

0. EXECUTIVE SUMMARY

0.1. OBJECTIVES

The European Charter for Small Enterprises, endorsed at the Feira European Council in June 2000, considers that "some failure is concomitant with responsible initiative and risk-taking and must be mainly envisaged as a learning opportunity" and called for assessing national bankruptcy laws in the light of good practice.

The project '*Bankruptcy and a fresh start: stigma on failure and legal consequences of bankruptcy*' was launched by the European Commission to identify the issues with regard to business restructuring, bankruptcy and fresh start in the European Union.

The objectives of the study were, in summary, to obtain current reliable information on the attitude of the public, the business community and financial institutions to business failure and bankruptcy and to analyse the legal consequences of insolvency.

The result of this study should allow a comparison of the situation in Europe and the United States and the drawing of policy conclusions on business failure and its consequences on entrepreneurship.

The project was conducted by the team of experts, specialised in EU law and reorganisation, set up by Philippe & Partners and Deloitte & Touche.

0.2. METHODOLOGY

The project consists of two parts:

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

With respect to the methodology implemented, within the section related to Stigma on failure, in order to assess the extent of the Stigma, we conceived a questionnaire to send to targeted communities (general, business and financial) and organisations.

The targeted communities and organisations have been selected using the database of Deloitte & Touche (a partner of the consortium), and its international network. The list of the targeted organisations has been communicated to the European Commission before sending the questionnaire by fax.

According to the Terms of References of the project and our technical proposal, we carried out also interviews with the targeted organisations in order to gauge the real needs of the members of the communities and to know the official position adopted by the organisations within the field of the Stigma and the Fresh Start.

We contacted the targeted organisations by phone and interviewed the representative. From a practical perspective, we decided to carry out the interview in accordance with the questionnaires.

This system allowed us to gather data and process them within the same statistics relating to the questionnaires received by fax.

The data collection operations were accomplished following these phases and organisation:

- First phone call
- First fax sending session
- Second phone call
- Third phone call
- Fourth phone call
- Second fax sending session
- Final phone call

In a second phase, we developed indicators relating to the Stigma on business failure.

Finally, we formulated recommendations aiming at eliminating or reducing the Stigma attached to failed entrepreneurs.

In order to analyse the legal consequences of bankruptcy, national insolvency law experts prepared comprehensive reports about the legal framework for bankruptcy in the Member States and the US. Together with this guideline, a questionnaire based on the “Principles and Guidelines for Effective Insolvency and Creditor Rights Systems” prepared by the World Bank, was sent to the experts.

The analysis of the collected national reports leads to an overview and a basic comparison of the various insolvency legislations in all Member States and the US.

During a second phase indicators were developed to assess to what extent national insolvency law really does act as a deterrent to business survival and to the possibility of a fresh start after bankruptcy.

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

0.3. KEY RESULTS OF THE QUESTIONNAIRES FOR THE GENERAL, BUSINESS AND FINANCIAL COMMUNITIES: A SUMMARY OVERVIEW.

0.3.1. Questionnaire for the general community at national level

Within the general (consumer) community, the general knowledge is limited to the notion of bankruptcy/business failure, but does not extend to the difference between insolvency and bankruptcy. Furthermore, the members of the general community do not seem to be generally interested by the matter, as questions from consumers on the issue of bankruptcy are very rare.

The answers received on the issue of stigma attached to bankruptcy and the distinction between a business in distress and a business that recovered from distress did not provide a clear common position. Furthermore, the vast majority of the targeted organisations declared that the general public does not know whether there is a difference between fraudulent and non-fraudulent bankruptcy.

The general ignorant attitude of the general community was further assessed by the observation that their members rely almost exclusively on the media as a source of information on business failure. Non-availability of information was confirmed by the fact that targeted organisations do not keep any specific databank on bankruptcies/business failures.

