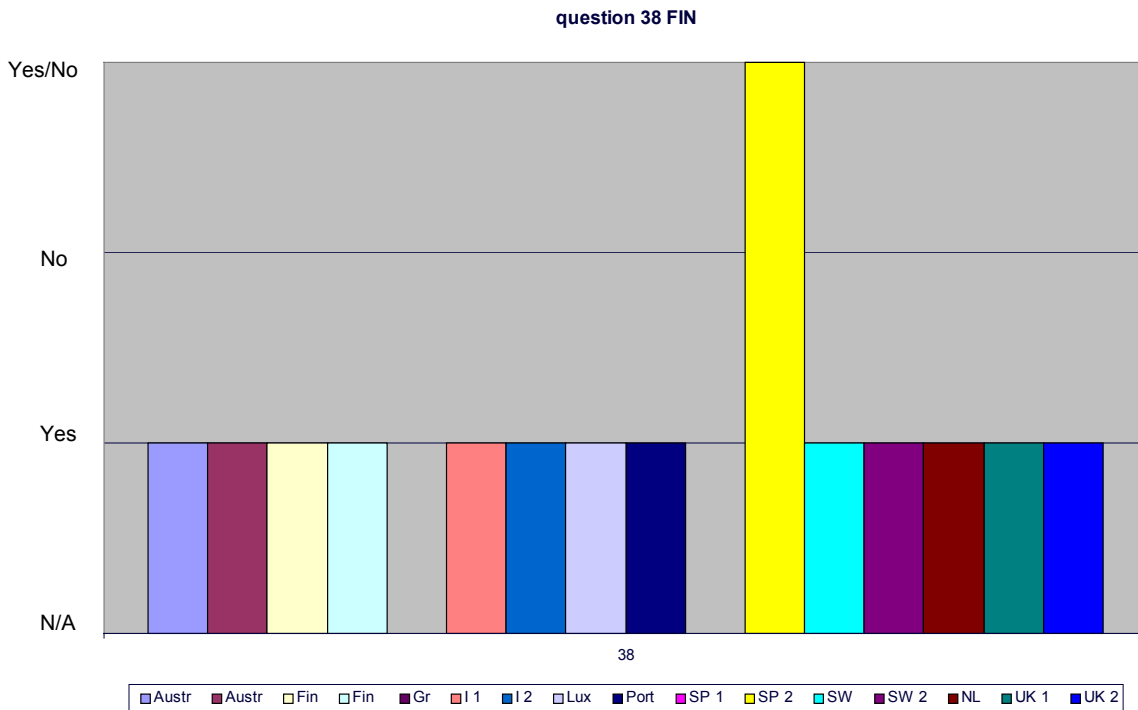
37. Do you believe that banks have an important role to play in the restart of a failed entrepreneur?



Despite the above stated reluctance of the financial community towards previously failed entrepreneurs, the almost unanimous agreement - that banks do have an important role to play in the restart of a failed entrepreneur - demonstrates that banks do feel concerned with helping a previously failed entrepreneur to start a new business.

Some limiting comments were however provided, such as playing a role only in so far as the bank takes part in the restart process by disclaiming parts of the given credit, or a Finnish organisation’s statement that “banks do not provide risk capital, they take credit risk”.

