

## **5. PRINCIPLES AND GUIDELINES FOR EFFECTIVE INSOLVENCY AND CREDITOR RIGHTS SYSTEM: ASSESSMENT TEST IN EU MEMBER STATES AND US**

The *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems* were developed by the World Bank to promote international consensus on a uniform framework to assess the effectiveness of insolvency and creditor rights systems<sup>1</sup>. The *Principles and Guidelines* offer guidance to policymakers on their policy choices. They are a distillation of international best practice in the design of effective insolvency systems.

For the purpose of our study, we thought that it could be useful to mention the World Bank principles as a tool to get a general view of the current practices throughout the European Union and in the U.S. regarding effective insolvency and creditors rights systems.

In order to assess to what extent the principles are adopted in the different Member States and in the U.S., we designed a questionnaire based on the key elements of the 35 *Principles and Guidelines*. Experts were asked to mention for each principle whether the principle is: 1) fully adopted 2) almost fully adopted 3) partially adopted 4) not adopted in his/her national insolvency system.

Our approach and conclusions do not pretend to be exhaustive or to reflect the full reality of the practice. It is based on multiple choice questionnaires that we sent to our national experts, who gave us answers based on their own experience and opinion, which is necessarily personal and subjective. Our national experts being high-specialised and well-experienced practitioners, we consider their answers as highly reliable and reflective of the general practices.

The charts below compare the responses of the experts per country and per principle. The last chart shows the average of all responses for each principle per country. Preceding the charts the key elements of the relevant principles are quoted.

### **5.1. LEGAL FRAMEWORK FOR CREDITOR RIGHTS**

#### **Principle 1 Compatible Enforcement Systems**

A modern credit-based economy requires predictable, transparent and affordable enforcement of both unsecured and secured credit claims by efficient mechanisms outside of insolvency, as well as a sound insolvency system. These systems must be designed to work in harmony.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Greece and Spain where it is only partially adopted.*

<sup>1</sup> The *Principles and Guidelines* can be accessed in the Best Practice directory on the Global Insolvency Law Database at [www.worldbank.org/gild](http://www.worldbank.org/gild).

### **Principle 2 Enforcement of Unsecured Rights**

A regularized system of credit should be supported by mechanisms that provide efficient, transparent, reliable and predictable methods for recovering debt, including seizure and sale of immovable and movable assets and sale or collection of intangible assets such as debts owed to the debtor by third parties.

*This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Greece and the UK where it is only partially adopted*

### **Principle 3 Security Interest Legislation**

The legal framework should provide for the creation, recognition, and enforcement of security interests in movable and immovable (real) property, arising by agreement or operation of law. The law should provide for the following features:

Security interests in all types of assets, movable and immovable, tangible and intangible, including inventory, receivables, and proceeds; future or after-acquired property, and on a global basis; and based on both possessory and non-possessory interests;

Security interests related to any or all of a debtor's obligations to a creditor, present or future, and between all types of persons;

Methods of notice that will sufficiently publicize the existence of security interests to creditors, purchasers, and the public generally at the lowest possible cost;

Clear rules of priority governing competing claims or interests in the same assets, eliminating or reducing priorities over security interests as much as possible.

- This principle is fully or almost fully adopted in all EU Member States. Unfortunately, we did not get any answer from our U.S. expert on this topic.

### **Principle 4 Recording and Registration of Secured Rights**

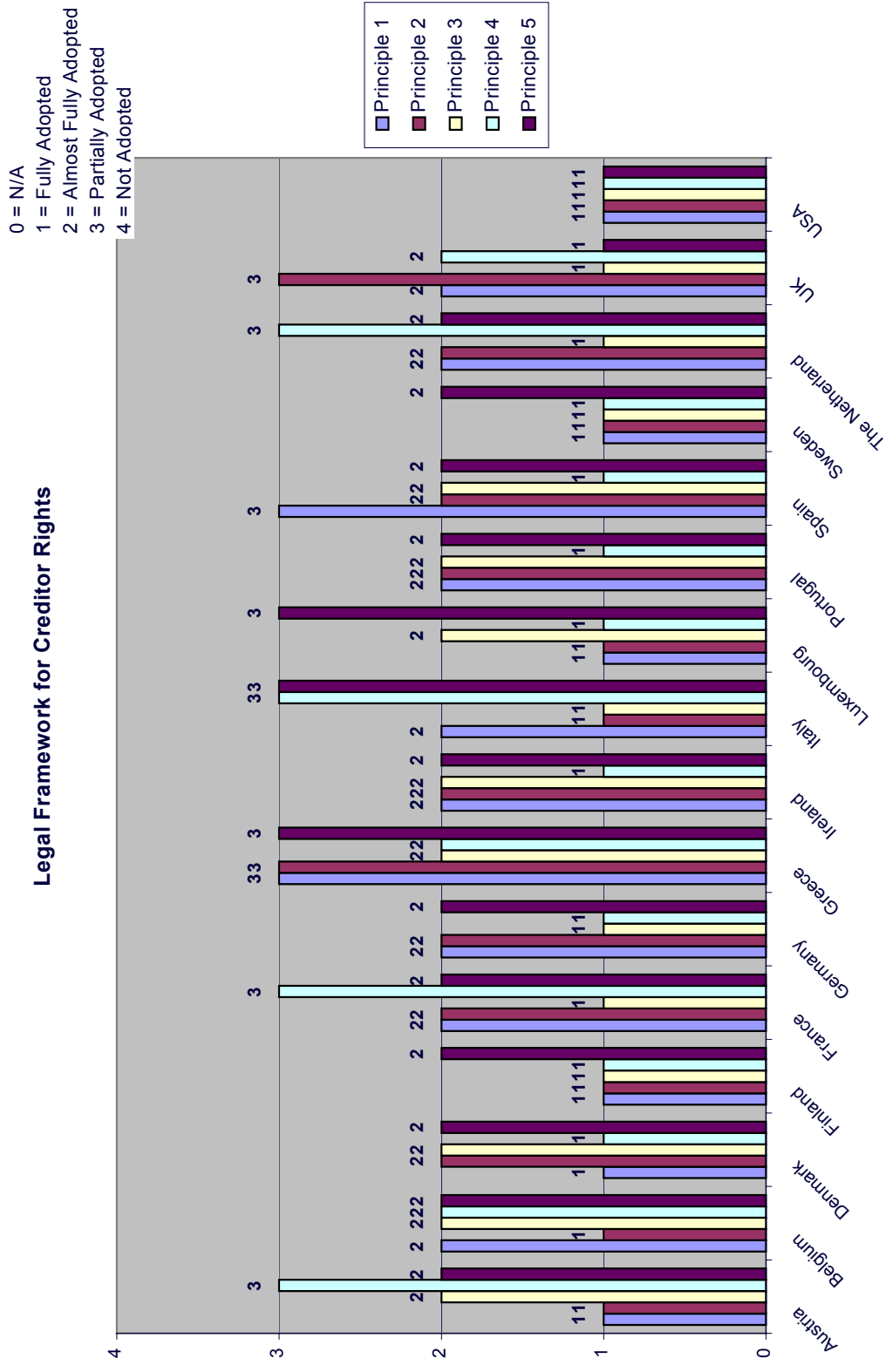
There should be an efficient and cost-effective means of publicizing secured interests in movable and immovable assets, with registration being the principal and strongly preferred method. Access to the registry should be inexpensive and open to all for both recording and search.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Italy and The Netherlands where it is only partially adopted.*

### **Principle 5 Enforcement of Secured Rights**

Enforcement systems should provide efficient, inexpensive, transparent and predictable methods for enforcing a security interest in property. Enforcement procedures should provide for prompt realization of the rights obtained in secured assets, ensuring the maximum possible recovery of asset values based on market values. Both non-judicial and judicial enforcement methods should be considered.