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 as to the consequences of failure was very divided, half rather discouraging their members from dealing with a business in difficulties. The reaction was even more conservative in the context of the fresh start: most organisations admitted that they would warn their members about the previous failure of a business. This trend was however limited by the positive attitude to the idea of legislative promotion of the opportunities available for a business previously involved in bankruptcy, and correlative elimination of stigma – except for fraudulent bankruptcy. According to the answers received, the members of the general community generally agree with the idea that failed entrepreneurs often learn from their mistakes – although they might also be deterred from creating a new business.

0.3.2. Questionnaire for the business community at national level

Within the business community, it appears that most of the targeted organisations that participated in the survey agree that a stigma does surround the failure of a business and/ or bankruptcy.

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

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.

However, the business community does not hold a significant position in one way or another with regard to the issue of tolerance towards young IT start-ups in contrast with their attitude towards established firms.

With regard to the issue of availability of information, it appears from the information provided by those organisations targeted that all choices that were provided in the questionnaire are indeed used as sources of information for discovering that a business (actual or potential counterpart) faces difficulties. The sources, which appear to be the most commonly used are: information provided by colleagues, competitors, or the business sector, media, and credit/ financial institutions. Information provided by creditors is however important too. A limit that was highlighted was banking secrecy. Furthermore, a German organisation pointed out the information provided by the supervisory entity.

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

Furthermore, most organisations in the business community hold databanks listing entrepreneurs according to solvency ratings, the overwhelming source of information for such insolvency ratings -generally considered as reliable- being private databanks. The latter do not generally differentiate between fraudulent and non-fraudulent bankruptcy. All the organisations targeted nevertheless more or less unanimously agreed that information relating to the distinction between fraudulent/ non-fraudulent bankruptcies is relevant to their business sector.

The issue of reasons for failure was answered somewhat differently by large enterprises on the one hand, and medium to micro enterprises on the other.

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 lack of 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.

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 reason for business failure was financial difficulties, followed very closely by external business conditions, youth/ lack of experience, and then 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, corporation 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.

With regard to the consequences of failure, the attitude of those organisations targeted appears to be almost fifty/fifty with regard to the issue of willingness 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, depending on the nature and level of difficulties encountered, on a case by case basis. However, a general reluctance to deal with a business facing difficulties appears quite strong. Surprisingly, and encouragingly, all the targeted organisations unanimously agreed that their members would be willing to deal with a business that has recovered after failure.

The business community expressed a general position of awareness as to the restriction regime applicable to a bankrupt business, and of tolerance in dealing with a business in insolvency status. The attitude was however divided as to whether the members of the organisations would be willing to get involved in the management of a bankrupt person, and was strongly reluctant on the issue of selling shares to a bankrupt person. Employment of a bankrupt person in a business would often be possible, though positions at the highest management levels would be excluded. Finally, strong extra guarantees would be required when dealing with a person who has failed in the past.

With regard to the issue of a fresh start, a majority of the targeted organisations appear to be favourable to the promotion, by the legislator, of the opportunities for a fresh start for an entrepreneur previously involved in bankruptcy, and to the correlative elimination of stigma affecting the business life of an entrepreneur previously involved in a bankruptcy, the limit being: fraud. 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, although such entrepreneurs would have to deal with the burden of the stigma of bankruptcy, making it more difficult to achieve good results.

Finally, as to the issue of external control, the business community generally speaking does not seem to believe that the legislator should strengthen the level of control over the business life of an entrepreneur *previously* involved -as opposed to *currently* facing difficulties - in a bankruptcy experience. The majority of the targeted organisations assessed that the external control over a business facing difficulties should not be under the power of the judicial authorities, and even less under the control of creditors. The suggestion in favour of the appointment of a crisis manager was generally well received by the business community, that agreed that it would be considered an appropriate measure both by creditors and by employees of the business facing difficulties.

0.3.3. Questionnaire for the financial community at national level

It appears that in the majority of Member States, the financial community considers that the failure of a business or its bankruptcy entails stigma. Furthermore, most organisations make the distinction between a business in distress and a business that has recovered from distress, and unanimously admit that businesses having incurred fraudulent bankruptcy are treated differently.