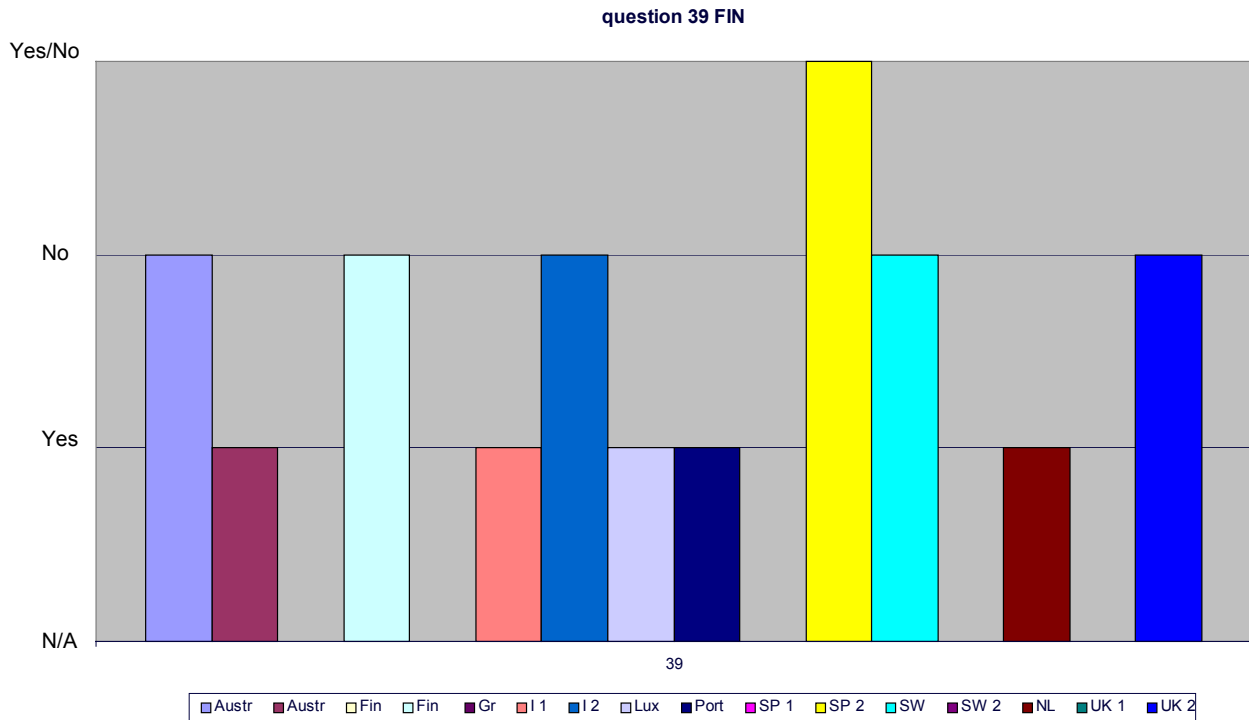
38. Would your members accept to provide new credit to an entrepreneur that has previously faced bankruptcy/ failed?



The targeted organisations, consistent with their declared positive attitude towards previously failed entrepreneurs, similarly (almost) unanimously agreed that the members of the financial community would accept to provide new credit to an entrepreneur that has previously faced bankruptcy/ failed.

Several organisations however pointed out that such provision of credit is made on a case by case basis, depending on the business potential and on the credibility of the entrepreneur, and subject to more severe criteria and stronger guarantees, as well as insisting on the close scrutiny of the business plan.

39. If yes, do your members put restrictions on providing credit?



The above positive statements appear to be strongly limited by banks who, in the majority, would indeed put restrictions on the provision of credit to the failed entrepreneur.

40. If yes, what kind of restrictions?

The restrictions referred to by the targeted financial organisations consisted mainly of the following:

- Provision of adequate securities for the debts and reinforced guarantees, collateral (mortgage and pledge),
- the respect of fixed goals expressed in the business plan, more careful assessment.