*This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Greece, Italy and Luxembourg where it is only partially adopted.*



## **5.2. LEGAL FRAMEWORK FOR CORPORATE INSOLVENCY**

### **Principle 6 Key Objectives and Policies**

Though country approaches vary, effective insolvency systems should aim to:

- Integrate with a country's broader legal and commercial systems.
  - Maximize the value of a firm's assets by providing an option to reorganize.
  - Strike a careful balance between liquidation and reorganization.
  - Provide for equitable treatment of similarly situated creditors, including similarly situated foreign and domestic creditors.
  - Provide for timely, efficient and impartial resolution of insolvencies.
  - Prevent the premature dismemberment of a debtor's assets by individual creditors seeking quick judgments.
  - Provide a transparent procedure that contains incentives for gathering and dispensing information.
  - Recognize existing creditor rights and respect the priority of claims with a predictable and established process.
  - Establish a framework for cross-border insolvencies, with recognition of foreign proceedings.
- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Germany and Greece where it is only partially adopted. In addition, principle 6 is not adopted in Spain.*

### **Principle 7 Director and Officer Liability**

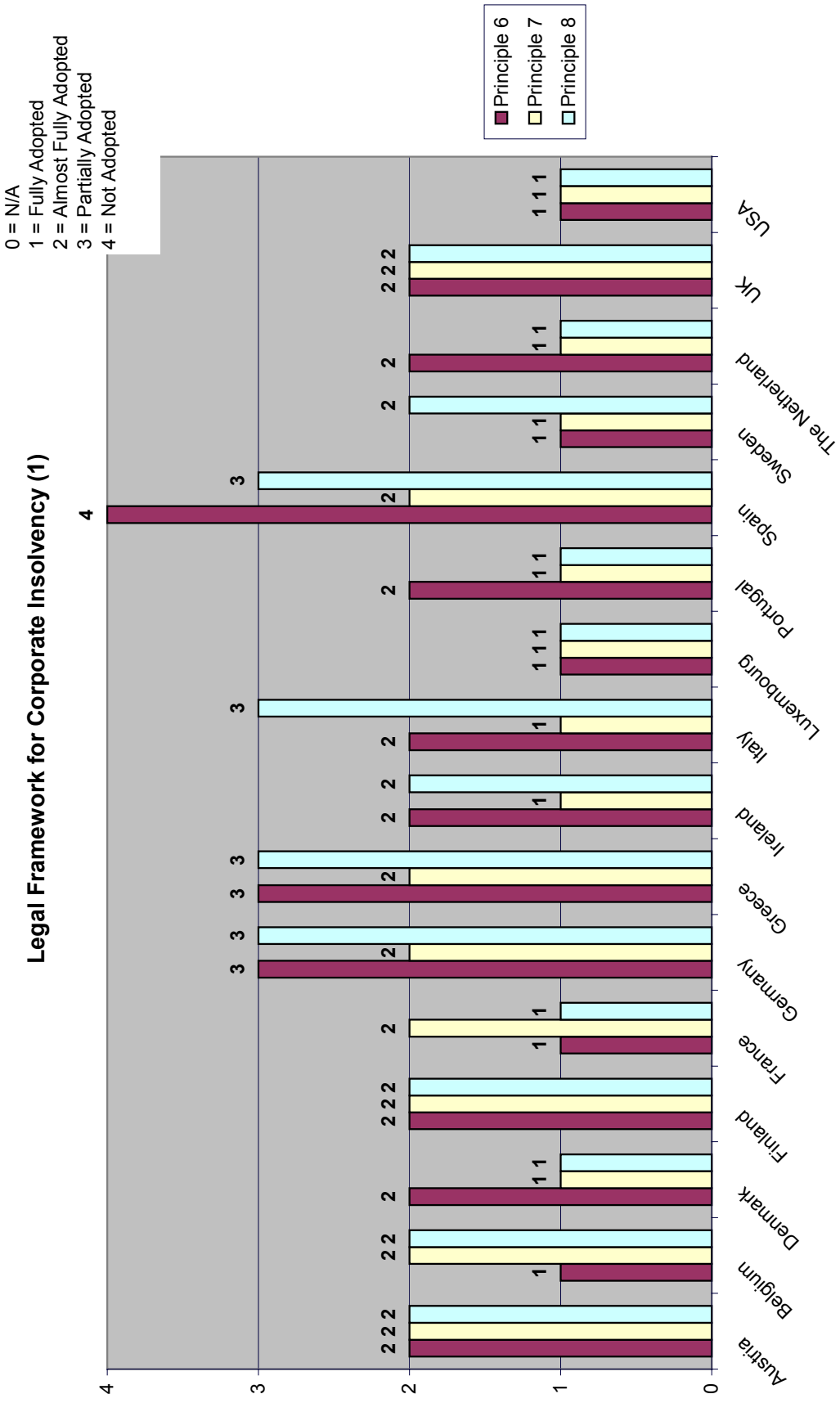
Director and officer liability for decisions detrimental to creditors made when an enterprise is insolvent should promote responsible corporate behavior while fostering reasonable risk taking. At a minimum, standards should address conduct based on knowledge of or reckless disregard for the adverse consequences to creditors.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States.*

### **Principle 8 Liquidation and Rehabilitation**

An insolvency law should provide both for efficient liquidation of nonviable businesses and those where liquidation is likely to produce a greater return to creditors, and for rehabilitation of viable businesses. Where circumstances justify it, the system should allow for easy conversion of proceedings from one procedure to another.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Germany, Greece, Italy and Spain where it is only partially adopted.*



**Principle 9 Commencement: Applicability and Accessibility**

A. The insolvency process should apply to all enterprises or corporate entities except financial institutions and insurance corporations, which should be dealt with through a separate law or through special provisions in the insolvency law. State-owned corporations should be subject to the same insolvency law as private corporations.

- *This part of principle 9 is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Greece, Italy and Spain where it is partially adopted. It is not adopted in Belgium.*

B. Debtors should have easy access to the insolvency system upon showing proof of basic criteria (insolvency or financial difficulty). A declaration to that effect may be provided by the debtor through its board of directors or management. Creditor access should be conditioned on showing proof of insolvency by presumption where there is clear evidence that the debtor failed to pay a matured debt (perhaps of a minimum amount).

- *This part of principle 9 is fully or almost fully adopted in the U.S. and in all EU Member States*

C. The preferred test for insolvency should be the debtor's inability to pay debts as they come due—known as the liquidity test. A balance sheet test may be used as an alternative secondary test, but should not replace the liquidity test. The filing of an application to commence a proceeding should automatically prohibit the debtor's transfer, sale or disposition of assets or parts of the business without court approval, except to the extent necessary to operate the business.

- *This part of principle 9 is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Finland and The Netherlands where it is only partially adopted.*

**Principle 10 Commencement: Moratoriums and Suspension of Proceedings**

A. The commencement of bankruptcy should prohibit the unauthorized disposition of the debtor's assets and suspend actions by creditors to enforce their rights or remedies against the debtor or the debtor's assets. The injunctive relief (stay) should be as wide and all embracing as possible, extending to an interest in property used, occupied or in the possession of the debtor.