Concerning the issue of availability of information, most targeted organisations assessed that the financial community does keep precise data (mainly accounting and general credit information) on the history of their clients and on their eventual financial difficulties. The data kept by the financial community seem to differentiate between fraudulent bankruptcy and non-fraudulent bankruptcy in a (small) majority of cases. Those data are clearly not shared with other financial institutions -though most organisations seemed to believe that sharing the information could prove helpful- but are often shared with their business partners. Several Member States provide a legal obligation to transmit financial data concerning the clients of financial institutions 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 open to consultation by financial institutions. Most targeted organisations within the financial community provided that they benefit from external sources of information about failed entrepreneurs, considered as useful.

With regard to the reasons for failure, The most commonly raised reasons for the failure of large enterprises are lack of management skills/poor management, financial, and external business conditions. For medium, small and micro enterprises, the reasons for failure seem to concentrate more on the person of the entrepreneur: very highly raised is the issue of management skills. Also quite important is the problem of relative youth or lack of experience of the entrepreneur. Otherwise, the same reasons as for large enterprises seem to apply (financial difficulties, external business conditions).

It appears that for the targeted financial organisations, the preferred way for reducing the number of bankruptcies/ business failures would consist in providing a better control of businesses. However, the answers do not seem to reflect the wish that this control be achieved through judicial intervention nor through intervention by financial institutions. Yet, most targeted financial organisations agree that they have an important role to play in the prevention of bankruptcy and business failure. The financial community generally assesses whether the entrepreneur represents a risk by using the following criteria: the lack of experience, the business plan, and the fact that the entrepreneur had previously failed. Furthermore, targeted organisations from all Member States, except Luxembourg, agreed that their members have internal control mechanisms for the detection of businesses that may be approaching distress. Efficient controls for the detection of businesses in potential financial difficulties include the presence of representatives of the organisation at the board of directors, overall control over management of the target business, and surveillance of the financial state of the business.

With regard to the consequences of failure, all targeted financial organisations agreed that provision of new credits 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 towards businesses having faced financial difficulties, and the stigma being linked to these businesses. Few organisations agreed that their members' attitude would change if the client facing difficulties was assisted by an expert such as a crisis manager. Finally, most organisations of the financial community assessed the harsh consequences -including criminal- of fraudulent bankruptcy.

The issue of the fresh start called the following conclusions. Most of the targeted financial organisations seem to be in favour of the promotion, by the legislator, of the opportunities for a fresh start for an entrepreneur previously involved in bankruptcy. The targeted financial organisations seem to be divided on the issues of whether the legislator should work to eliminate the stigma affecting the business life of an entrepreneur previously involved in a bankruptcy, and of whether the legislator should promote a fresh start and eliminate stigma for fraudulently bankrupt persons. However, most targeted organisations positively answered 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. The financial community nevertheless almost unanimously agreed that banks do have an important role to play in the restart of a failed entrepreneur, and that their members would accept to provide new credit to an entrepreneur that has previously faced bankruptcy or failed, although the latter would be subject to the provision of adequate securities and guarantees, and to the respect of fixed goals expressed in the business plan.

With regard to the issue of external control, most targeted organisations of the financial community seem to believe that the entrepreneur does consider that the external manager can reduce the stigma on business facing difficulties. The majority of the financial targeted organisations seem to reject the idea of judicial supervision of the external control, to which several organisations seemed to prefer the control of creditors. The targeted organisations almost unanimously agreed that the appointment of a crisis manager would be considered an appropriate measure by creditors of a business facing difficulties.

A cross comparison of these of answers received in relation to the way in which the domestic legislation and regulation provide for control on businesses in difficulties shows that the most common type of control which is not combined with another type of control -the judicial control also is felt by the financial community as the least satisfactory control of businesses in difficulties. Furthermore, 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 - although the targeted financial organisations seem generally satisfied with the way the domestic legislation and regulations deal with bankruptcy/business failure in terms of the debtors' interests.

0.4. PRINCIPLES AND GUIDELINES FOR EFFECTIVE INSOLVENCY AND CREDITOR RIGHT SYSTEM: ASSESSMENT 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 systems¹. The *Principles and Guidelines* offer guidance to policymakers on their policy choices.