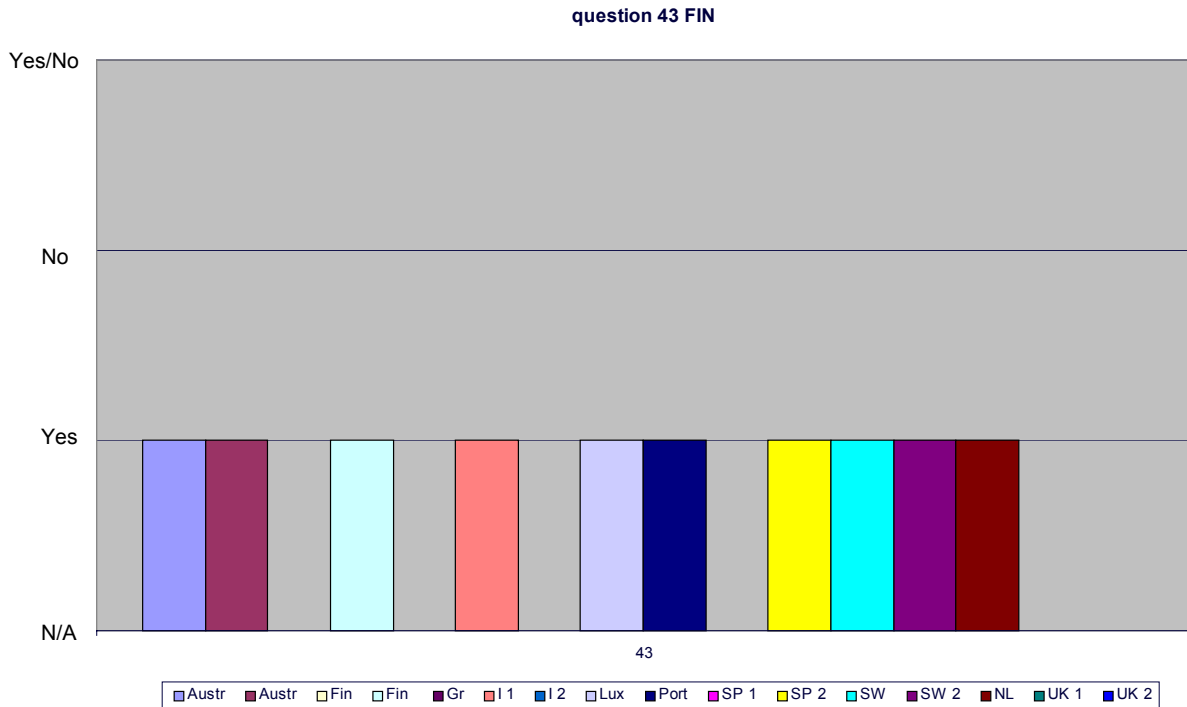
41. If yes, how long would such restrictions apply?

Very few targeted organisations responded to the question of duration of the application of restrictions – if any - by members of the financial community.

The main answers were: on the one hand, as long as the client is not completely creditworthy, and on the other hand, during the whole investment period, at certain determined scheduled dates.

□ **External control**

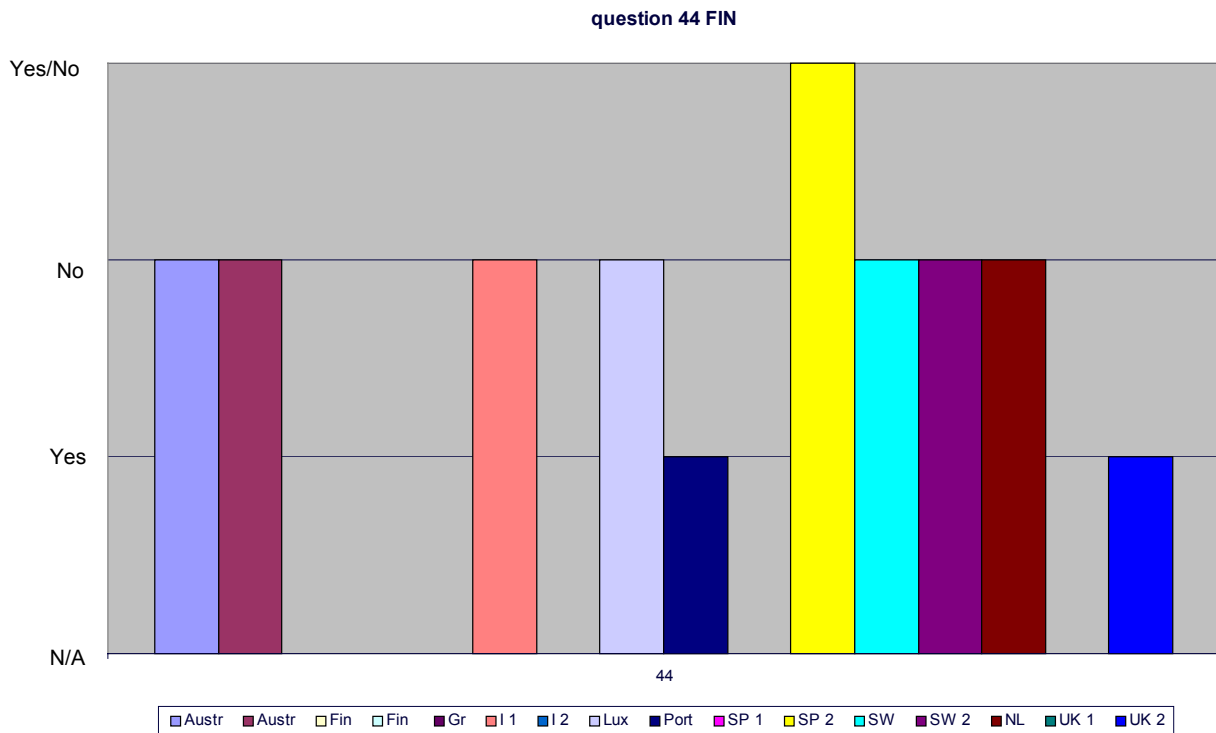
43. According to your experience, does the entrepreneur consider that the external manager can reduce the stigma on business facing difficulties?