- *This part of principle 10 is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Finland where it has not been adopted.*

B. To maximize the value of asset recoveries, a stay on enforcement actions by secured creditors should be imposed for a limited period in a liquidation proceeding to enable higher recovery of assets by sale of the entire business or its productive units, and in a rehabilitation proceeding where the collateral is needed for the rehabilitation.

- *This part of principle 10 is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Spain where it has not been adopted and the UK where it is only partially adopted*

**Principle 11 Governance: Management**

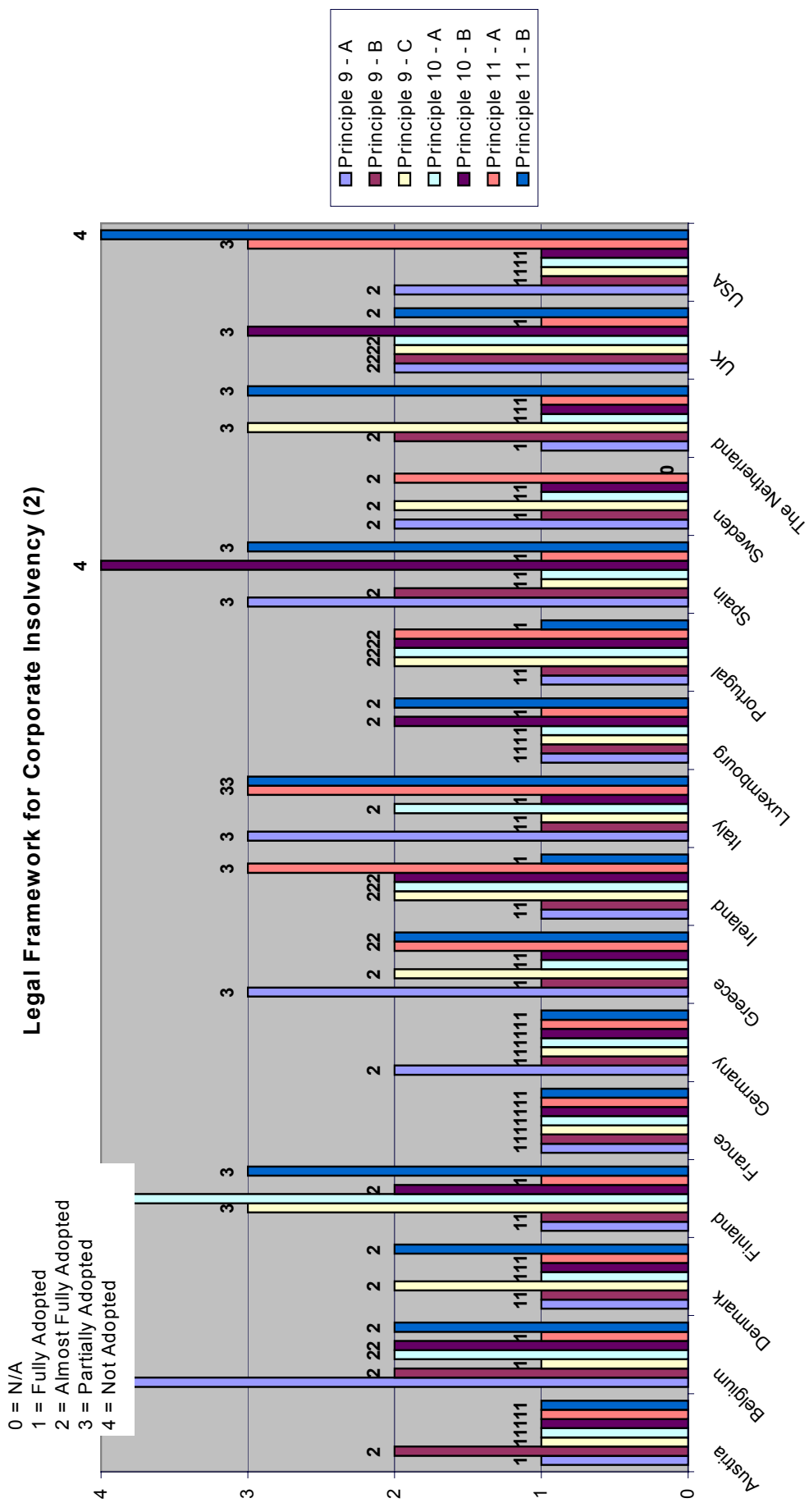
A. In liquidation proceedings, management should be replaced by a qualified court-appointed official (administrator) with broad authority to administer the estate in the interest of creditors. Control of the estate should be surrendered immediately to the administrator except where management has been authorized to retain control over the company, in which case the law should impose the same duties on management as on the administrator. In creditor-initiated filings, where circumstances warrant, an interim administrator with reduced duties should be appointed to monitor the business to ensure that creditor interests are protected.

- *This part of principle 11 is fully or almost fully adopted in all EU Member States with the exception of Ireland and Spain where it is only partially adopted. In the U.S. it is partially adopted.*

B. There are two preferred approaches in a rehabilitation proceeding: exclusive control of the proceeding by an independent administrator or supervision of management by an impartial and independent administrator or supervisor. Under the second option complete power should be shifted to the administrator if management proves incompetent or negligent or has engaged in fraud or other misbehavior. Similarly, independent administrators or supervisors should be held to the same standard of accountability to creditors and the court and should be subject to removal for incompetence, negligence, fraud or other wrongful conduct.

- *This part of principle 11 is fully or almost fully adopted in all EU Member States with the exception of Finland, Italy, The Netherlands and Spain where it is only partially adopted. In the U.S. it is not adopted.*





### **Principle 12 Governance: Creditors and the Creditors' Committee**

Creditor interests should be safeguarded by establishing a creditors committee that enables creditors to actively participate in the insolvency process and that allows the committee to monitor the process to ensure fairness and integrity. The committee should be consulted on non-routine matters in the case and have the ability to be heard on key decisions in the proceedings (such as matters involving dispositions of assets outside the normal course of business). The committee should serve as a conduit for processing and distributing relevant information to other creditors and for organizing creditors to decide on critical issues. The law should provide for such things as a general creditors assembly for major decisions, to appoint the creditors committee and to determine the committee's membership, quorum and voting rules, powers and the conduct of meetings. In rehabilitation proceedings, the creditors should be entitled to select an independent administrator or supervisor of their choice, provided the person meets the qualifications for serving in this capacity in the specific case.

- *Principle 12 is fully or almost fully adopted in the U.S. and in 8 EU Member States. It is only partially adopted in France, Ireland, Italy, Sweden, The Netherlands and the UK. It is not adopted in Belgium.*

### **Principle 13 Administration: Collection, Preservation, Disposition of Property**

The law should provide for the collection, preservation and disposition of all property belonging to the debtor, including property obtained after the commencement of the case. Immediate steps should be taken or allowed to preserve and protect the debtor's assets and business. The law should provide a flexible and transparent system for disposing of assets efficiently and at maximum values. Where necessary, the law should allow for sales free and clear of security interests, charges or other encumbrances, subject to preserving the priority of interests in the proceeds from the assets disposed.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Denmark, Greece and Spain where it is only partially adopted.*

### **Principle 14 Administration: Treatment of Contractual Obligations**

The law should allow for interference with contractual obligations that are not fully performed to the extent necessary to achieve the objectives of the insolvency process, whether to enforce, cancel or assign contracts, except where there is a compelling commercial, public or social interest in upholding the contractual rights of the counter-party to the contract (as with swap agreements).