¹ The *Principles and Guidelines* can be accessed in the Best Practice directory on the Global Insolvency Law Database at www.worldbank.org/gild.

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 US, 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.

0.4.1. 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.*

PRINCIPLE 2: ENFORCEMENT OF UNSECURED RIGHTS

A regularised 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 publicise 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. experts on this topic.*

PRINCIPLE 4: RECORDING AND REGISTRATION OF SECURED RIGHTS

There should be an efficient and cost-effective means of publicising 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 realisation 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 all EU Member States, except for Greece, Italy and Luxembourg where it is only partially adopted.

- *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.*

0.4.2. 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.
- Maximise the value of a firm's assets by providing an option to reorganise.
- Strike a careful balance between liquidation and reorganisation.
- 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 judgements.
- Provide a transparent procedure that contains incentives for gathering and dispensing information.

- Recognise 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 behaviour 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 unauthorised 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 maximise 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 authorised to retain control over the business, 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 misbehaviour. 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 organising 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.

- *This principle 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.*

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 maximise 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 recognise 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 realisation 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.*

0.4.3. 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 favour 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.

- *This principle 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.

- *Principle 19 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 the U.S..*

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 judgements, co-operation and assistance among courts in different Member States, 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.*

0.4.4. 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 write-offs, reschedulings, restructurings and debt- equity conversions; and provide favourable 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.*

0.4.5. 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 specialised bankruptcy expertise. Significant benefits can be gained by creating specialised 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 organised 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 maximise resource use. To the degree feasible the court should institutionalise, streamline and standardise 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 judgements.

- *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

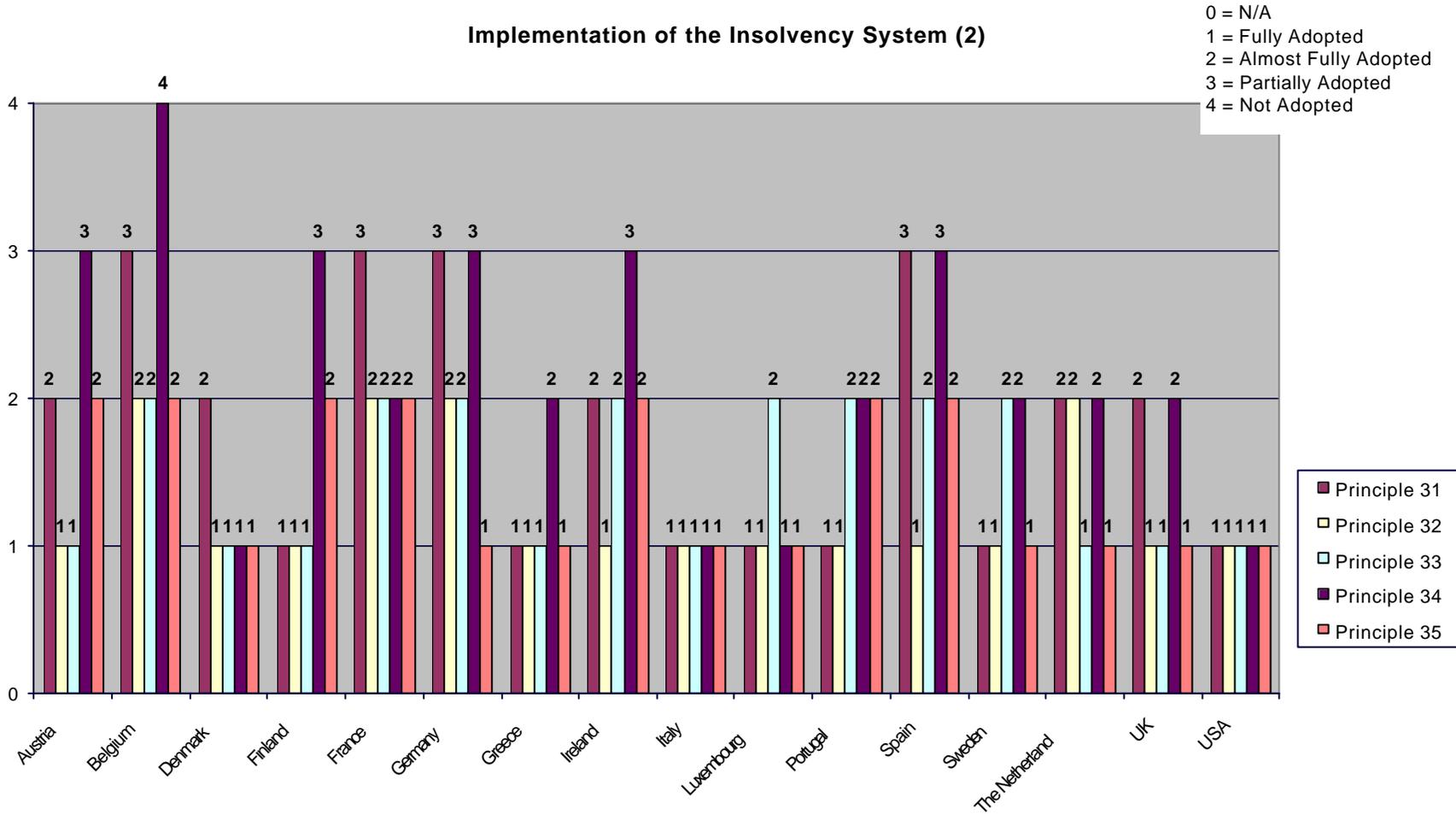
The body or bodies responsible for regulating or supervising insolvency administrators should be independent of individual administrators and should set standards that reflect the requirements of the legislation and public expectations of fairness, impartiality, transparency and accountability.