The majority of targeted organisations seemed to believe that the entrepreneur considers that the external manager reduces the stigma on business facing difficulties.

A UK organisation made the distinction between the court-appointed administrator, in which case the entrepreneur would not consider the external manager to be able to reduce the stigma, and the crisis manager, who would be better positioned to reduce the said stigma. The same organisation further added that they do not feel that, in general, any stigma is associated with difficulties as opposed to failure.

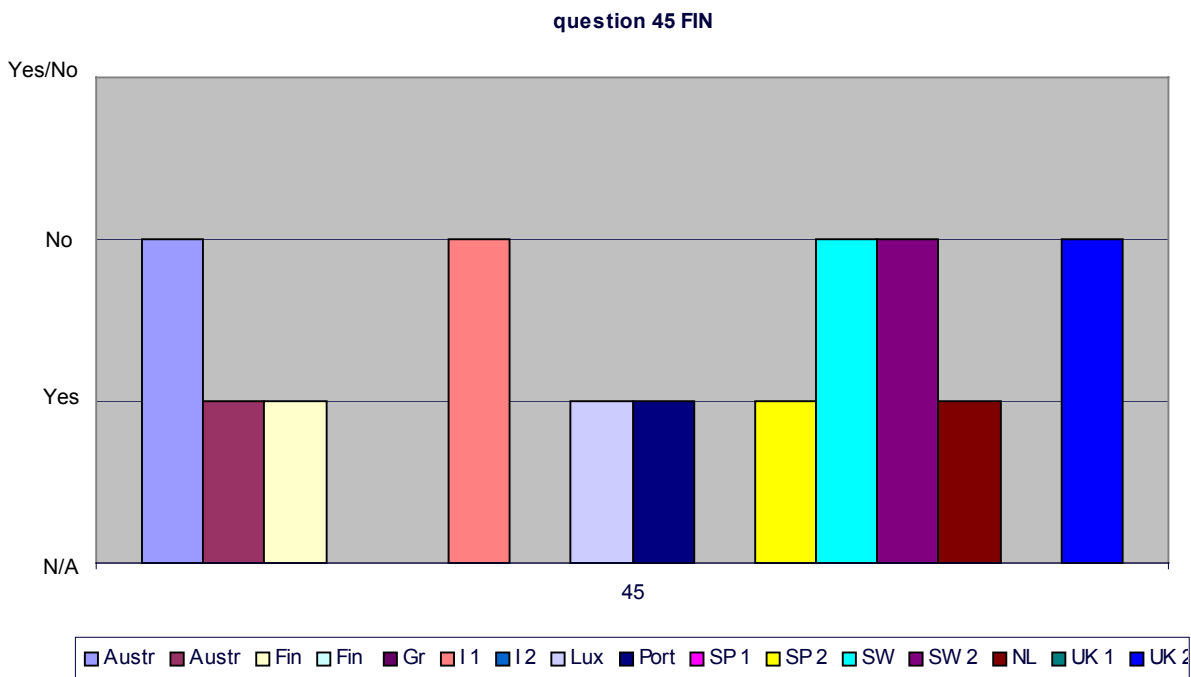
44. Do you think that the external control should be under supervision of the judicial authority?



The majority of the financial targeted organisations rejected the idea of judicial supervision of the external control.

A UK organisation, which agreed with placing the external control under the supervision of the judicial authority, nevertheless observed that the manager should have a free hand and should not have to resort continually to the court for decisions, thus expressing the same reluctance as other targeted organisations towards judicial supervision.