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of France and Spain where it is only partially adopted.*

**Principle 15 Administration: Fraudulent or Preferential Transactions**

The law should provide for the avoidance or cancellation of pre-bankruptcy fraudulent and preferential transactions completed when the enterprise was insolvent or that resulted in its insolvency. The suspect period prior to bankruptcy, during which payments are presumed to be preferential and may be set aside, should normally be short to avoid disrupting normal commercial and credit relations. The suspect period may be longer in the case of gifts or where the person receiving the transfer is closely related to the debtor or its owners.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Greece where it is only partially adopted. Member States*

**Principle 16 Claims Resolution: Treatment of Stakeholder Rights and Priorities**

A. The rights and priorities of creditors established prior to insolvency under commercial laws should be upheld in an insolvency case to preserve the legitimate expectations of creditors and encourage greater predictability in commercial relationships. Deviations from this general rule should occur only where necessary to promote other compelling policies, such as the policy supporting rehabilitation or to maximize the estate's value. Rules of priority should support incentives for creditors to manage credit efficiently.

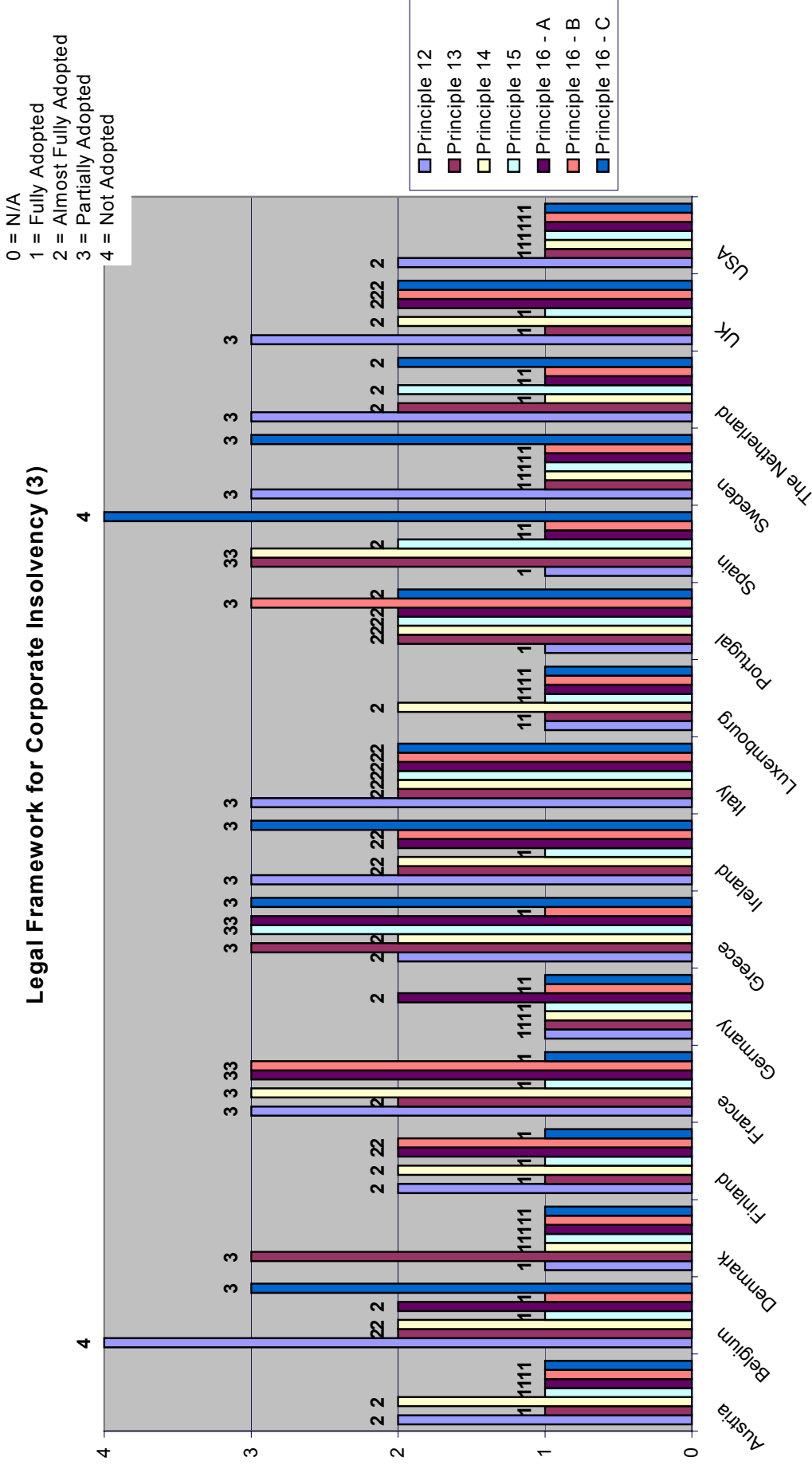
- *This part of principle 16 is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of France and Greece where it is only partially adopted.*

B. The bankruptcy law should recognize the priority of secured creditors in their collateral. Where the rights of secured creditors are impaired to promote a legitimate bankruptcy policy, the interests of these creditors in their collateral should be protected to avoid a loss or deterioration in the economic value of their interest at the commencement of the case. Distributions to secured creditors from the proceeds of their collateral should be made as promptly as possible after realization of proceeds from the sale. In cases where the stay applies to secured creditors, it should be of limited specified duration, strike a proper balance between creditor protection and insolvency objectives, and provide for the possibility of orders being made on the application of affected creditors or other persons for relief from the stay.

- *This part of principle 16 is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of France and Portugal where it is only partially adopted.*

C. Following distributions to secured creditors and payment of claims related to costs and expenses of administration, proceeds available for distribution should be distributed pari passu to remaining creditors unless there are compelling reasons to justify giving preferential status to a particular debt. Public interests generally should not be given precedence over private rights. The number of priority classes should be kept to a minimum.

- *This part of principle 16 is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Belgium, Ireland, Sweden and Greece where it is only partially adopted. It is not adopted in Spain.*



### **5.3. FEATURES PERTAINING TO CORPORATE REHABILITATION**

#### **Principle 17 Design Features of Rehabilitation Statutes**

To be commercially and economically effective, the law should establish rehabilitation procedures that permit quick and easy access to the process, provide sufficient protection for all those involved in the process, provide a structure that permits the negotiation of a commercial plan, enable a majority of creditors in favor of a plan or other course of action to bind all other creditors by the democratic exercise of voting rights (subject to appropriate minority protections and the protection of class rights) and provide for judicial or other supervision to ensure that the process is not subject to manipulation or abuse.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of France, Greece and Spain where it is only partially adopted.*

#### **Principle 18 Administration: Stabilizing and Sustaining Business Operations**

The law should provide for a commercially sound form of priority funding for the ongoing and urgent business needs of a debtor during the rescue process, subject to appropriate safeguards.

- *Principle 18 is fully or partially adopted in the U.S. and in 8 EU Member States It is partially adopted in Belgium, France, Germany, Greece, Ireland, Italy and Luxembourg. It is not adopted in Spain.*

#### **Principle 19 Information: Access and Disclosure**

The law should require the provision of relevant information on the debtor. It should also provide for independent comment on and analysis of that information. Directors of a debtor corporation should be required to attend meetings of creditors. Provision should be made for the possible examination of directors and other persons with knowledge of the debtor's affairs, who may be compelled to give information to the court and administrator.