- *Principle 34 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.*



The graph above shows the EU average degree of implementation for each principle². A majority of principles are on average almost fully or fully adopted. The least adopted principles are principles 26, 28 and 24 whereas principles 32, 9/B and 15 are adopted in most Member States.

The graph below illustrated the degree of implementation for all 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).

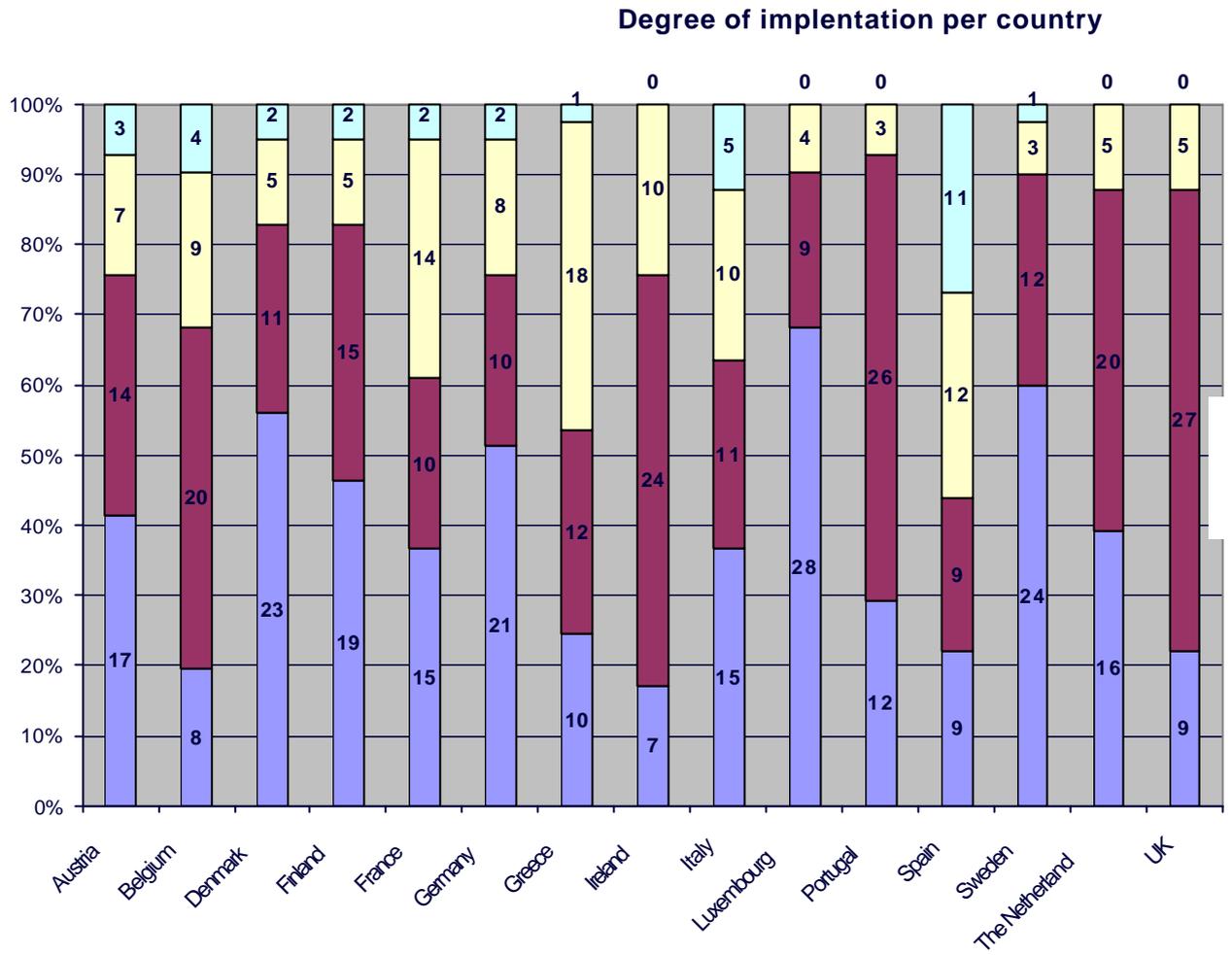
Portugal, whilst showing a majority of 38 fully adopted or almost fully adopted answers has the largest number of principles "almost fully adopted".