45. Do you think that the external control should be under the control of creditors?

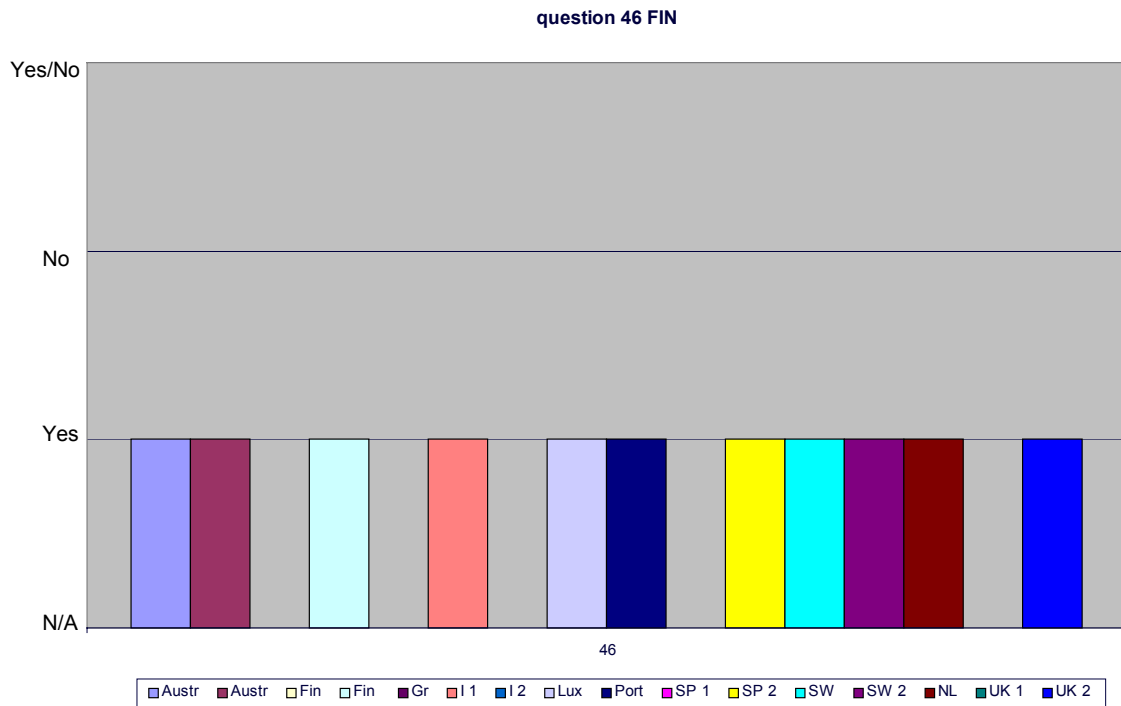


A number of the targeted organisations appeared to prefer placing the external control under the control of creditors than under the supervision of a judicial authority.

For instance, an Italian organisation was of the opinion that rather than external monitoring, they would prefer to entrust the oversight of the adjustment plan’s implementation to the creditors, as parties that are directly involved and hence interested in the success of the adjustment. It further advocated the institution of a body such as the “Committee of creditors” (with functions different from those envisaged by the current Bankruptcy Law) and which would also be comprised of experts capable of judging the real possibility of restoring the firm to a sound situation.

A UK organisation, rejecting the idea of external control under creditors’ control, argued that this has been the system in the UK in respect of banks holding detention/ floating charges over a company’s assets and has been extremely successful in achieving business rescue. However, it would not agree with the idea of entrusting such control to creditors as a whole.

46. Would creditors of a business facing difficulties consider the appointment of a crisis manager an appropriate measure?



The targeted organisations almost unanimously agreed that the appointment of a crisis manager would be considered an appropriate measure by the creditors of a business facing difficulties.

47. What do you think about the way in which domestic legislation and regulation provide for control on companies in difficulties (very good, satisfactory, unsatisfactory)?

Very good: UK, Finland

Satisfactory: Netherlands, Sweden

Unsatisfactory: Spain, Portugal, Luxembourg, Italy, Austria

It seems that the feeling of dissatisfaction with regard to the way domestic legislation and regulations provide for controls on companies in difficulties takes predominance over the sense of relative/ total satisfaction within the financial community.

48. Which type of control is used in your country (external, internal, judicial, others)?

Italy: judicial

Portugal: judicial

Spain: judicial

Luxembourg: internal

UK: external/internal

Austria: all 3

Sweden: all 3

Netherlands: different

A comparison of the types of control used in the various countries reveals that judicial control is the most common method employed.