- *This principle is fully or almost fully adopted in the U.S. and in 9 EU Member States. It is partially adopted in Austria, Belgium, France and Greece. It is not adopted in Italy and Spain.*

### **Principle 20 Plan: Formulation, Consideration and Voting**

The law should not prescribe the nature of a plan except in terms of fundamental requirements and to prevent commercial abuse. The law may provide for classes of creditors for voting purposes. Voting rights should be determined by amount of debt. An appropriate majority of creditors should be required to approve a plan. Special provision should be made to limit the voting rights of insiders. The effect of a majority vote should be to bind all creditors.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of France, Greece, Austria and Ireland where it is only partially adopted.*

### **Principle 21 Plan: Approval of Plan**

The law should establish clear criteria for plan approval based on fairness to similar creditors, recognition of relative priorities and majority acceptance. The law should also provide for approval over the rejection of minority creditors if the plan complies with rules of fairness and offers the opposing creditors or classes an amount equal to or greater than would be received under a liquidation proceeding. Some provision for possible adjournment of a plan decision meeting should be made, but under strict time limits. If a plan is not approved, the debtor should automatically be liquidated.

- *This principle is fully or almost fully adopted in the U.S. and in 10 EU Member States. It is partially adopted in Belgium, France, Greece and the UK. It is not adopted in Spain.*

### **Principle 22 Plan: Implementation and Amendment**

The law should provide a means for monitoring effective implementation of the plan, requiring the debtor to make periodic reports to the court on the status of implementation and progress during the plan period. A plan should be capable of amendment (by vote of the creditors) if it is in the interests of the creditors. The law should provide for the possible termination of a plan and for the debtor to be liquidated.

- *This principle is fully or almost fully adopted in 9 EU Member States. It is partially adopted in Belgium, Denmark, Ireland, Spain, the UK and Greece. Unfortunately, we did not get any answer from our U.S. expert on this topic.*

### **Principle 23 Discharge and Binding Effects**

To ensure that the rehabilitated enterprise has the best chance of succeeding, the law should provide for a discharge or alteration of debts and claims that have been discharged or otherwise altered under the plan. Where approval of the plan has been procured by fraud, the plan should be subject to challenge, reconsidered or set aside.

- *This principle is fully or almost fully adopted in the U.S. and in 11 EU Member States. It is partially adopted in Germany and Greece. It is not adopted in Italy and France.*

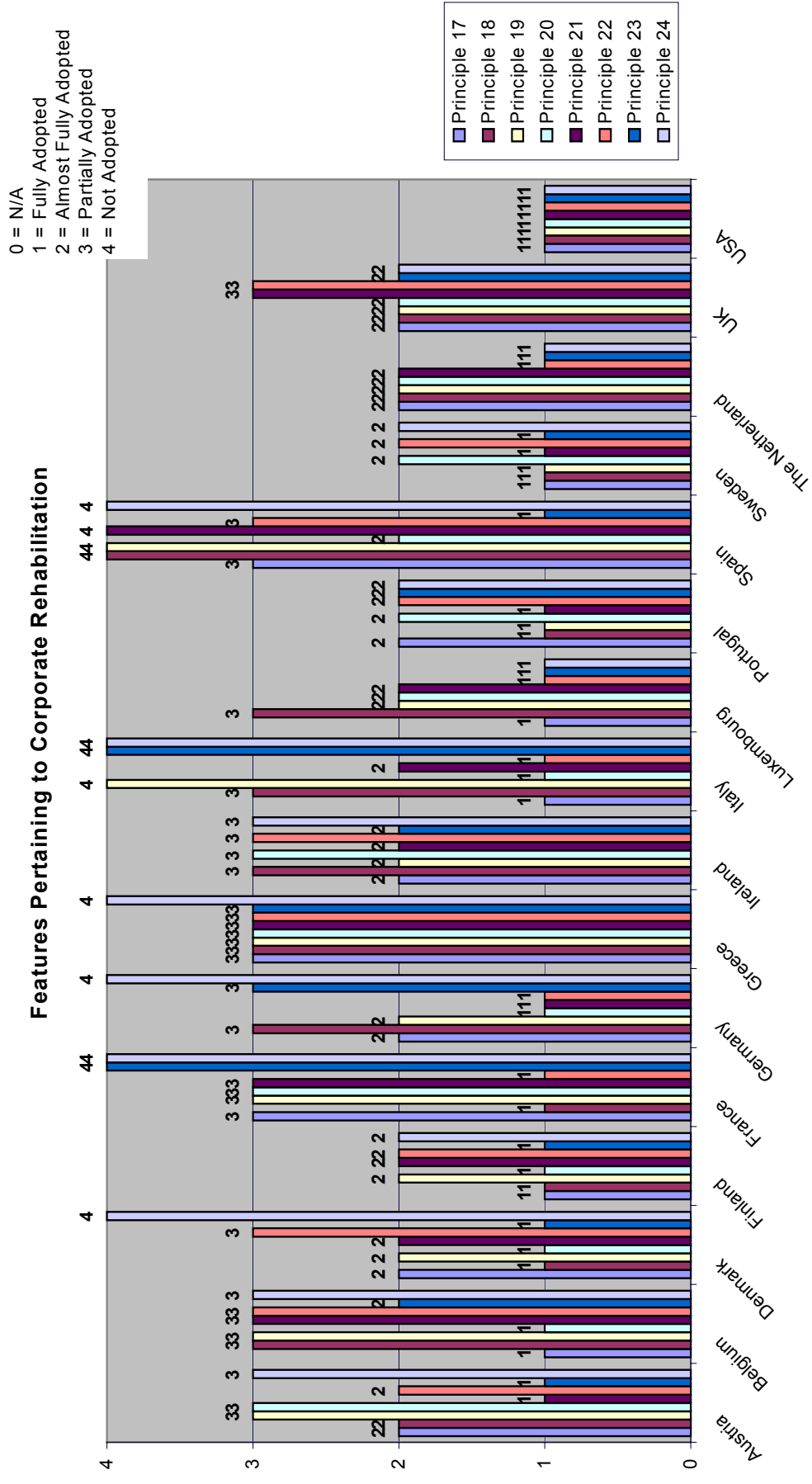
**Principle 24 International Considerations**

Insolvency proceedings may have international aspects, and insolvency laws should provide for rules of jurisdiction, recognition of foreign judgments, cooperation and assistance among courts in different countries, and choice of law.