Luxembourg, showing the largest number of principles fully adopted, totals 37 principles 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).

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.

We are aware that these results cannot necessarily be extended or generalised, and that is the reason why for example we would not affirm that Member States that have the highest rate of implementation should be showed as examples of best practice.

² 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.



0.5. INDICATORS

0.5.1. Indicators to assess the influence of the stigma of failure

- **“awareness”**

Definition: General knowledge in a particular community on basic distinctions linked to bankruptcy: what is bankruptcy/ business failure/insolvency, fraudulent/ non-fraudulent bankruptcy...

Objective: To determine to what extent the ignorance of a particular community around the notions linked to bankruptcy might incur particularly stigmatising attitudes in the situations.

Most striking answers by the three communities:

- *General community:* Knowledge does not extend to the difference between insolvency and bankruptcy. Limited awareness on the matter.
- *Business community:* Aware of the stigma that surrounds business failure. Distinction is made between business in distress and business that has recovered from distress.
- *Financial community:* idem.

- **“attitudes”**

Definition: General trends described by the targeted communities in reaction to situations of bankruptcy/ insolvency, specific case by case attitudes, for instance in the case of fraudulent bankruptcy.

Objective: To determine whether the reaction is rather positive or negative in general, whether it differs according to the community, whether it attaches a stigma to the failure and whether it might deter a failed business/ entrepreneur from starting a new business.

Most striking answers by the three communities:

- *General community:* Stigma attached to failure in general.
- *Business community:* More moderated: distinction is made between business in distress/ business having recovered from distress, and between fraudulent/ non-fraudulent bankruptcy.
- *Financial community:* idem.

- **“information”**

Definition: What are the sources of information that are relied on by the different communities.

Objective: To determine how the sources of information on business failure which are used by each community influence their knowledge on bankruptcy notions and their attitude towards bankrupt businesses.

Most striking answers by the three communities:

- *General community:* Media (no specific databanks); not well informed.
- *Business community:* Varied sources of information (colleagues, competitors, the business sector, media, credit/financial institutions).
- *Financial community:* Specific and efficient databanks.