Two countries however provide a combination of external, internal and judicial controls.

Internal control therefore also appears as well spread.

A cross comparison of these two questions also reveals that the most common type of control which is not combined with another type of control – the judicial control - is also felt by the financial community to be the least satisfactory form of control of companies in difficulties.

49. What do you think about the way domestic legislation and regulation deal with bankruptcy/business failure in terms of creditors' interests (very good/ satisfactory/ unsatisfactory)?

Very good: Netherlands, UK

Satisfactory: Luxembourg, Sweden

Unsatisfactory: Austria, Finland, Italy, Portugal, Spain (important reform is pending)

From the answers received from the targeted financial organisations, it appears that there is a predominant sense of dissatisfaction towards the way domestic legislation and regulations deal with bankruptcy/business failure in terms of creditors' interests. Only the Dutch and the British targeted organisations stated that creditors' interests are very well dealt with.

50. What do you think about the way the domestic legislation and regulation deal with bankruptcy/business failure in terms of debtors' interests (very good/ satisfactory/ unsatisfactory)?

Very good: Austria, Finland,

Satisfactory: Italy, Portugal, Sweden, Netherlands, UK

Unsatisfactory: Luxembourg, Spain

It appears that the targeted financial organisations appear to be generally satisfied with the way the domestic legislation and regulations deal with bankruptcy/business failure in terms of the debtors' interests. There are, however, areas for improvement.

3.4. KEY RESULTS OF THE QUESTIONNAIRES FOR THE COMMUNITIES: A SUMMARY OVERVIEW.

3.4.1. Questionnaire for the general community at national level

General knowledge

The general community seems to be knowledgeable about bankruptcy and business failure in general, but not on the difference between insolvency and bankruptcy. There also seems to be a general lack of interest regarding these matters, as questions from consumers on the issue of bankruptcy are very rare.

Stigma

In general a stigma is attached to bankrupt enterprises, although no clear distinction was evident between the issue of a business in distress and a business that recovered from distress. The majority of the targeted organisations indicated that the general community is not informed or knowledgeable about the difference between fraudulent and non-fraudulent bankruptcy.

Information

The targeted organisations indicated that there is reliance almost completely on media sources for information on failure business. The targeted organisations do not collect any specific data on bankruptcies or business failures.

Reasons for and consequence of failure

With regard to reasons for failure, the most sensitive sectors appeared to be the credit sector (where failure would mainly be caused by financial problems) and the horeca/ hospitality/ health sector (where business failure would mainly be due to a lack of management skills).

The general attitude of the consumer organisations regarding consequences of failure was mixed, half rather discouraging their members from dealing with a business in difficulties.

The general community generally agree that failed entrepreneurs often learn from their mistakes, which might make them more cautious to enter into new business ventures, and that legislation should be introduced to limit the stigma associated with a bankruptcy.

3.4.2. Questionnaire for the business community at national level

Stigma

Most of the targeted organisations agree that a stigma is created and attached around the failure of a business and/ or bankruptcy.

The majority believes entrepreneurs make a difference between a business in distress and a business that has recovered from distress.

All targeted organisations agreed that a fraudulent bankrupt business is not viewed in the same way as a non-fraudulent bankrupt business.

Information

The sources most commonly used are: information provided by colleagues, competitors, the business sector, media, credit or financial institutions, except information covered by banking secrecy acts and creditors.

A majority of the organisations indicate that their members enquire whether a bankrupt person was fraudulent. Furthermore, most organisations have databanks listing entrepreneurs according to solvency ratings, the main source of information for such insolvency ratings – generally considered as reliable - being private databanks. However, the latter do not generally differentiate between fraudulent and non-fraudulent bankruptcy. Most of the organisations targeted agreed that information relating to the distinction between fraudulent/ non-fraudulent bankruptcies is relevant to their business sector.

Reasons and consequences of failure

Large enterprises indicate that the most common reason for business failure could be attributed to poor management skills, followed by financial problems, and external business conditions, such as loss of market, main customer, rent review, and increased overheads. Fraud, personal extravagance, and failure to deal with income tax, were not considered to be a common reason.