- *This principle is fully or almost fully adopted in the U.S. and in 6 EU Member States. It is partially adopted in Austria, Belgium, and Ireland. It is not adopted in Italy, Denmark, Germany, France, Spain and Greece. The question is however no more relevant under a European perspective, because of the adoption of the Council Regulation No 1346/2000 of 29 May 2000 on insolvency proceedings, which is directly applicable in all EU Member States with the exception of Denmark.*







#### **5.4. INFORMAL CORPORATE WORKOUTS AND RESTRUCTURINGS**

##### **Principle 25 Enabling Legislative Framework**

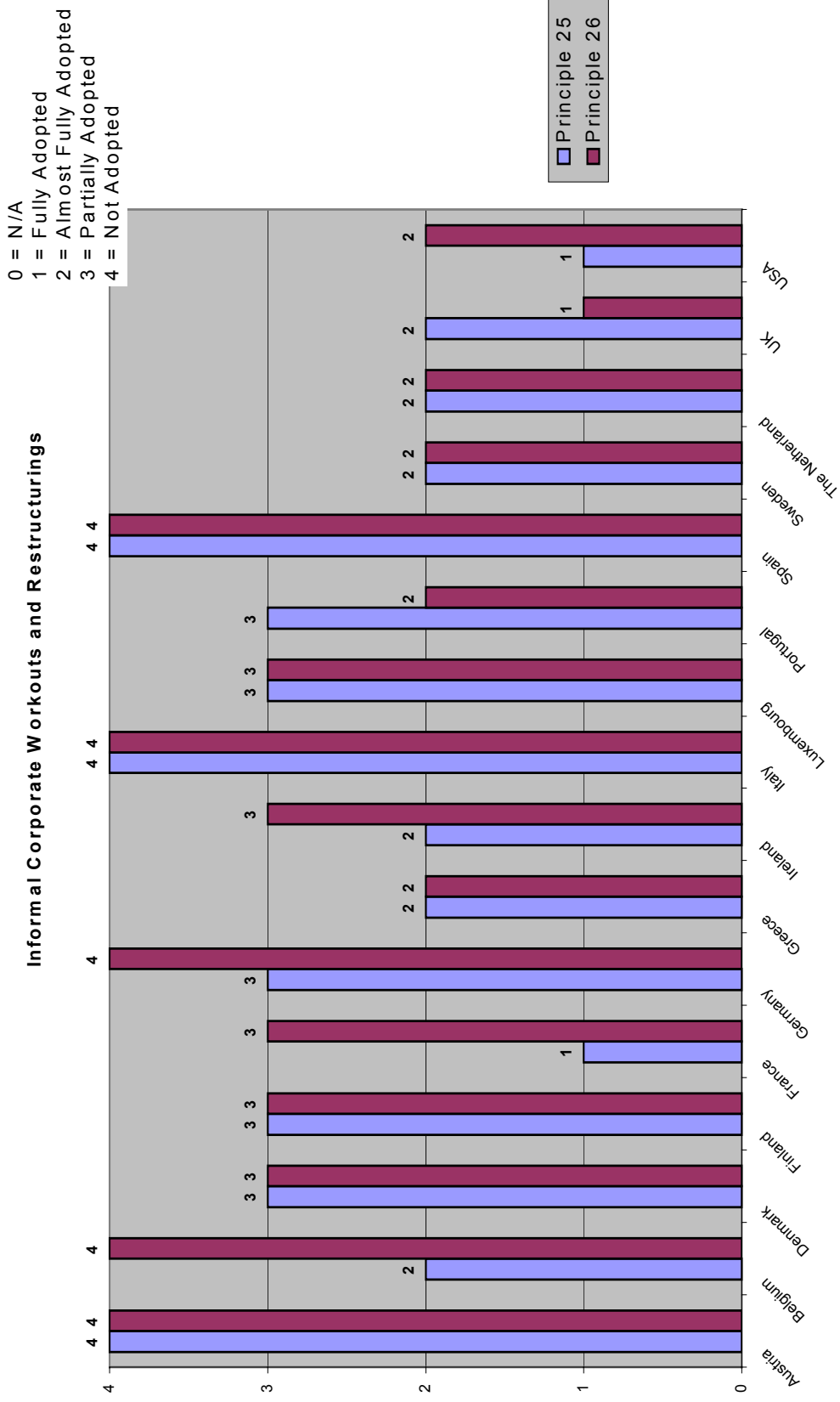
Corporate workouts and restructurings should be supported by an enabling environment that encourages participants to engage in consensual arrangements designed to restore an enterprise to financial viability. An enabling environment includes laws and procedures that require disclosure of or ensure access to timely, reliable and accurate financial information on the distressed enterprise; encourage lending to, investment in or recapitalization of viable financially distressed enterprises; support a broad range of restructuring activities, such as debt writeoffs, reschedulings, restructurings and debt- equity conversions; and provide favorable or neutral tax treatment for restructurings.

- *This principle is fully or almost fully adopted in the U.S. and in 7 EU Member States. It is partially adopted in Denmark, Germany, Finland, Luxembourg and Portugal. It is not adopted in Italy, Austria and Spain.*

##### **Principle 26 Informal Workout Procedures**

A country's financial sector (possibly with the informal endorsement and assistance of the central bank or finance ministry) should promote the development of a code of conduct on an informal out-of-court process for dealing with cases of corporate financial difficulty in which banks and other financial institutions have a significant exposure—especially in markets where enterprise insolvency has reached systemic levels. An informal process is far more likely to be sustained where there are adequate creditor remedy and insolvency laws. The informal process may produce a formal rescue, which should be able to quickly process a packaged plan produced by the informal process. The formal process may work better if it enables creditors and debtors to use informal techniques.

- *This principle is fully or almost fully adopted in the U.S. and in 5 EU Member States only. It is partially adopted in Denmark, France, Finland, Luxembourg and Ireland. It is not adopted in Italy, Austria, Belgium, Germany and Spain*



## **5.5. IMPLEMENTATION OF THE INSOLVENCY SYSTEM**

### **Principle 27 Role of Courts**

Bankruptcy cases should be overseen and disposed of by an independent court or competent authority and assigned, where practical, to judges with specialized bankruptcy expertise. Significant benefits can be gained by creating specialized bankruptcy courts.

The law should provide for a court or other tribunal to have a general, non-intrusive, supervisory role in the rehabilitation process. The court/tribunal or regulatory authority should be obliged to accept the decision reached by the creditors that a plan be approved or that the debtor be liquidated.

- *This principle is fully or almost fully adopted in the U.S. and in 9 EU Member States. It is partially adopted in Austria, France, Italy, Spain and Portugal. It is not adopted in Sweden.*

### **Principle 28 Performance Standards of the Court, Qualification and Training of Judges**

Standards should be adopted to measure the competence, performance and services of a bankruptcy court. These standards should serve as a basis for evaluating and improving courts. They should be enforced by adequate qualification criteria as well as training and continuing education for judges.

- *This principle is fully or almost fully adopted in the U.S. and in 5 EU Member States. It is partially adopted in Belgium, France, Greece, Ireland, Italy and Sweden. It is not adopted in Denmark, Austria, Finland and Spain*