- **“role in prevention”**

Definition: Whether the targeted community feels it has a role to play in the prevention of business failure.

Objective: To determine what this role would be, and whether it consists in an active approach: for the prevention of failure on the one hand, and for the fresh start on the other hand.

Most striking answers by the three communities:

- *General community:* Very limited role.
- *Business community:* Yes but generally not in favour of the following forms of intervention: to get involved in the management of a bankrupt person, to sell shares to a bankrupt person.
- *Financial community:* Yes. It could involve the presence of representatives of the organisation at the board of directors, overall control over management of the target business, and surveillance of the financial state of the business.

- **“dealing with bankrupt businesses”**

Definition: Whether the members of the targeted communities generally continue to deal with businesses that are facing difficulties/ bankruptcy, including: continuing business, continuing to provide credits, etc.

Objective: To determine on the one hand, whether businesses facing difficulties are provided with support from their business partners, from banks, etc, and on the other hand, whether a stigma is attached to a previously failed business, which would be revealed by its partners' reluctance to continue to deal with it.

Most striking answers by the three communities:

- *General community:* Very deterrent effect: most consumer organisations would discourage their members from dealing with a business in difficulties, and would warn their members of the previous failure of a business.
- *Business community:* Relative willingness to deal with bankrupt businesses, depending on the case. Requirement of strong extra guarantees. Generally tolerant to deal with a business in insolvency status.
- *Financial community:* Reluctance.

- **“fresh start”**

Definition: Whether previously failed/ bankrupt businesses are given a “second chance” and are provided with the possibility to start a new business.

Objective: To identify any stigma linked to the start of a new business by a previously failed/ bankrupt business.

Most striking answers by the three communities:

- *General community:* Very deterrent effect: most consumer organisations would warn their members of the previous failure of a business. However, favourable to legislative promotion of opportunities.
- *Business community:* Generally favourable to legislative promotion of the opportunities for a fresh start and correlative elimination of stigma. Limit: fraudulent bankruptcy.
- *Financial community:* Generally favourable to legislative promotion of the opportunities for a fresh start but more reluctant to the correlative elimination of stigma. Banks' important role: provision of credits (subject to the provision of adequate securities).

- **“external control”**

Definition: Control which is/ could/ should be provided by domestic legislations over the business life of an entrepreneur either facing difficulties or previously involved in bankruptcy.

Objective: To identify the position of the three targeted communities in respect of various forms of external control. This analysis involves the assessment of the existing legislation in the matter, including the level of satisfaction of the targeted communities in the member states, and the choice of the preferred form of external control (by the judicial authorities, by creditors...).

Most striking answers by the three communities:

- *General community:* N/A.
- *Business community:* Generally not in favour of a legislative strengthening of the control over the business life of an entrepreneur “previously” involved in bankruptcy – as opposed to “actually” facing difficulties. In the latter case, the business community is generally reluctant to place the external control under the power of judicial authorities or under the control of creditors: the appointment of a crisis manager would be preferred.
- *Financial community:* According to the financial community, the entrepreneur would consider that the external manager could reduce the stigma. The majority of the targeted organisations rejected judicial supervision, to which several organisations preferred the control of creditors. The appointment of a crisis manager was considered almost unanimously as an appropriate measure for the protection of creditors.

0.5.2. Indicators to assess to what extent national bankruptcy law acts as deterrent to business survival and a fresh start

a) Early warning

- **“Recognition of financial difficulties”**

Objective: To detect early enough a business or an entrepreneur's financial difficulties in order to set up adequate prevention procedures.

- **“Disclosure of information by debtor”**

Objective: To assess whether the debtor is subject to an efficient supervision process for his disclosure of information regarding its own situation.

Example of best practice: Belgium

b) Business survival

- **“ignorance and complexity”**

Objective: to determine to what extent the ignorance of legal possibilities to rescue business and complexity of these procedures might impede the debtor from benefiting from such rescue opportunities.