Medium, small and micro enterprises indicate that the reason for business failure could be attributed (in descending order) to financial difficulties, external business conditions, lack of experience, and management skills. Contrary to large enterprises, the young age or the lack of experience of the entrepreneur is considered as an important and common reason for medium to micro business failures. Fraud, personal extravagance, legal disputes were not considered to be one of the most common reasons, whereas failure to properly comply with income tax regulations, corporation tax affairs and VAT were ranked among the first three reasons according to smaller businesses.

With regard to the consequences of failure, there appears to be a general reluctance to deal with a business facing difficulties. It often depends on the current economic situation, the importance of the customer relationship, the nature and extent of difficulties encountered and is considered on a case-by-case basis. However, an encouragingly sign is that all targeted organisations unanimously agreed that their members would be willing to deal with a business who managed to recover from failure.

Restrictions

There is a general awareness of the restrictions applicable to a bankrupt business in terms of the bankruptcy and insolvency laws. Most organisations are reluctant to sell shares to a bankrupt person. Most organisations would employ a bankrupt person; however there seems to be a reluctance to employ such a person at high management levels. Guarantees are required by the organisations when dealing with a person who has failed in the past.

Fresh start

Most targeted organisations are in favour for steps to be implemented that will encourage a fresh start and eliminate any stigma that usually remains with the entrepreneur, except in the case of fraudulent activity. Almost all targeted organisations agreed that failed entrepreneurs often learn from their mistakes and that they will be more successful in the future, expressing a positive “second chance” attitude. However, currently entrepreneurs have to deal with the burden of the stigma of bankruptcy, making it more difficult to achieve positive results.

External control

The business community generally does not want the legislator to strengthen the level of control over the business life of an entrepreneur *previously* involved in a bankruptcy, as opposed to those entrepreneurs “*currently* facing difficulties”. The majority of the targeted organisations indicated that external control over a business in distress should not be under the power of the judicial authorities, and even less under the control of creditors. The appointment of a crisis manager was generally considered a step in the right direction both for creditors and the employees of the business in distress.

3.4.3. Questionnaire for the financial community at national level

Stigma

A majority of organisations considers that the failure of a business or its bankruptcy attaches a stigma. Most organisations also distinguish between a business in distress and a business that has recovered from distress, and unanimously admit that businesses failing as a result of fraudulent activity are treated differently.

Information

Most targeted organisations indicated that the financial community collects historical data (mainly accounting and general credit information), including information on any financial difficulties of their clients. The data collected appear to differentiate between fraudulent and non-fraudulent bankruptcy in a few countries. The data is not shared with other financial institutions – though most organisations seemed to believe that sharing the information could prove helpful – but is often shared with their business partners. In several countries a legal obligation exists to submit financial data, concerning their clients, to judicial authorities when criminal proceedings have been

instituted. Furthermore, most targeted organisations are aware that their country provides a national databank of failed entrepreneurs, which is generally available to financial institutions. Most targeted organisations indicated that external sources of information about failed entrepreneurs are useful.

Reasons and Consequences of Failure

The main reasons identified for the failure of enterprises were poor management skills, financial difficulties and external business conditions. However, medium, small and micro enterprises specifically identified the lack of experience and the relative young age of the entrepreneur as a main cause for failure.

All targeted financial organisations indicated that there is reluctance in extending further credit to a client in financial distress and is typically subject to a case-by-case evaluation. Although this is perceived as a stigma, most financial organisations are reacting to the situation to manage its exposure to clients in financial distress. There also seems to be a general view that organisations would not change their attitude if an expert, such as a crisis manager, assisted the client. Most organisations indicate that they will act more strictly and severely with companies or individuals associated with a fraudulent bankruptcy.

Fresh start

Most of the targeted financial organisations seem to be in favour of the promotion, by the legislator, of opportunities for a fresh start for a business previously involved in bankruptcy. There seems to be a divided opinion as to whether the legislator should work to eliminate the stigma around individuals involved in fraudulent bankruptcies. They do believe that failed entrepreneurs often learn from their mistakes and that they will be more successful in the future. They also believe that banks plays an important role in the restart of a previously failed entrepreneur, and would extend credit to such an individual, subject to providing adequate securities and guarantees, and reaching goals expressed in the business plan.

External control

There seems to be a general opinion that the appointment of an external manager can reduce the stigma associated with a business in distress, although they seem to reject the idea of judicial supervision, but rather to place more control in the hands of the creditors. Creditors always view the appointment of a crisis manager in a positive light.