### **Principle 29 Court Organization**

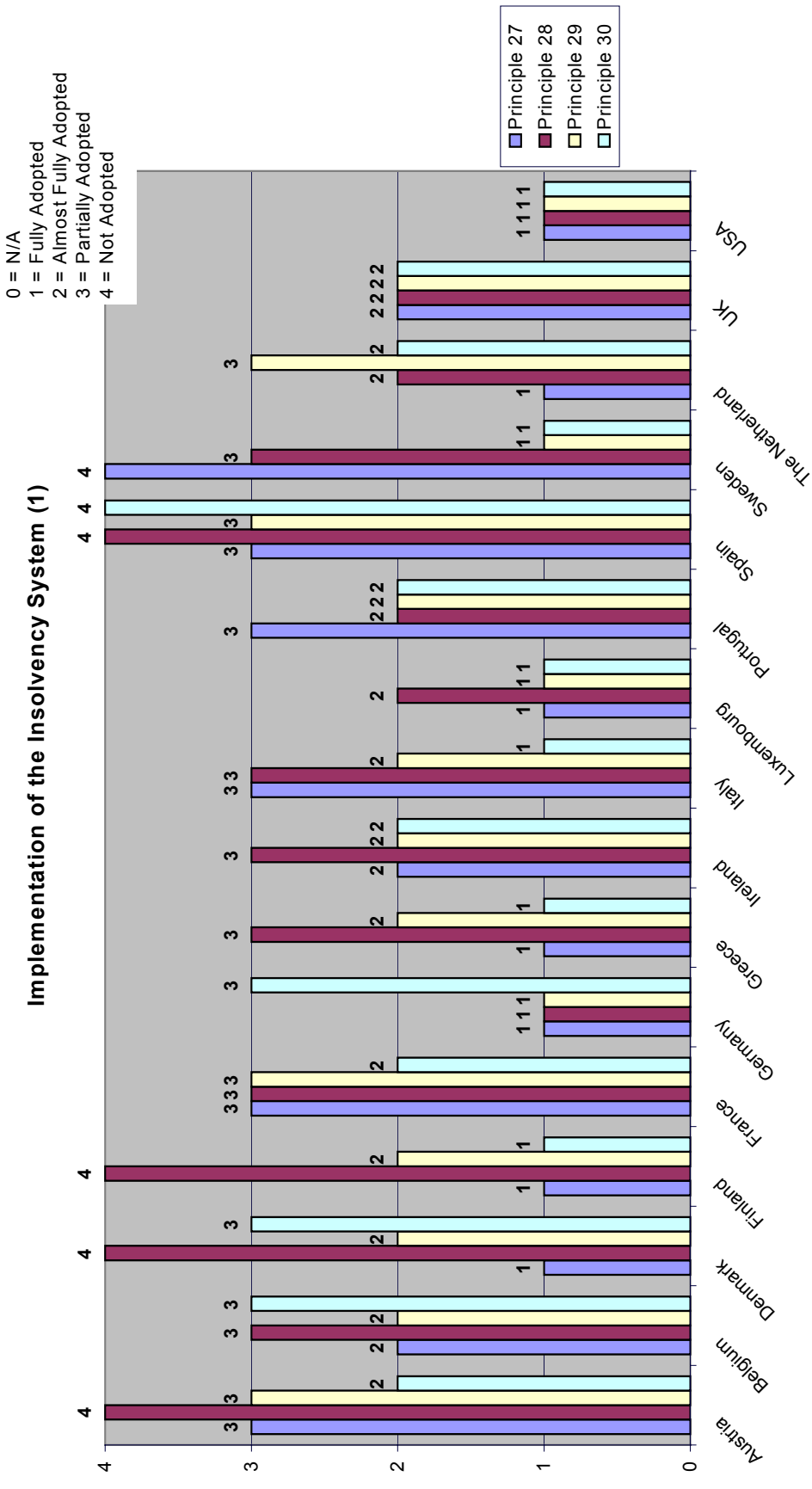
The court should be organized so that all interested parties—including the administrator, the debtor and all creditors—are dealt with fairly, objectively and transparently. To the extent possible, publicly available court operating rules, case practice and case management regulations should govern the court and other participants in the process. The court's internal operations should allocate responsibility and authority to maximize resource use. To the degree feasible the court should institutionalize, streamline and standardize court practices and procedures.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of France, Austria and Spain where it is only partially adopted.*

### **Principle 30 Transparency and Accountability**

An insolvency systems should be based on transparency and accountability. Rules should ensure ready access to court records, court hearings, debtor and financial data and other public information.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of Belgium, Denmark and Germany where it is only partially adopted. In addition, it is not adopted in Spain.*



### **Principle 31 Judicial Decision making and Enforcement**

Judicial decision making should encourage consensual resolution among parties where possible and otherwise undertake timely adjudication of issues with a view to reinforcing predictability in the system through consistent application of the law. The court must have clear authority and effective methods of enforcing its judgments.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States with the exception of France, Germany, Belgium and Spain where it is only partially adopted.*

### **Principle 32 Integrity of the Court**

Court operations and decisions should be based on firm rules and regulations to avoid corruption and undue influence. The court must be free of conflicts of interest, bias and lapses in judicial ethics, objectivity and impartiality.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States.*

### **Principle 33 Integrity of Participants**

Persons involved in a bankruptcy proceeding must be subject to rules and court orders designed to prevent fraud, other illegal activity or abuse of the bankruptcy system. In addition, the bankruptcy court must be vested with appropriate powers to deal with illegal activity or abusive conduct that does not constitute criminal activity.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States.*

### **Principle 34 Role of Regulatory or Supervisory Bodies**

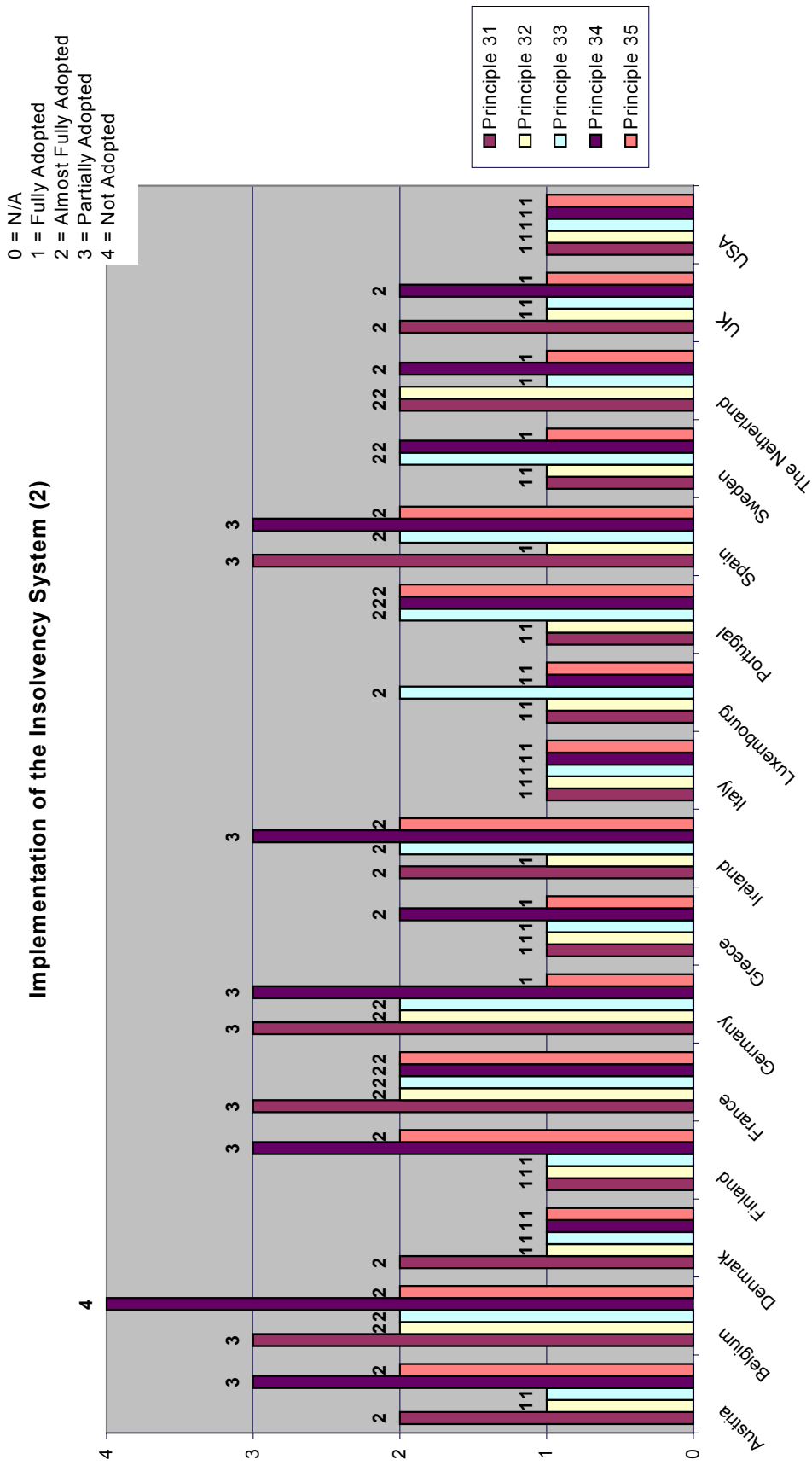
The body or bodies responsible for regulating or supervising insolvency administrators should be independent of individual administrators and should set standards that reflect the requirements of the legislation and public expectations of fairness, impartiality, transparency and accountability.