Example of best practice: None

- **“requirements for entry”**

Objective: to assess the level of requirements of a national legislation to benefit from the rehabilitation proceedings, which, if too high, may impede the debtor from benefiting from such procedures.

example of best practice: Denmark, France, UK (receivership), USA.

- **“publicity”**

Objective: to identify whether the publicity obligations provided by the national legislation will have a harmful effect on the rehabilitation process.

Example of best practice: France, USA

- **“costs”**

Objective: to determine whether the level of costs required for the rehabilitation proceedings -in particular for small and medium enterprises- provided by the national legislation will have a harmful effect on the rehabilitation process.

Example of best practice: None

- **“administration of the regime”**

Objective: to assess whether the formalism and delays of the procedure set up under a national legislation will be such as to deter an enterprise to initiate reorganisation proceedings.

Example of best practice: Portugal

- **“degree of protection against creditors during the procedures”**

Objective: to identify whether the national legislation provides a particularly protective regime for secured creditors, which might be a factor of failure for a reorganisation procedure.

Example of best practice: Belgium, Finland, France, Germany, Greece, Ireland, Luxembourg, Portugal, US.

- **“knowledge and functioning of the relevant courts”**

Objective: to determine whether the competent courts have the adequate knowledge and training in order to favour the success of rehabilitation proceedings.

Example of best practice: all, except Spain

c) Fresh start

- **“effects of bankruptcy”**

Objective: to assess to what extent the effects of bankruptcy as such may incur stigmatisation of the debtor

Example of best practice: all Member States

- **“restrictions, disqualifications and prohibitions”**

Objective: to determine whether a national legislation imposes automatic restrictions, disqualifications and prohibitions that end up stigmatising the bankrupt person.

Example of best practice: Greece

- **“distinction between honest and dishonest bankrupts”**

Objective: to identify whether a national legislation does distinguish a fraudulent bankruptcy from an honest bankruptcy, so as to avoid stigmatising the honest bankrupt.

Example of best practice: Spain

- **“discharge from remaining debts”**

Objective: to assess whether a national legislation provides for the possibility to discharge from remaining debts once the bankruptcy is closed.

Example of best practice: Austria, Belgium, France, Germany, Spain, UK and US.

0.6. RECOMMENDATIONS

Possible recommendations were identified, which are summarised below.

0.6.1. Recommendations as regards the stigma on bankruptcy:

a) The general public, the business community and financial institutions

- **General knowledge on bankruptcy / insolvency**
- **Dealing with bankrupt businesses**

b) National authorities

- **Information on business failure**
- **Promotion of fresh start**
- **External control**

c) The European Union

- **Information of existing insolvency proceedings**
- **Reduce stigmatising effects of bankruptcy by stressing distinction between honest and dishonest bankrupts**

0.6.2. Recommendations as regards the early warning:

a) The general public, the business community and financial institutions

- **Earlier detection**
- **Information**

b) National authorities

- **Formal detection proceedings**
- **Information with regard to the legal possibilities to rescue businesses**

c) The European Union

- **Harmonise legislations**
- **Promote a control of the detection measures**

0.6.3. Recommendations as regards the business survival:

a) The general public, the business community and financial institutions

- **Appointment of an external crisis manager**

b) National authorities

- **Promotion of entrepreneurial culture according to European trends**
- **Enterprises should be obliged to take action in a timely manner**
- **Simplification of existing proceedings**
- **Lower requirements for entry**
- **Higher confidentiality**
- **Reduce costs**
- **Control of the information to disclose**
- **New deliveries**
- **Specialised insolvency courts**
- **Reduce the number of preferential rights**
- **Do not keep preferential creditors completely out of proceedings**

c) The European Union

- **Promotion of the information**
- **Harmonisation of the legislation**

0.6.4. Recommendations as regards the possibilities for a fresh start:

a) The general public, the business community and financial institutions

- **Promotional campaign in order to launch the Fresh start and a new entrepreneurship**

b) National authorities

- **Reduce stigmatising effects of bankruptcy: distinction between honest and dishonest bankrupts**
- **Early discharge for honest bankrupts**

c) The European Union

- **Information on the “positive” effects of a bankruptcy experience.**