- *This principle is fully or almost fully adopted in the U.S. and in 9 EU Member States. It is partially adopted in Austria, Finland, Germany, Ireland and Spain. It is not adopted in Belgium.*

### **Principle 35 Competence and Integrity of Insolvency Administrators**

Insolvency administrators should be competent to exercise the powers given to them and should act with integrity, impartiality and independence.

- *This principle is fully or almost fully adopted in the U.S. and in all EU Member States.*

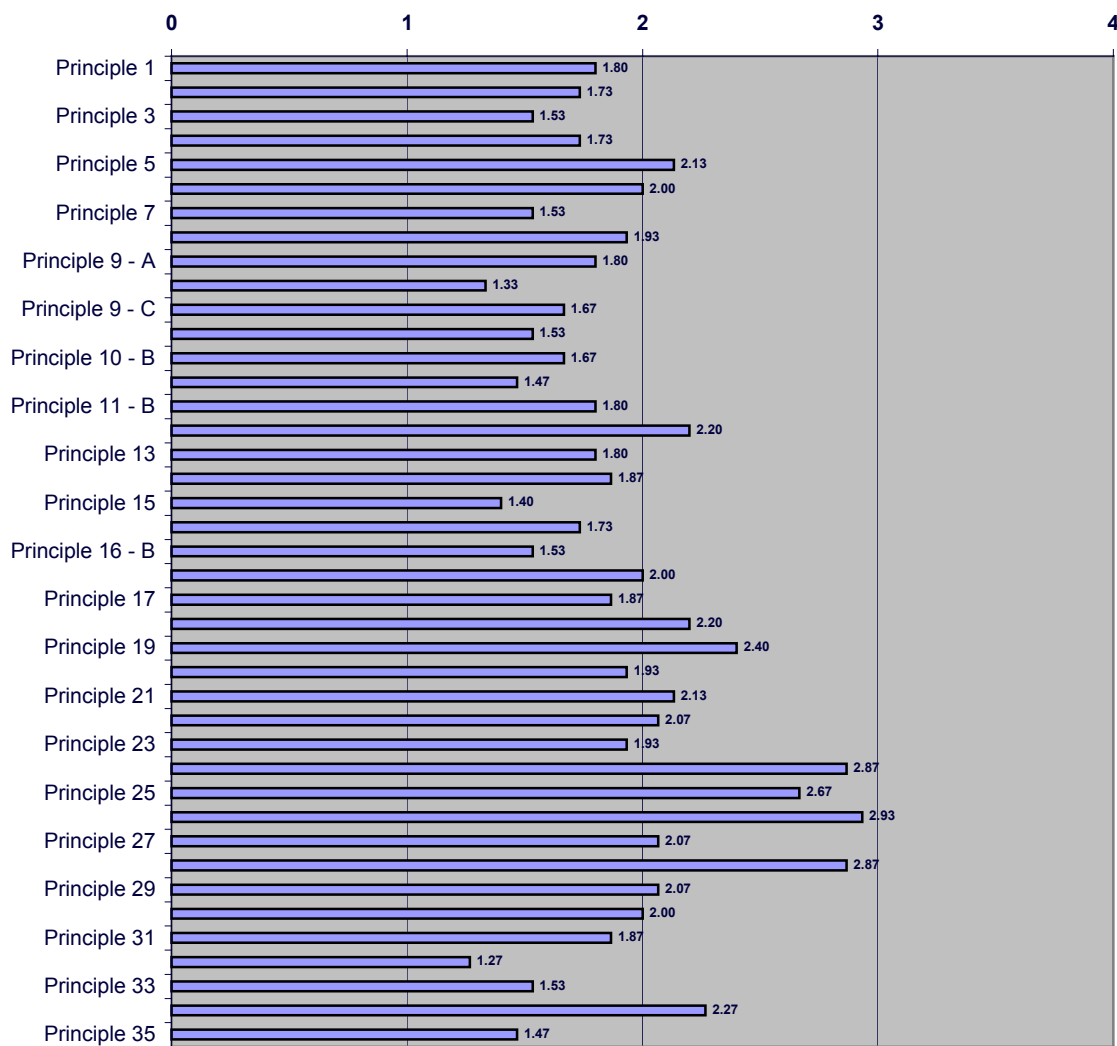




*Bankruptcy and a fresh start: stigma on failure and legal consequences of bankruptcy*

- 0 = No answer
- 1 = Fully Adopted
- 2 = Almost Fully Adopted
- 3 = Partially Adopted
- 4 = Not Adopted

**EU Average**



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

The graph above shows the EU and U.S. average degree of implementation for each principle<sup>2</sup>. A majority of principles are on average almost fully or fully adopted. The least adopted principles are principles 26, and 28 whereas principles 9/B, 15 and 32 are adopted in most Member States.

The graph below illustrated the degree of implementation for all principles or parts of principles per country. Luxembourg, Denmark and Sweden have fully adopted a majority of principles (respectively 28 principles fully adopted in Luxembourg, 24 in Sweden and 23 in Denmark).

Portugal, whilst showing a majority of 38 fully adopted or almost fully adopted answers has the largest number of principles "almost fully adopted".

Luxembourg, showing the largest number of principles fully adopted, totals 37 principles or parts of principles fully or almost fully adopted. Only 3 principles are partially adopted in Luxembourg as opposed to Spain, which has fully adopted or almost fully adopted 18 principles. Spain also has the largest number of principles not adopted (11). Finally, Greece shows the largest number of principles partially adopted (18).

As we already underlined, the results of the 16 questionnaires that we received from our experts are to be taken carefully and to be considered as nothing more than what they really reflect: the opinion of 16 national experts regarding the implementation of the World Bank principles in their own legal systems, based on their high experience in the matter of insolvency.

Accordingly, we believe that it is interesting to show and to describe practices throughout the EU Member States and the U.S. regarding the World Bank principles, as they are perceived by the national experts. Nevertheless, we are aware that their results cannot necessarily be extended or generalized, and that is the reason why we would not affirm that Member States that have the highest rate of implementation should be showed as examples of best practice.

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<sup>2</sup> It should be noted that these statistics are calculated on the basis of all principles and their subdivision since each subdivision was also the object of a separate question. This gives a total of 41 questions.

